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FEDERAL REGISTER

Vol. 79 Thursday,
No. 99 May 22, 2014

Pages 29323–29660

OFFICE OF THE FEDERAL REGISTER

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0954; Airspace Docket No. 13–AGL–35]

Amendment of Class D Airspace; St. Paul, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action amends a typographical error in a final rule correction published in the **Federal Register** of May 8, 2014, amending the geographic coordinates of South St. Paul Municipal Airport-Richard E. Fleming Field, St. Paul, MN, in Class D airspace.

DATES: Effective date: 0901 UTC, May 29, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 8, 2014, a final rule, correction was published in the **Federal Register** (FR 79 26365) Docket No. FAA–2013–0954, correcting the latitude coordinate of a final rule technical amendment published in the **Federal Register** of March 4, 2014 (79 FR 12050), for South St. Paul Municipal Airport-Richard E. Fleming Field, St. Paul, MN, in Class D airspace. Subsequent to publication, the FAA found the longitude coordinate (93°01′58″) was added in error along with the edited latitude coordinate. This action corrects that error.

Correction to Final Rule Correction

■ Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of May 8, 2014 (79 FR 26365) FR Doc. 2014–09881, the latitude coordinate in the regulatory text on page 26365, column 2, line 12, is corrected as follows:

§ 71.1 [Amended]

AGL MN D St. Paul, MN [Corrected]

■ Remove (Lat. 44°51′26″ N., 93°01′58″ W.) and add in its place (Lat. 44°51′26″ N.)

Issued in Fort Worth, Texas, on May 15, 2014.

Kent M. Wheeler,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–11856 Filed 5–21–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0986; Airspace Docket No. 13–AGL–25]

Establishment of Class E Airspace; Bois Blanc Island, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bois Blanc Island, MI. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Bois Blanc Island Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, July 24, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7654.

SUPPLEMENTARY INFORMATION:

History

On March 14, 2014, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the Bois Blanc Island, MI, area, creating controlled airspace at Bois Blanc Island Airport (79 FR 14449) Docket No. FAA–2013–0986. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Bois Blanc Island Airport, Bois Blanc Island, MI, for new standard instrument approach procedures developed at the airport. Controlled airspace is needed for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Bois Blanc Island Airport, Bois Blanc Island, MI.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL MI E5 Bois Blanc Island, MI [New]

Bois Blanc Island Airport, MO

(Lat. 38°20′52″ N., long. 93°20′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Bois Blanc Island Airport.

Issued in Fort Worth, Texas, on May 7, 2014.

Walter Tweedy,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–11382 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0731; Airspace Docket No. 13–ASO–18]

Establishment of Class E Airspace; Blairsville, GA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule: correction

SUMMARY: This action corrects the effective date of a final rule, published in the **Federal Register** on April 2, 2014, establishing controlled airspace at Blairsville Airport, Blairsville, GA.

DATES: Effective 0901 UTC, The effective date of the final rule published on April 2, 2014 is corrected from May 27, 2014, to May 29, 2014. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On April 2, 2014, the FAA published a final rule in the **Federal Register** establishing Class E airspace at Blairsville Airport, Blairsville, GA (79 FR 18442). After publication, the FAA found that the effective date was incorrectly typed as May 27, 2014, instead of May 29, 2014. This action makes the correction.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date listed under **DATES** heading on Docket No. FAA–2013–0731, establishing Class E airspace at Blairsville Airport, Blairsville, GA, as published in the **Federal Register** of April 2, 2014, (79 FR 18442), FR Doc. 2014–07292, is corrected as follows:

■ On page 18442, column 2, line 44, remove, ''May 27'', and add in its place ''May 29.''

Issued in College Park, Georgia, on May 15, 2015.

Myron A. Jenkins,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2014–11860 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0274; FRL–9910–92–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Revision to the Chicago 8-Hour Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Illinois' March 28, 2014, state implementation plan (SIP) revision to the 1997 8-hour ozone maintenance plan for the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana area (the Greater Chicago Area). This SIP revision establishes new Motor Vehicle Emissions Budgets (MVEB) for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) for the year 2025. EPA is approving the allocation of a portion of the safety margin for VOC and NO_X in the ozone maintenance plan to the 2025 MVEBs. Total year 2025 emissions of VOC and NO_X for the area will remain below the attainment level required by the transportation conformity regulations.

DATES: This direct final rule is effective July 21, 2014, unless EPA receives adverse comments by June 23, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0274, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.

4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2014–0274. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Leslie, Environmental Engineer, at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov*.

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

I. What is the background for this action?
II. What is a safety margin?
III. How does this action change the Chicago area's ozone maintenance plan?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. What is the background for this action?

On August 13, 2012 (77 FR 48062), EPA approved a request from the State of Illinois to redesignate the Illinois portion of the Greater Chicago Area to attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS). In addition to approving the ozone redesignation request, EPA approved the State's plan for maintaining the 1997 8-hour ozone standard in the Illinois portion of the Greater Chicago Area through 2025. The ozone maintenance plan established MVEBs for VOC and NO_X for the year 2025 to account for new transportation planning assumptions.

MVEBs are the projected levels of controlled emissions from the transportation sector (mobile sources) that are estimated in the SIP to provide for maintenance of the ozone standard. The transportation conformity rule allows the MVEB to be changed as long as the total level of emissions from all sources remains below the attainment levels.

II. What is a safety margin?

A ''safety margin'', as defined in the transportation conformity rule (40 CFR part 93 subpart A), is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Table 1 gives detailed information on the safety margin for the Illinois portion of the Greater Chicago Area. Table 1 includes a comparison of the VOC and NO_X emissions in the year 2008 (Illinois' attainment year), to the projected emissions of VOC and NO_X in the year 2025. The difference between the projected emissions in the year 2025 and the actual emissions in the year 2008 is referred to as the safety margin or the amount of excess emission reductions.

TABLE 1—SAFETY MARGIN FOR CHICAGO'S 1997 8-HOUR OZONE MAINTENANCE PLAN

Pollutant	2008 Attainment year emissions (tons/day)	2025 Projected year maintenance emissions (tons/day)	Safety margin (tons/day)
VOC	787.45	611.95	175.60
NO_X	896.76	427.11	469.65

Illinois has requested the allocation of 12 tons/day of the VOC and 25 tons/day of NO_X from the safety margins to the MVEBs. The revised maintenance plan will have a safety margin of 163.6 tons/day of VOC and 444.65 tons/day of NO_X. The 2025 projected emissions, even with this allocation, will be below the 2008 attainment year emissions for both VOC and NO_X. For this reason, EPA finds that the allocation of the safety margin to the 2025 MVEBs for the

Illinois portion of the Greater Chicago Area meets the requirements of the transportation conformity regulations at 40 CFR part 93, and is approvable.

III. How does this action change the Chicago area's ozone maintenance plan?

This action changes the MVEBs for mobile sources. The maintenance plan is designed to provide for future growth while still maintaining the ozone NAAQS. Growth in industries, population, and traffic is offset by reductions from cleaner cars and other emission reduction programs. Through the maintenance plan, the State and local agencies can manage and maintain clean air quality while providing for growth.

In the submittal, Illinois requested to allocate a portion of the safely margins for VOC and NO_X to the 2025 MVEBs. Table 2 details the updated MVEBs for the 1997 8-hour ozone maintenance plan for the Illinois portion of the Greater Chicago Area. Table 2 shows the 2025 MVEBs for VOC and NO_X (approved by EPA on August 13, 2012), the amount of excess emission reductions or safety margin to be allocated into the new MVEBs, and the new 2025 MVEBs for VOC and NO_X.

TABLE 2—CHICAGO 1997 8-HOUR OZONE MAINTENANCE PLAN MVEBS

Pollutant	Approved 2025 MVEB (tons/day)	Safety margin allocation (tons/day)	New 2025 MVEB (tons/day)
VOC	48.13	12.00	60.13
NO_X	125.27	25.00	150.27

IV. What action is EPA taking?

EPA is approving a revision to the 1997 8-hour ozone maintenance plan for the Illinois portion of the Greater Chicago Area. The revision will change the MVEBs for VOC and NO_X that are used for transportation conformity purposes. The revision will keep the total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to continue to maintain air quality while providing for transportation growth.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective July 21, 2014 without further notice unless we receive relevant adverse written comments by June 23, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective July 21, 2014.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *July 21, 2014.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of Nitrogen, Ozone, Volatile organic compounds, Incorporation by reference.

Dated: May 2, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.726 is amended by adding paragraph (oo) to read as follows:

§ 52.726 Control strategy; Ozone.

* * * * *

(oo) *Approval*—On March 28, 2014, the State of Illinois submitted a revision to its State Implementation Plan for the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana area (the Greater Chicago Area). The submittal established new Motor Vehicle Emissions Budgets (MVEB) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the year 2025. The MVEBs for the Illinois portion of the Greater Chicago Area are now: 60.13 tons per day of VOC emissions and 150.27 tons per day of NO_X emissions for the year 2025.

[FR Doc. 2014–11487 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0534; FRL–9911–07–Region 9]

Approval and Promulgation of Implementation Plans; California; San Joaquin Valley; Contingency Measures for the 1997 $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State implementation plan (SIP) revision submitted by California that corrects deficiencies in the Clean Air Act (CAA) contingency measures for the 1997 annual and 24-hour national ambient air quality standards (NAAQS) for fine particulate matter ($PM_{2.5}$) in the San Joaquin Valley (SJV). Approval of this SIP revision lifts the CAA section 179(b)(2) offset sanctions and terminates the CAA section 179(b)(1) highway funding sanction clock triggered by the EPA's partial disapproval of the SJV SIP for attainment of the 1997 $PM_{2.5}$ NAAQS on November 9, 2011.

DATES: This rule is effective on June 23, 2014.

ADDRESSES: You may inspect the supporting information for this action, identified by docket number EPA–R09–OAR–2013–0534, by one of the following methods: Federal eRulemaking portal, *http://www.regulations.gov,* please follow the online instructions; or, Visit our regional office at, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Docket: The index to the docket (docket number EPA–R09–OAR–2013–0534) for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., voluminous records, large maps, copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, EPA Region 9, (415) 972–3957, *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. Background Information

On November 9, 2011, the EPA partially approved and partially disapproved the San Joaquin Valley $PM_{2.5}$ State Implementation Plan (''SJV $PM_{2.5}$ SIP'') (76 FR 69896). The SJV $PM_{2.5}$ SIP is California's plan for attaining the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley.[1] Our partial disapproval of the SJV $PM_{2.5}$ SIP was based on our determination that its contingency measure provisions failed to meet the requirements of Clean Air Act (''CAA'' or ''the Act'') section 172(c)(9), which require that the SIP for each $PM_{2.5}$ nonattainment area contain contingency measures to be implemented if the area fails to make reasonable further progress (RFP) or to attain the NAAQS by the applicable attainment date. *See* 76 FR 41338, 41357 to 41359 (July 13, 2011) (proposed partial approval and partial disapproval of SJV $PM_{2.5}$ SIP) and 76 FR 69896, 69918 to 69919 and 69924 (final partial approval and partial disapproval of SJV $PM_{2.5}$ SIP). The disapproval became effective on January 9, 2012, starting a sanctions clock for imposition of new source review offset sanctions 18 months after January 9, 2012, and highway sanctions 6 months after the imposition of offset sanctions, pursuant to CAA section 179 and our regulations at 40 CFR 52.31.

On July 3, 2013, CARB submitted the Contingency Measure SIP as a revision to the California State Implementation Plan. The Contingency Measure SIP addresses the SIP deficiencies identified in the EPA's 2011 partial disapproval of the SJV $PM_{2.5}$ SIP by (1) confirming that

[1] For a more detailed description of the SJV $PM_{2.5}$ SIP, *see* 76 FR 41338, 41339 to 41359 (July 13, 2011).

the SJV area had met its 2012 RFP milestones and (2) expanding upon the attainment contingency measures in the SJV $PM_{2.5}$ SIP to establish a contingency plan that achieves SIP-creditable emission reductions equivalent to approximately one year's worth of RFP in 2015. *See generally* Contingency Measure SIP. Among these SIP-creditable emission reductions are reductions from a contingency provision in the District's residential woodburning rule, Rule 4901, and reductions from the District's implementation of two incentive grant programs: The Carl Moyer Memorial Air Quality Standards Attainment Program (''Carl Moyer Program'') and the Proposition 1B: Goods Movement Emission Reduction Program (''Prop 1B''). *Id.* at 4 and 6. A detailed description of the Contingency Measure SIP can be found at 78 FR 53113, 53115 (August 28, 2013).

On August 28, 2013, we proposed to approve the Contingency Measure SIP as correcting the deficiency in the SJV $PM_{2.5}$ SIP related to the attainment contingency measure requirement (78 FR 53113). At the same time, we also proposed to find, based on documentation in the Contingency Measure SIP, that the RFP contingency measure requirement in CAA section 172(c)(9) for the 2012 milestone year was moot because the SJV has achieved the emission reduction benchmarks for the 2012 RFP year. Our full evaluation of the Contingency Measure SIP and our rationale for finding that this SIP corrects the deficiencies in the SJV $PM_{2.5}$ SIP can be found in the August 28, 2013 proposed rule. Based on our proposed approval of the Contingency Measure SIP, we also issued on August 28, 2013, an interim final determination that stayed the imposition of the offset sanctions that became effective in the SJV on July 9, 2013 and tolled the sanctions clock for the imposition of the highway sanctions (78 FR 53038).

II. Public Comments and the EPA's Responses

The EPA provided a 30-day period for the public to comment on our proposed rule. During this comment period, which ended on September 28, 2013, we received four public comments. A copy of these comment letters can be found in the docket. We provide our responses to these comments below.

A. Comments Regarding Necessary Types and Quantities of Contingency Measure Emission Reductions

Comment 1: Earthjustice cites the D.C. Circuit Court of Appeals' decision in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013) (hereafter ''*NRDC*'') to support its claim that the Contingency Measure SIP cannot be approved under the CAA. Specifically, Earthjustice argues that the EPA's approval of the SJV $PM_{2.5}$ SIP was built upon the EPA's 2007 implementation rule for the 1997 $PM_{2.5}$ NAAQS (hereafter ''2007 $PM_{2.5}$ Implementation Rule''),[2] which the *NRDC* court has since remanded for failure to comply with the requirements of subpart 4 of title I, part D of the CAA; that the SJV $PM_{2.5}$ SIP and the reasonable further progress (RFP) projections therein likewise fail to satisfy the applicable requirements of subpart 4; and that because the contingency measure obligation is based upon the RFP projections in the SJV $PM_{2.5}$ SIP, the Contingency Measure SIP is also flawed.

Earthjustice argues that the most significant defect in the SJV $PM_{2.5}$ SIP is that it assumes the maximum available attainment deadline without implementing best available control measures (BACM) under CAA section 189(b)(1)(B), and that because of this erroneous attainment date the RFP trajectory in the SJV $PM_{2.5}$ SIP provides for a 9-year attainment ''glide path'' that fails to comply with the CAA. Under subpart 4, Earthjustice argues, nonattainment areas relying on reasonably available control measures have four years to attain and thus have a contingency measure obligation of 25 percent of the total reductions required for attainment, rather than the one-ninth of total reductions provided in the Contingency Measure SIP. Alternatively, Earthjustice argues that had the SJV qualified for an extended attainment deadline under CAA section 188(b)(1), the District would have had to implement BACM, which would have provided for steeper emission reductions than currently provided in the SJV $PM_{2.5}$ SIP which is based on the implementation of reasonably available controls.

Earthjustice further contends that because the SJV area has failed to attain the $PM_{2.5}$ standard by the ''moderate'' area deadline in subpart 4, a new plan with new controls and an attainment horizon that is less than 9 years is required. Earthjustice states that this new plan must include new RFP targets and contingency measures, and that the calculation of these targets will require more than one-ninth of the total reductions required, because the interval between the baseline for the serious area plan and the attainment deadline will be less than nine years. Thus, according to Earthjustice, ''no matter how the SJV chooses to comply with subpart 4, there is no scenario in which the RFP trajectory and therefore the quantity of emission reductions required for contingency measures will match those calculated in the [SJV $PM_{2.5}$ SIP].''

Response 1: As a threshold matter, to the extent the commenter is challenging our November 2011 final action on the SJV $PM_{2.5}$ SIP based on the D.C. Circuit's January 2013 decision in *NRDC,* such a challenge may only be brought in the appropriate circuit court within specified timeframes under CAA section 307(b). Section 307(b)(1) provides, *inter alia,* that any petition for review of an EPA action in ''approving or promulgating any implementation plan under [CAA section 110] * * * which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit'' and must be filed ''within sixty days from the date notice of such promulgation, approval, or action appears in the **Federal Register**, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise.'' Our action today on the Contingency Measure SIP is not the appropriate forum for a challenge to our November 2011 final action on the SJV $PM_{2.5}$ SIP.

We nonetheless respond below to the substance of Earthjustice's claims. In *NRDC,* the U.S. Court of Appeals for the D.C. Circuit remanded the EPA's 2007 $PM_{2.5}$ Implementation Rule,[3] holding that the EPA erred in implementing the 1997 $PM_{2.5}$ standards solely pursuant to the general implementation provisions of subpart 1 of part D, title I of the CAA, without also considering the particulate matter-specific provisions of subpart 4. The court directed the EPA to re-promulgate the rule pursuant to subpart 4 of part D, title I of the Clean Air Act but declined to impose a deadline by which the Agency must do so. *See* 706 F.3d 428, 437 and n. 10. This decision has no bearing on our action on the Contingency Measure SIP.

Earthjustice's arguments rest on the premise that the *NRDC* decision necessarily invalidates our November 2011 final action on the SJV $PM_{2.5}$ SIP (76 FR 69896, November 9, 2011) and therefore renders flawed any assessment of contingency measure obligations

[2] *See* ''Clean Air Fine Particle Implementation Rule,'' 72 FR 20586 (April 25, 2007), codified at 40 CFR part 51, subpart Z.

[3] The *NRDC* decision remanded both the 2007 $PM_{2.5}$ Implementation Rule and a separate rulemaking to implement the New Source Review permitting requirements for the 1997 $PM_{2.5}$ NAAQS. This latter rule is not at issue in this action.

derived from that plan. Nothing in *NRDC,* however, indicates the court intended to automatically invalidate other EPA rulemakings that were based in whole or in part on the 2007 $PM_{2.5}$ Implementation Rule. Indeed, the D.C. Circuit remanded but did not vacate the 2007 $PM_{2.5}$ Implementation Rule,[4] citing in its opinion (at 706 F.3d at 437 n. 10) a prior decision in which it held that ''it is appropriate to remand without vacatur in particular occasions where vacatur 'would at least temporarily defeat . . . the enhanced protection of the environmental values covered by [the EPA rule at issue].' '' *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). Our November 2011 final action on the SJV $PM_{2.5}$ SIP included approval of District commitments to adopt and implement specific control measures on a fixed schedule and State and District commitments to achieve specific amounts of NO_X, SO_X and direct $PM_{2.5}$ emission reductions by fixed dates. *See* 76 FR 69896, 69924 (November 9, 2011), codified at 40 CFR 52.220(c)(392) and (c)(395). Absent an EPA rulemaking to withdraw or revise this final rule, which *NRDC* does not compel, our final action on the SJV $PM_{2.5}$ SIP remains effective and these State and District commitments remain federally-enforceable requirements of the California SIP.[5] We therefore disagree with the commenter's assertion that the RFP projections in the SJV $PM_{2.5}$ SIP render the Contingency Measure SIP flawed.

Additionally, we do not believe that the *NRDC* court's January 4, 2013 decision should be interpreted so as to retroactively impose subpart 4 requirements on the state in the context of our action on this corrective SIP, as the timing and nature of the court's decision compound the consequences of disapproval based on such retroactive application here.[6] California submitted the various components of the SJV $PM_{2.5}$ SIP (and revisions thereto) between June 2008 and July 2011. On July 13, 2011, we proposed to approve all elements of the SJV $PM_{2.5}$ SIP except for its contingency measure provisions and described the specific deficiencies in the contingency measures that California would need to address in a corrective SIP submission in order to avoid mandatory sanctions (76 FR 41338, 41358 to 41359, 41361, July 13, 2011). We finalized this partial approval and partial disapproval action on November 9, 2011, effective January 9, 2012, starting a sanctions clock for imposition of offset sanctions 18 months after January 9, 2012 and highway sanctions 6 months later, pursuant to CAA section 179(b) and the EPA's regulations at 40 CFR 52.31 (76 FR 69896, 69924, November 9, 2011) (final rule partially approving and partially disapproving SJV $PM_{2.5}$ SIP).[7] We stated in the final rule that ''[n]either sanction [would] be imposed under the CAA if California submits and we approve prior to the implementation of the sanctions, SIP revisions that correct the deficiencies identified in our proposed action.'' *Id.* California reasonably relied upon this statement to develop a SIP submission addressing the deficiencies identified in the July 2011 proposed action—i.e., a SIP submission containing contingency measures that achieve emission reductions equivalent to one year's worth of RFP, on a pollutant-specific basis, which are in excess of the emission reductions relied on for RFP and attainment in the SJV $PM_{2.5}$ SIP (76 FR 41338, 41358 to 41359, 41361, July 13, 2011).

Over a year later, on January 4, 2013, the D.C. Circuit issued its decision remanding the EPA's 2007 $PM_{2.5}$ Implementation Rule. By this time, just six months remained before mandatory offset sanctions would apply in the SJV under CAA section 179(b) unless the State submitted and we approved a SIP revision correcting the deficiencies that prompted the EPA's disapproval. On June 20, 2013, the District adopted the Contingency Measure SIP, which it had developed to address the deficiencies identified in the 2011 action on the SJV $PM_{2.5}$ SIP, and CARB submitted this corrective SIP on July 3, 2013.[8] We proposed to approve the Contingency Measure SIP on August 28, 2013 (78 FR 53113). Concurrently, we issued an interim final determination to stay offset sanctions and defer highway sanctions in the SJV area, based on our ''proposal to approve the State's SIP revision as correcting the deficiency that initiated these sanctions'' (78 FR 53038, August 28, 2013).[9] To disapprove this corrective SIP submission now, based on a retroactive application of subpart 4 requirements to the SJV $PM_{2.5}$ SIP, would immediately subject the SJV area to offset sanctions and highway sanctions under the EPA's sanction application sequencing rule in 40 CFR 52.31(d)(2)(ii).[10] We believe it would be unreasonable to now disapprove this SIP submission, which corrects the deficiencies we had identified, and subject the SJV area to mandatory sanctions solely because the State did not address subpart 4 requirements of which it had no notice.[11]

Moreover, it is not clear what RFP projections would result from the new subpart 4 plan that Earthjustice calls for and, consequently, it is impossible for the State to quantify a contingency measure obligation based on such a new plan before it is developed.[12] It would

[4] The 2007 $PM_{2.5}$ Implementation Rule therefore remains ''on the books'' while the EPA effects the required changes through one or more national rulemakings consistent with the *NRDC* decision.

[5] To remove these commitments from the applicable SIP before the EPA has re-promulgated an implementation rule pursuant to subpart 4 consistent with the *NRDC* opinion would be to temporarily defeat the enhanced environmental protections provided by these federally-enforceable control obligations.

[6] In rulemakings on individual areas subsequent to the *NRDC* decision, the EPA has explained in detail its view that the court's recently announced interpretation should not be applied retroactively. *See, e.g.,* 78 FR 20856 (April 8, 2013) (proposed redesignation of Indianapolis to attainment for 1997 annual $PM_{2.5}$ standard) and 78 FR 41698 (July 11, 2013) (final redesignation of Indianapolis to attainment for 1997 annual $PM_{2.5}$ standard). The U.S. District Court for the District of Colorado recently agreed with the EPA's position that *NRDC* does not require retroactive application of Subpart 4 requirements. *See Wildearth Guardians* v. *Gina McCarthy,* Case No. 13–CV–1275–WJM–KMT (D. Colo., March 11, 2014) (dismissing plaintiff's claim that the EPA missed a non-discretionary deadline based on retroactive application of Subpart 4).

[7] The disapproval also triggered an obligation on the EPA under CAA section 110(c)(1) to promulgate a federal implementation plan to address the deficiency unless the State submits and the EPA approves a plan revision correcting the deficiency within two years (76 FR 69896, 69924, November 9, 2011).

[8] Letter dated July 3, 2013, from Richard W. Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, transmitting the San Joaquin Valley Air Pollution Control District's ''Quantification of Contingency Reductions for the 2008 $PM_{2.5}$ Plan'' (adopted June 20, 2013), with enclosures.

[9] Under 40 CFR 52.31(d)(2)(ii), during the period between 18 and 24 months following the EPA's disapproval of a plan submission, offset sanctions are stayed and highway sanctions deferred if the EPA proposes to approve a revised plan submitted by the State and issues an interim final determination that the revised plan ''corrects the deficiency prompting the [disapproval].''

[10] The offset sanction initially applied in the SJV area on July 9, 2013 (78 FR 53038, August 28, 2013). Thus, under 40 CFR 52.31(d)(2)(ii), the offset sanction would reapply on the date the EPA issued a proposed or final disapproval and the highway sanction would apply immediately because more than 6 months have passed since initial application of the offset sanction.

[11] As the U.S. District Court for the District of Colorado recently stated, ''retroactive application of Subpart 4 to impose deadlines of which the States were not previously aware would be unfair and contrary to the state/federal balance outlined in the CAA.'' *See Wildearth Guardians* v. *Gina McCarthy,* Case No. 13–CV–1275–WJM–KMT (D. Colo., March 11, 2014) at 12.

[12] As the EPA explained in the preamble to the 2007 $PM_{2.5}$ Implementation Rule, contingency measures should provide for emission reductions equivalent to about one year of reductions needed for RFP, based on the overall level of reductions needed to demonstrate attainment divided by the number of years from the ''base year'' to the attainment year (72 FR 20586, 20643, April 25, 2007). Thus, without first establishing the relevant base year, the attainment year, and the overall level

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be even more unreasonable to disapprove this corrective SIP submission on the basis of RFP trajectories that cannot currently be ascertained, particularly given the lengthy rulemakings that would be necessary for the State to develop a new plan under subpart 4 with new RFP targets and a new attainment deadline, and the likely economic hardship that would result from continued application of mandatory offset and highway sanctions during this time. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002), where it upheld the district court's ruling refusing to make retroactive the EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the court to make the EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which the EPA actually made the determination. The court rejected this view, stating that applying it ''would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans * * * even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize California by rejecting this corrective SIP on the basis of subpart 4 requirements of which the State was unaware when we partially disapproved the SJV $PM_{2.5}$ SIP, particularly when relief from mandatory sanctions would not be available until after the State completes a lengthy rulemaking process to adopt an entirely new plan under subpart 4.

In separate rulemakings, the EPA has taken steps to respond to the *NRDC* decision by addressing the applicable requirements of subpart 4 for areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS and/or the 2006 $PM_{2.5}$ NAAQS. For example, the EPA recently completed a rulemaking to classify all $PM_{2.5}$ nonattainment areas nationwide, including the San Joaquin Valley, as ''moderate'' nonattainment under subpart 4 and to establish a December 31, 2014 deadline for the states to submit any additional SIP revisions that may be necessary to satisfy the requirements applicable to moderate nonattainment areas under CAA section 189(a). *See* 78 FR 69806 (November 21, 2013) (proposed rule) and ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS,'' signed April 25, 2014 (final rule, pre-publication copy). As explained in that rulemaking, the EPA recognizes that prior to the D.C. Circuit's decision in *NRDC,* states have worked towards meeting the air quality goals of both the 1997 $PM_{2.5}$ standards and the 2006 $PM_{2.5}$ standards in accordance with EPA regulations and guidance derived from subpart 1, including the requirements of the 2007 $PM_{2.5}$ Implementation Rule (78 FR 69806, 69809). Taking this history into account, the EPA concluded that a December 31, 2014 deadline would provide states a relatively brief but reasonable amount of time to ascertain whether and to what extent any additional SIP submissions would be needed to satisfy the applicable requirements of subpart 4 in a particular nonattainment area and to develop, adopt and submit any such SIPs. *See id.* The EPA explicitly stated that this rulemaking ''does not affect any action that the EPA has previously taken under section 110(k) of the Act on a SIP for a $PM_{2.5}$ nonattainment area.'' *Id.* at 69810.

Accordingly, California is obligated to consider whether and to what extent any additional SIP submissions may be required to satisfy the applicable requirements of subpart 4 for the 1997 and/or 2006 $PM_{2.5}$ NAAQS in the SJV and to develop, adopt and submit any such SIPs, following reasonable notice and public hearings, no later than December 31, 2014. In the meantime, our November 2011 final action remains in effect and continues to provide the appropriate basis for calculating the required quantity of emission reductions in this corrective SIP. We believe it is appropriate to address the *NRDC* decision on a prospective rather than retrospective basis by maintaining the environmental benefits of air quality plans that the EPA has previously approved while working with state and local agencies to supplement these prior submissions as necessary going forward. Our approval of the Contingency Measure SIP today does not obviate the State's obligation to submit these additional SIP revisions, consistent with the requirements of subpart 4, including additional contingency measures as necessary.

Comment 2: Earthjustice argues that the EPA cannot claim that the Contingency Measure SIP and the SJV $PM_{2.5}$ SIP are consistent with the implementation rule remanded by the D.C. Circuit pending adoption of a new implementation rule. According to Earthjustice, subpart 4 is self-effectuating and directly-enforceable and does not require EPA regulations in order for states to know their planning obligations. Additionally, Earthjustice states that the EPA has already adopted guidance interpreting subpart 4 in ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) (hereafter ''General Preamble'') and in ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (59 FR 41998, August 16, 1994) (hereafter ''Addendum''). According to Earthjustice, the requirements of subpart 4 are plain on their face and well understood, and the *NRDC* holding means that these requirements have always applied to $PM_{2.5}$ nonattainment plans notwithstanding the EPA's efforts to avoid them.

Response 2: It appears Earthjustice is arguing that *NRDC* compels us to disapprove the Contingency Measure SIP based on a retroactive application of subpart 4 requirements to the underlying SJV $PM_{2.5}$ SIP. We disagree with this assertion. As explained above, we do not believe it would be reasonable to disapprove this corrective SIP based on a finding that the underlying attainment and RFP demonstrations in the SJV $PM_{2.5}$ SIP, which we fully approved in 2011, now fail to satisfy subpart 4 requirements of which the State had no notice. As discussed in our proposal (78 FR 53113, 53123), the Contingency Measure SIP corrects the deficiencies that prompted the partial disapproval of the SJV $PM_{2.5}$ SIP in 2011. We believe our approval of this corrective SIP submission today is appropriate in light of the State's reasonable reliance on the 2011 final action, the significant consequences of a disapproval based on retroactive application of subpart 4 requirements in this context, and the EPA's separate rulemaking to establish reasonable timeframes for states to submit additional SIPs that may be required to satisfy the requirements of under subpart 4. *See* Response 1.

The commenter does not appear to challenge our position that the general contingency measure requirement in subpart 1 (CAA section 172(c)(9)) continues to govern our evaluation of

of reductions needed to demonstrate attainment, and then considering whether available controls (whether RACM or BACM) might expedite the attainment date, it is impossible to determine the rate of emission reductions that would demonstrate RFP and the corresponding amount of emission reductions that would be equivalent to about one year of RFP.

and action on the Contingency Measure SIP.[13] Under the EPA's long-standing policy, which pre-dates the 2007 $PM_{2.5}$ Implementation Rule by more than a decade, contingency measures in a SIP should consist of available control measures beyond those required in the control strategy to attain the standards or demonstrate RFP, provide SIP-creditable emission reductions equal to approximately one year of the emission reductions needed for RFP, and be implemented without further action by the State. *See* General Preamble at 13543 to 13544 (discussing contingency measures for moderate PM_{10} nonattainment areas); *see also* Addendum at 42014 to 42015 (discussing contingency measures for serious PM_{10} nonattainment areas). We are approving the Contingency Measure SIP because it meets these criteria as applied to the SJV $PM_{2.5}$ SIP and because it corrects the deficiencies that prompted the 2011 partial disapproval of that plan (78 FR 53113, 53123).

Our approval of the Contingency Measure SIP today does not rest on a conclusion that compliance with the 2007 $PM_{2.5}$ Implementation Rule remanded by the court suffices to satisfy CAA requirements pending adoption of a new implementation rule, nor does the EPA believe an implementation rule is necessary for states to know their planning obligations under subpart 4. Indeed, although the EPA has not yet issued a new or revised implementation rule consistent with the court's directive in *NRDC,* the EPA has established a December 31, 2014 deadline for all states with $PM_{2.5}$ nonattainment areas to submit any additional SIPs that may be required under subpart 4, following consultation as appropriate with EPA regional offices. *See* ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS,'' signed April 25, 2014 (final rule, pre-publication copy). To the extent any revisions to the SJV $PM_{2.5}$ SIP are necessary to ensure compliance with the requirements of subpart 4, California is required to adopt and submit such SIP revisions by December 31, 2014, including additional contingency measures as appropriate.

Comment 3: Earthjustice comments that the EPA cannot claim as a basis for approval that the Contingency Measure SIP satisfies the obligations identified in the EPA's 2011 final action on the SJV $PM_{2.5}$ SIP because that plan does not comply with the Act. Earthjustice contends that the approval of the Contingency Measure SIP would ''compound the legal defects of the [SJV $PM_{2.5}$ SIP]'' and that we should act immediately to ''call'' the SJV $PM_{2.5}$ SIP under CAA section 110(k)(5) because we now know that the plan fails to comply with the requirements of the Act. In the meantime, Earthjustice asserts that we cannot add to the legal defects by approving contingency measures that are based on a defective plan. In support of these arguments, Earthjustice cites *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''*AIR*'').

Response 3: We disagree with these arguments. First, as discussed above, nothing in *NRDC* compels us to retroactively apply subpart 4 requirements to the SJV $PM_{2.5}$ SIP and to disapprove the Contingency Measure SIP on that basis. Absent an EPA rulemaking to withdraw or revise our November 2011 final action on the SJV $PM_{2.5}$ SIP (76 FR 69896, November 9, 2011), that final action remains effective and provides an appropriate basis for our evaluation of the State's corrective SIP submission in accordance with the EPA's long-standing policies on contingency measures. *See* Response 1.

Second, the EPA's discretionary ''SIP call'' authority in CAA section 110(k)(5) is not relevant to this action as we have not made any of the findings that would obligate us to ''call'' the SJV $PM_{2.5}$ SIP. Section 110(k)(5) provides, in relevant part, that ''[w]henever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS] . . . or to otherwise comply with any requirement of [the CAA],'' the EPA ''shall require the State to revise the plan as necessary to correct such inadequacies'' and may establish reasonable deadlines, not to exceed 18 months after providing notice to the State, for the submission of such plan revisions. CAA section 110(k)(5), 42 U.S.C. 7410(k)(5). Should we find that the SJV $PM_{2.5}$ SIP is ''substantially inadequate to attain or maintain'' the 1997 $PM_{2.5}$ NAAQS or to otherwise comply with any requirement of the Act, we would be obligated to require that California revise the plan as necessary to correct such inadequacies (i.e., to issue a ''SIP call'') and would be authorized to establish reasonable deadlines for the State to submit such plan revisions, not to exceed 18 months after the EPA notifies the State of the inadequacies. To date, however, we have not made any such finding under section 110(k)(5) with respect to the SJV $PM_{2.5}$ SIP. The EPA believes that its recent rulemaking to classify all $PM_{2.5}$ nonattainment areas as ''moderate'' nonattainment and to set a December 31, 2014 deadline for subpart 4 SIP submissions provides a reasonable timeframe for California to develop, adopt and submit any additional SIP submissions that are necessary to comply with the requirements of subpart 4 in the San Joaquin Valley. *See* ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS,'' signed April 25, 2014 (final rule, pre-publication copy). Under CAA section 110(k)(5), the EPA retains the discretion to determine after this deadline for SIP submissions whether the $PM_{2.5}$ SIP for the SJV is substantially inadequate to comply with CAA requirements.

Finally, the Ninth Circuit Court of Appeal's decision in *AIR* is inapposite. *AIR* involved our action on proposed revisions to the SIP for the one-hour ozone standard for the Los Angeles-South Coast air basin (686 F.3d 668 at 671). An approved SIP for the area was in place, but after conducting new modeling for the one-hour ozone standard, California submitted proposed SIP revisions, including a revised attainment demonstration that relied on additional control measures. *Id.* at 672–73. California later withdrew certain of the proposed additional control measures and the State specifically represented that the currently approved plan was not sufficient to provide for attainment. *Id.* We approved the control measures that had not been withdrawn. *Id.* at 673. However, we disapproved the revised attainment demonstration because California had substantially based it upon emission reductions resulting from the withdrawn control measures. *Id.* This disapproval left in place the existing attainment demonstration, which the State had specifically characterized as deficient. *Id.* The Ninth Circuit held that our action was arbitrary and capricious,

[13] As explained in our proposed rule, subpart 4 of part D, title I of the Act contains no specific provision governing contingency measures for PM_{10} or $PM_{2.5}$ nonattainment areas that supersedes the general contingency measure requirement for all nonattainment areas in CAA section 172(c)(9). Thus, even if we apply the subpart 4 requirements to our evaluation of the Contingency Measure SIP and disregard the provisions of the 2007 $PM_{2.5}$ Implementation Rule remanded by the *NRDC* court, the general requirement for contingency measures in CAA section 172(c)(9) continues to apply (78 FR 53113, 53115 n. 8).

because we had a duty under CAA section 110(l) to evaluate whether the SIP, as a whole, would provide for attainment of the NAAQS when the EPA approved a revision to the already approved SIP. *Id.* at 673–74.

The circumstances here are significantly different from those in *AIR.* First, nothing in the record indicates that California considers any element of the currently approved SJV $PM_{2.5}$ SIP insufficient to provide for attainment of the 1997 $PM_{2.5}$ standards. Second, the Contingency Measure SIP neither revises nor replaces the attainment demonstration in the currently approved plan, nor does it alter any existing emission limitation or other control requirement in the applicable SIP. Finally, California has not withdrawn any control measures that provide emission reductions necessary for attainment of the 1997 $PM_{2.5}$ standards; to the contrary, the Contingency Measure SIP expands upon the contingency measure portion of the SJV $PM_{2.5}$ SIP by providing additional NO_X, SO_X, and direct $PM_{2.5}$ emission reductions beyond those relied upon for RFP and attainment in the SJV $PM_{2.5}$ SIP, thereby correcting the deficiency that we had identified in 2011 (78 FR 5311, 53123). In sum, nothing in the Contingency Measure SIP revises the currently approved attainment demonstration in the SJV $PM_{2.5}$ SIP, nor does any information in the State's submissions raise a question about the plan's sufficiency to provide for timely attainment of the 1997 $PM_{2.5}$ standards. The *AIR* decision therefore is not pertinent to our action.

For these reasons, we disagree with the commenter's claim that our approval of the Contingency Measure SIP would ''compound'' or ''add to'' existing legal defects in the SJV $PM_{2.5}$ SIP. Because our approval of the Contingency Measure SIP strengthens the SIP and does not interfere with the on-going process for ensuring that requirements for RFP and attainment of the 1997 $PM_{2.5}$ NAAQS are met, we find that it complies with CAA section 110(l). To the extent California is obligated to submit additional SIP revisions consistent with subpart 4 requirements by December 31, 2014, these outstanding obligations do not preclude approval today of the Contingency Measure SIP as adequate to correct prior SIP deficiencies that triggered sanctions clocks. *See* Response 1.

Comment 4: Earthjustice comments that the SJV $PM_{2.5}$ SIP fails to properly address $PM_{2.5}$ precursor emissions and that the EPA approved the plan based on the ''illegal presumption'' in the 2007 $PM_{2.5}$ Implementation Rule that VOC and ammonia need not be controlled. Earthjustice argues that because the *NRDC* court has rejected this presumption, without a showing that sources of these precursor emissions do not contribute significantly to $PM_{2.5}$ levels, they are subject to controls and therefore subject to separate contingency measure targets. Earthjustice further argues that the San Joaquin Valley APCD has made no such demonstration and that ''the record currently before EPA suggests that these emissions do contribute significantly to ambient levels even though the District believes that a strategy focusing on oxides of nitrogen is better policy.'' In support of these arguments, Earthjustice references our responses to comments regarding VOCs in our final action on the SJV $PM_{2.5}$ SIP (76 FR 69896, 69902).

Response 4: To the extent the commenter is challenging the November 2011 final action on the SJV $PM_{2.5}$ SIP based on the D.C. Circuit's January 2013 decision in *NRDC,* such a challenge may only be brought in the U.S. Court of Appeals for the appropriate circuit within specified timeframes under CAA section 307(b). We are today acting on a SIP revision submitted by the State to correct SIP deficiencies that prompted sanctions, and comments concerning the analyses underlying the November 2011 action on the SJV $PM_{2.5}$ SIP are not germane to this action. *See* Response 1.

As discussed above, the November 2011 final action on the SJV $PM_{2.5}$ SIP remains in effect and we believe that it would be unreasonable to retroactively apply the requirements of subpart 4 to our prior evaluation of the $PM_{2.5}$ precursor assessment in the SJV $PM_{2.5}$ SIP. Although the EPA has taken steps in a separate rulemaking to respond to the *NRDC* decision regarding subpart 4 and is requiring all states with $PM_{2.5}$ nonattainment areas, including California, to submit SIP revisions as necessary to address subpart 4 requirements no later than December 31, 2014, that rulemaking specifically notes that it does not affect any action that the EPA has previously taken under CAA section 110(k) on a SIP for a $PM_{2.5}$ nonattainment area. *See* 78 FR 69806, 69810 (November 21, 2013) and ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS,'' signed April 25, 2014 (final rule, pre-publication copy). Accordingly, the RFP demonstration in the SJV $PM_{2.5}$ SIP remains the appropriate basis for our evaluation of the specific types and amounts of emission reductions provided by the Contingency Measure SIP at this time. *See* Response 1.

Even if the EPA takes the view that *NRDC* compels us to retroactively apply the requirements of subpart 4 to our prior evaluation of the $PM_{2.5}$ precursor assessment in the SJV $PM_{2.5}$ SIP, it is not clear at this time how such a reevaluation would affect the assessment of required contingency measures. The D.C. Circuit remanded the EPA's 2007 $PM_{2.5}$ Implementation Rule, including the presumptions concerning VOC and ammonia in 40 CFR 51.1002.[14] While expressly declining to decide the specific challenge to these presumptions (*see* 706 F.3d at 437, n. 10 (D.C. Cir. 2013)), the court cited CAA section 189(e)[15] to support its observation that ''[a]mmonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}'' and that ''[f]or a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated.'' 706 F.3d at 436, n. 7 (*citing* CAA section 189(e), 42 U.S.C. 7513a(e)). The *NRDC* court did not, however, address whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area. Moreover, even assuming both VOC and ammonia must be regulated for purposes of attaining the 1997 $PM_{2.5}$ standards in the SJV, it is not clear what collection of control measures for which specific precursors would ultimately be necessary to satisfy the requirements in subpart 4 concerning reasonably available control measures (CAA section 189(a)(1)(C)), best available control measures (CAA section 189(b)(1)(B)), or quantitative milestones demonstrating RFP (CAA section 189(c)). *See,* e.g., General Preamble at 13540 to 13541 (discussing technological feasibility, cost of control, and ''de minimis'' emission levels among factors to be considered in

[14] The 2007 $PM_{2.5}$ Implementation Rule contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002(c), the EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures,'' unless the State or the EPA provided an appropriate technical demonstration showing that emissions from sources of these pollutants ''significantly contribute'' to $PM_{2.5}$ concentrations in the nonattainment area (40 CFR 51.1002(c)(3), (4)).

[15] CAA section 189(e) provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where the EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

determining RACM and RACT for a particular PM_{10} nonattainment area); *see also* Addendum at 42011 to 42014 (distinguishing BACM from RACM standard and discussing factors to be considered in determining BACM and BACT for a particular PM_{10} nonattainment area, including technological and economic feasibility). Given that it is thus currently impossible to identify the precise collection of control measures that would be necessary in a new subpart 4 plan, let alone to quantify the emission reductions that these measures would collectively achieve and then calculate the reductions that would be required for associated contingency measure purposes,[16] we do not believe it would be reasonable to penalize the State at this time for failure to carry out these tasks in the past. The State and District must first address these issues as appropriate through adoption of a SIP revision satisfying the requirements of subpart 4, which is due December 31, 2014.

Under the commenter's read of *NRDC,* relief from mandatory sanctions for SIP deficiencies identified prior to the *NRDC* decision would be unavailable to California until it completes lengthy State and local rulemaking processes to develop and adopt an entirely new attainment plan that satisfies the requirements of subpart 4, requirements that are not yet due and that we have not, to date, identified as bases for plan disapproval. We decline to read the court's decision in a way that would lead to such an inequitable and retroactive result.

Comment 5: Earthjustice claims that the alleged legal defects of the SJV $PM_{2.5}$ SIP preclude the EPA from determining that the proposed contingency measures are ''beyond or in addition to'' the core control requirements of the CAA. Earthjustice argues that this problem is most apparent in the EPA's treatment of the contingency provision in the District's residential woodburning rule, Rule 4901. Citing our November 2011 responses to comments on the SJV $PM_{2.5}$ SIP (76 FR 69896, 69904), Earthjustice states that we did not require implementation of this measure as a basic control measure on the basis that it would not ''advance attainment'' by at least a year and argues that this justification ''is no longer sufficient if the area is subject to the [BACM] requirement, as it must be given that it has failed to attain within four years of its designation as nonattainment for $PM_{2.5}$.'' Earthjustice asserts that BACM are more stringent than reasonably available controls and cannot be rejected based on whether or not they advance attainment, and that credit for the Rule 4901 contingency measure is therefore inappropriate. Furthermore, Earthjustice asserts that our 2009 approval of Rule 4901 as BACM for PM_{10} is ''not sufficient for concluding that improvements such as those included in the proposed contingency measure are beyond [BACM]'' as the necessary demonstration has not been made and ''there is no reason to believe that the lower trigger included in the proposed contingency measure is not technically feasible or cost-effective.'' Noting that the problems associated with $PM_{2.5}$ in the Valley are different than those associated with PM_{10}, Earthjustice cites the preamble to the EPA's 2007 $PM_{2.5}$ Implementation Rule (72 FR 20617) to support its conclusion that ''past determinations on the adequacy of control measures cannot substitute for a new demonstration for a new state implementation plan.''

Response 5: As noted above, it appears the commenter is challenging the November 2011 final action on the SJV $PM_{2.5}$ SIP based on the D.C. Circuit's January 2013 decision in *NRDC.* Such a challenge, however, may only be brought in the U.S. Court of Appeals for the appropriate circuit within specified timeframes under CAA section 307(b). We are today acting on a SIP revision submitted by the State to correct SIP deficiencies that prompted sanctions, and comments concerning the analyses underlying the EPA's November 2011 action on the SJV $PM_{2.5}$ SIP are not germane to this action. *See* Response 1.

We nonetheless respond below to the substance of the commenter's claims. To the extent the commenter is arguing that our action today on the Contingency Measure SIP constitutes a determination that the contingency provision in Rule 4901 is ''beyond BACM,'' this is incorrect. We have not yet made any determination concerning BACM for $PM_{2.5}$ in the SJV and make no such determination today, as the area has not been classified as a ''Serious Area'' area under subpart 4 and the State therefore has not submitted a Serious Area plan for SJV for any $PM_{2.5}$ standard. *See* CAA section 189(b)(1)(B) (requiring that ''each State in which all or part of a Serious Area is located'' submit a plan for such area that includes BACM for the control of PM_{10}) and section 189(b)(2) (requiring submission of BACM provisions ''no later than 18 months after reclassification of the area as a Serious Area''). Although Earthjustice suggests that we are relying on the Agency's prior (2009) approval of Rule 4901 as BACM for the control of PM_{10} as a basis for today's action, this suggestion is also incorrect. As part of the 2011 action on the SJV $PM_{2.5}$ SIP, we concluded that the contingency provision in Rule 4901 was not a required RACM under CAA section 172(c)(1)[17] and that it qualified for consideration as a contingency measure because it provided emission reductions beyond those relied upon for RFP or attainment in that plan. *See* 76 FR 41338, 41358 (July 13, 2011) and 76 FR 69896, 69904 and 69906 (November 9, 2011). We disagree with the commenter's claim that we must now also conclude that the contingency provision in Rule 4901 is not a required BACM under CAA section 189(b)(1)(B).

Likewise, we disagree with the commenter's contention that our November 2011 rationale for not requiring implementation of this measure as a basic control measure (i.e., on the basis that it would not ''advance attainment'' by at least a year) is no longer sufficient because the area has failed to attain within four years of its designation as nonattainment for $PM_{2.5}$ and is, therefore, now subject to the BACM requirement. Under the CAA, BACM is required only for nonattainment areas classified as serious (CAA section 189(b)(1)(B)). The SJV area is currently classified as moderate nonattainment. *See* ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS,'' signed April 25, 2014 (final rule, pre-publication copy). Whether or not the SJV area has attained the 1997 $PM_{2.5}$ standards to date, in the absence of an EPA rulemaking to reclassify the area as a Serious Area under subpart 4, the requirement to submit a Serious Area plan that assures implementation of BACM does not apply (CAA sections 189(b)(1)(B) and 189(b)(2)).

We note also that the commenter's reference to CAA section 188(c)(1) to support its contention that ''[u]nder subpart 4, nonattainment areas relying on reasonably available controls have four years to attain'' is not accurate. Section 188(c)(1) states that ''[f]or a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth

[16] *See* n. 12, supra.

[17] In response to comments on the SJV $PM_{2.5}$ SIP, we discussed the 2009 approval of Rule 4901 for PM_{10} BACM purposes as relevant context, but the Agency's approval of the RACM demonstration in the SJV $PM_{2.5}$ SIP did not rely on this prior action (76 FR 69896, 69904 and 69906, November 9, 2011).

calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM_{10} under section [107(d)(4) of the Act], the attainment date shall not extend beyond December 31, 1994'' (CAA section 188(c)(1), 42 U.S.C. 7513(c)(1)). It appears that the commenter is interpreting the exception specified in the last clause of this provision to mean that the SJV $PM_{2.5}$ nonattainment area must attain the 1997 $PM_{2.5}$ NAAQS within four years of its designation as nonattainment for these standards. By its terms, however, this provision establishes an attainment date that has long passed (December 31, 1994) and applies only to those areas that were designated by operation of law under CAA section 107(d)(4) as nonattainment for the PM_{10} NAAQS, pursuant to the CAA Amendments of 1990. *See* CAA section 107(d)(4)(B), 42 U.S.C. 7407(d)(4)(B) (establishing nonattainment designations by operation of law for certain areas identified by the EPA as ''Group I'' areas prior to November 15, 1990 and areas where air quality monitoring data showed a violation of the PM–10 NAAQS before January 1, 1989). This provision and the December 31, 1994 attainment date specified therein do not apply for purposes of establishing the applicable attainment date for an area designated nonattainment for the 1997 $PM_{2.5}$ NAAQS in 2005, such as the San Joaquin Valley.

If and when the EPA reclassifies the SJV area from ''moderate'' to ''serious'' nonattainment for a $PM_{2.5}$ standard under subpart 4,[18] California will be obligated to submit, no later than 18 months after such reclassification, SIP provisions to assure that BACM for $PM_{2.5}$ shall be implemented no later than 4 years after the date the area is reclassified, among other things (CAA sections 189(b)(1)(B) and 189(b)(2)). Contingency measures for any new or revised plan submitted to address subpart 4 requirements would have to provide emission reductions beyond those relied upon in the control strategy for that plan (i.e., for a ''Serious Area,'' measures that are ''beyond BACM'').

We note that the possibility that a measure may be required as RACM or BACM in the future does not preclude its use as a contingency measure now. Likewise, an approval of a measure as a contingency measure now does not preclude a future determination that it is a required RACM or BACM under subpart 4. As the EPA explained in the Addendum, ''if all or part of the moderate area plan contingency measures become part of the required serious area control measures (i.e., BACM), then additional contingency measures must be submitted whether or not the previously submitted contingency measures had already been implemented.'' Addendum at 42015.

Comment 6: Earthjustice comments that because the RFP demonstration will change under a plan that complies with subpart 4, the assessment of the controls required for demonstrating RFP will also change. Earthjustice argues that without a new RFP demonstration, the EPA cannot determine whether the contingency measures are surplus to measures that are otherwise required by the Act.

Response 6: As explained above, we do not believe it would be reasonable to disapprove this corrective SIP based on a finding that the underlying attainment and RFP demonstrations in the SJV $PM_{2.5}$ SIP, demonstrations that we fully approved in 2011, now fail to satisfy subpart 4 requirements of which the State had no notice. As discussed in our proposal (78 FR 53113, 53123), the Contingency Measure SIP corrects the deficiencies that prompted the partial disapproval of the SJV $PM_{2.5}$ SIP in 2011. We believe our approval of this corrective SIP submission today is appropriate in light of the State's reasonable reliance on our 2011 final action, the significant consequences of a disapproval based on retroactive application of subpart 4 requirements in this context, and the EPA's separate rulemaking to establish reasonable timeframes for states to submit additional SIPs that may be required under subpart 4 consistent with the *NRDC* decision. *See* Response 1.

B. Comments Regarding Emission Reductions From Waiver Measures and Incentive Grant Programs

Comment 7: Earthjustice comments that ''Congress was not willing to let states merely 'promise' to protect air quality'' and that CAA section 110(a) requires states to formulate plans for meeting and maintaining compliance with the NAAQS which ''include enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights) . . . as may be necessary or appropriate to meet the applicable requirements of this chapter. . . .'' Earthjustice states that even those nontraditional techniques for reducing pollution (economic incentives, marketable permits, and auctions of emissions rights) authorized by section 110(a)(2)(A) must be ''enforceable,'' meaning that the EPA and citizens must have the ability to bring enforcement actions to assure compliance. Earthjustice further asserts that ''[a] state cannot claim SIP credit from control measures that shield pollution sources from independent enforcement actions.'' In support of these statements, Earthjustice references the EPA's statements in ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) (hereafter ''General Preamble''); ''Improving Air Quality with Economic Incentive Programs,'' U.S. EPA, Office of Air and Radiation, January 2001 (EPA–452/R–01–001) (hereafter ''2001 EIP Guidance''); and the February 4, 2013 docket memorandum for a rulemaking entitled ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction'' (EPA–HQ–OAR–2012–0322) (hereafter ''2013 SSM Memo'').

Response 7: We agree generally with the statement that the CAA requires states to submit implementation plans including measures that the EPA and citizens can enforce. As the commenter notes, the EPA has long interpreted CAA section 110(a) to mean that control measures and other means of achieving emission reductions in a SIP, including ''nontraditional techniques for reducing pollution [such as] economic incentives, marketable permits, and auctions of emissions rights,'' must be ''enforceable'' (General Preamble at 13556). We disagree, however, with Earthjustice's suggestion that the emission reductions identified in the Contingency Measure SIP are not enforceable because they are based on ''measures that shield pollution sources from independent enforcement actions.'' As explained below in Response 8 through Response 15, all of the measures relied upon in the Contingency Measure SIP are directly enforceable by the State and/or District against pollution sources, and the District's commitments concerning the incentive-based emission reductions are also enforceable by the EPA and citizens

[18] Under CAA sections 188(b)(2) and 179(c), the EPA must determine no later than 6 months following the applicable attainment date for the 1997 $PM_{2.5}$ standards in the SJV (April 5, 2015), based on air quality data, whether the area attained the standards by that date. Should we determine that the SJV area has failed to attain by April 5, 2015, the area will be reclassified by operation of law as a Serious Area and the State will be required to submit plan provisions consistent with the requirements of subpart 4 within 18 months. *See* CAA sections 188(b)(2) and 189(b)(2).

under the CAA. Nothing in the Contingency Measure SIP ''shields'' pollution sources from enforcement actions brought by the State or District. *See* Response 8 through Response 15.

Comment 8: Earthjustice highlights both the EPA's enforcement authority in CAA section 113 and the citizen suit provision in CAA section 304 as indication that ''Congress was not willing to rely on states alone to guarantee that the claimed emission reductions would occur or be enforced.'' Citing *Pennsylvania* v. *Del. Valley Citizens' Council for Clean Air,* 478 U.S. 546, 560 (1986), Earthjustice states that ''[t]he Supreme Court has found that 'Congress enacted 304 specifically to encourage citizen participation in the enforcement of standards and regulations established under this Act, and intended the section to afford citizens very broad opportunities to participate in the effort to prevent and abate air pollution.' '' Additionally, Earthjustice states that ''[t]his notion that SIPs must be built upon emission reductions that are capable of being enforced by EPA and citizens pervades a number of EPA policies regarding SIP approvability.'' For example, Earthjustice states that the ''EPA will not approve control measures that include 'director discretion' to define or redefine compliance requirements'' and that the EPA also will ''not allow SIPs to include state affirmative defenses that would foreclose EPA or other enforcement.'' In support of these statements, Earthjustice references EPA statements in the 2013 SSM Memo and in a memorandum dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance, to Regional Administrators, entitled ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (hereafter ''1999 SSM Guidance''). Earthjustice asserts that the two main contingency measures relied upon by the District—excess emission reductions from State mobile source measures and emission reductions achieved through incentive programs—fail to meet these criteria for enforceability.

Response 8: We agree generally with the commenter's statement that SIPs must be built upon emission reductions that the EPA and citizens can enforce under CAA sections 113 and 304, respectively. We disagree, however, with the commenter's assertion that the contingency measures relied upon by the District contain any impermissible ''director discretion'' or ''affirmative defense'' provisions that may bar EPA or citizen enforcement of these measures or otherwise fail to meet the Act's requirements for enforceability.

As Earthjustice correctly states, the EPA has stated in long-standing policy that it would not approve into a SIP any ''director discretion'' or ''affirmative defense'' provision that would bar the EPA or citizens from enforcing applicable SIP requirements, as such provisions would be inconsistent with the regulatory scheme established in title I of the Act. *See* 2013 SSM Memo at 11–13 (quoting 1999 SSM Guidance at 3). Although some degree of state/local agency discretion in a SIP rule may be permissible if explicit and replicable procedures within the rule tightly define how the discretion will be exercised to assure equivalent emission reductions, the EPA has long stated that SIP provisions that include unbounded discretion for state personnel unilaterally to change or to grant variances from applicable SIP provisions are problematic and inconsistent with the requirements of the CAA. *See* ''Guidance Document for Correcting Common VOC and Other Rule Deficiencies (a.k.a. The Little Bluebook),'' U.S. EPA Region IX, originally issued April 1991, revised August 21, 2001; *see also* 78 FR 12460, 12485 to 12486 (February 22, 2013) (proposed findings of substantial inadequacy and SIP calls to amend provisions applying to excess emissions during periods of startup, shutdown, and malfunction) and 2013 SSM Memo at 13. With respect to ''affirmative defenses,'' [19] the EPA has stated in long-standing policy that a state may include in a SIP certain narrowly drawn affirmative defense provisions, which qualifying sources may utilize in enforcement proceedings under specified circumstances, but that a SIP may not contain any defense to injunctive relief or any provision that would enable a state to bar EPA or citizen enforcement of applicable requirements. *See* 2013 SSM Memo at 11–13; *see also* 1999 SSM Guidance at 2.

Nothing in the Contingency Measure SIP authorizes either CARB or the District to modify the requirements of the SIP. As explained below in Response 13, the District has submitted enforceable commitments to account for specified amounts of NO_X and $PM_{2.5}$ emission reductions to be achieved in 2015 through incentive programs and to adopt and submit substitute measures on a fixed schedule if the identified programs fail to achieve these emission reductions in 2015. Since the EPA is approving these commitments into the SIP, they are federally enforceable requirements of an applicable implementation plan, which cannot be modified except through a SIP revision adopted by the State after reasonable notice and public hearing and approved by the EPA through notice-and-comment rulemaking. *See* CAA sections 110(l) and 302(q), 5 U.S.C. section 553, and 40 CFR 51.105. Additionally, nothing in the Contingency Measure SIP creates grounds for an affirmative defense that could be used in proceedings to enforce the District's SIP commitments, nor does the Contingency Measure SIP contain any provision that could bar EPA or citizen enforcement of these SIP commitments. We therefore disagree with the commenter's suggestion that the Contingency Measure SIP contains any ''director discretion'' or ''affirmative defense'' provision that would undermine the enforceability of these emission reductions. We explain more fully below how the District's SIP commitments can be enforced by the EPA and citizens. *See* Response 10 through Response 15.

In addition, the EPA disagrees with the commenter's assertion that the CARB mobile source control measures relied upon in the Contingency Measure SIP are not creditable as contingency measures. As explained in Response 9 below, the EPA has historically allowed emission reduction credit for California motor vehicle emissions standards that have received waivers of federal preemption pursuant to the waiver approval process of CAA section 209 (''waiver measures''), without requiring California to submit the standards themselves to the EPA for approval as part of the California SIP. *See,* e.g., 76 FR 69896 (November 9, 2011) (final rule partially approving and partially disapproving SJV $PM_{2.5}$ SIP) and 77 FR 12652 (March 1, 2012) (final rule approving SJV 8-hour Ozone SIP). Waiver measures are substituted for federal mobile source control measures in California, and they become enforceable by the State once the EPA issues a waiver or authorization. Based on considerations of permanence, enforceability, and quantifiability, the EPA continues to believe that it is appropriate and consistent with the CAA to allow California to rely on emission reductions resulting from

[19] The term ''affirmative defense'' means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. *See* 1999 SSM Memo, Attachment at 2, n. 4.

waiver measures in SIPs. *See* Response 9.

Comment 9: Earthjustice states that most of the CARB mobile source control measures relied upon to provide excess emission reductions are not approved into the SIP and, therefore, are not enforceable by the EPA or through independent citizen enforcement. Earthjustice states that the EPA is aware of this issue from previous comments on the 2008 $PM_{2.5}$ Plan and incorporates those comments by reference.[20] Earthjustice contends that because ''the State is free to amend or rescind these measures altogether without EPA oversight,'' these emission reductions are not creditable as contingency measures.

Response 9: We disagree with the commenter's argument that emission reductions from CARB mobile source control measures may not be credited as contingency measures. The EPA believes that credit for emission reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers (''waiver measures'') is appropriate notwithstanding the fact that such rules are not approved as part of the California SIP. In our July 13, 2011 proposed action on the SJV $PM_{2.5}$ SIP and the technical support document for that proposal, we explained why we believe such credit is appropriate. *See* 76 FR 41338, 41345 (July 13, 2011) and ''Technical Support Document and Responses to Comments, Final Rule on the San Joaquin Valley 2008 $PM_{2.5}$ State Implementation Plan,'' U.S. EPA Region 9, September 30, 2011 (hereafter ''2011 Final TSD'') at 101–105. Historically, the EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare,'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, the EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which the EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision. As we explained in the 2011 Final TSD (p. 87), credit for Federal measures, including those that establish on-road and nonroad standards, notwithstanding their absence in the SIP, is justified by reference to CAA section 110(a)(2)(A), which establishes the following content requirements for SIPs: ''. . . enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), . . . , as may be *necessary or appropriate* to meet the applicable requirements of this chapter.'' (emphasis added.) Federal measures are permanent, independently enforceable (by the EPA and citizens), and quantifiable without regard to whether they are approved into a SIP, and thus the EPA has never found such measures to be ''necessary or appropriate'' for inclusion in SIPs to meet the applicable requirements of the Act. CAA section 209 establishes a process under which the EPA allows California's waiver measures to substitute for Federal measures, and like the Federal measures for which they substitute, the EPA has historically found, and continues to find, based on considerations of permanence, enforceability, and quantifiability, that such measures are not ''necessary or appropriate'' for California to include in its SIP to meet the applicable requirements of the Act.

First, with respect to permanence, we note that, to maintain a waiver, CARB's on-road waiver measures can be relaxed only to a level of aggregate equivalence to the Federal Motor Vehicle Control Program (FMVCP) (CAA section 209(b)(1)). In this respect, the FMVCP acts as a partial backstop to California's on-road waiver measures (i.e., absent a waiver, the FMVCP would apply in California). Likewise, Federal nonroad vehicle and engine standards act as a partial backstop for corresponding California nonroad waiver measures. The constraints of the waiver process thus serve to limit the extent to which CARB can relax the waiver measures for which there are corresponding the EPA standards, and thereby serve an anti-backsliding function similar in substance to those established for SIP revisions in CAA sections 110(l) and 193. Meanwhile, the growing convergence between California and EPA mobile source standards diminishes the difference in the emission reductions reasonably attributed to the two programs and strengthens the role of the Federal program in serving as an effective backstop to the State program. In other words, with the harmonization of EPA mobile source standards with the corresponding State standards, the Federal program is becoming essentially a full backstop to most parts of the California program.

Second, as to enforceability, we note that the waiver process itself bestows enforceability onto California to enforce the on-road or nonroad standards for which the EPA has issued the waiver. CARB has as long a history of enforcement of vehicle/engine emissions standards as the EPA, and CARB's enforcement program is equally as rigorous as the corresponding EPA program. The history and rigor of CARB's enforcement program lends assurance to California SIP revisions that rely on the emission reductions from CARB's rules in the same manner as the EPA's mobile source enforcement program lends assurance to other state's SIPs in their reliance on emission reductions from the FMVCP. While it is true that citizens and the EPA are not authorized to enforce California waiver measures under the Clean Air Act (i.e., because they are not in the SIP), citizens and the EPA are authorized to enforce EPA standards in the event that vehicles operate in California without either California or EPA certification.

As to quantifiability, the EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. The EPA verifies the emission reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emission reductions from the EPA's motor vehicle

[20] Specifically, the commenter states: ''As EPA is well aware from previous comments on the 2008 $PM_{2.5}$ Plan (incorporated by reference here), most of the CARB mobile source control measures relied upon here to provide excess emission reductions are not actually approved into the state implementation plan. As a result, they are not enforceable by EPA or through independent citizen enforcement. . . .'' *See* letter dated September 27, 2013, from Paul Cort, at 7. Given the context of this comment and the broad range of issues raised by commenters during the EPA's previous rulemaking on the 2008 $PM_{2.5}$ Plan (referred to herein as the ''SJV $PM_{2.5}$ SIP''), we assume Earthjustice intended here to incorporate by reference only those of its own comments addressing the EPA's treatment of CARB mobile source control measures in the SIP (*see* letter dated August 12, 2011, from Paul Cort, Staff Attorney, and Sarah Jackson, Research Associate, Earthjustice, ''Comments on EPA's Partial Approval/Disapproval of the San Joaquin Valley's State Implementation Plan for Fine Particulate Matter, Docket # EPA–R09–OAR–2010–0516'').

standards are reflected in an analogous model known as MOVES.) The EMFAC model is based on the motor vehicle emissions standards for which California has received waivers from the EPA but accounts for vehicle deterioration and many other factors. The motor vehicle emissions estimates themselves combine EMFAC results with vehicle activity estimates, among other considerations. See the 1982 Bay Area Air Quality Plan, and the related the EPA rulemakings approving the plan (*see* 48 FR 5074 (February 3, 1983) for the proposed rule and 48 FR 57130 (December 28, 1983) for the final rule) as an example of how the waiver measures have been treated historically by the EPA in California SIP actions.[21] The SJV $PM_{2.5}$ SIP was developed using a version of the EMFAC model referred to as EMFAC2007, which the EPA has approved for use in SIP development in California. (73 FR 3464, January 18, 2008). Thus, the emission reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as are the emission reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model.

Moreover, the EPA's waiver review and approval process is analogous to the SIP approval process. First, CARB adopts its emissions standards following notice and comment procedures at the state level, and then submits the rules to the EPA as part of its waiver request. When the EPA receives new waiver requests from CARB, the EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. Once again, in substance, the process is similar to that for SIP approval and supports the argument that one hurdle (the waiver process) is all Congress intended for California standards, not two (waiver process plus SIP approval process). Second, just as SIP revisions are not effective until approved by the EPA, changes to CARB's rules (for which a waiver has been granted) are not effective until the EPA grants a new waiver, unless the changes are ''within the scope'' of a prior waiver and no new waiver is needed. Third, both types of final actions by the EPA—i.e., final actions on California requests for waivers and final actions on state submittals of SIPs and SIP revisions—may be challenged under section 307(b)(1) of the CAA in the appropriate United States Court of Appeals.

In the 2011 Final TSD (pp. 102–103), we indicated that we believe that section 193 of the CAA, the general savings clause added by Congress in 1990, effectively ratified our long-standing practice of granting credit for the California waiver rules because Congress did not insert any language into the statute rendering the EPA's treatment of California's motor vehicle standards inconsistent with the Act. Rather, Congress extended the California waiver provisions to most types of nonroad vehicles and engines, once again reflecting Congressional intent to provide California with the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. Requiring the waiver measures to undergo SIP review in addition to the statutory waiver process is not consistent with providing California with the broadest possible discretion as to on-road and nonroad vehicle and engine standards, but rather, would add to the regulatory burden California faces in establishing and modifying such standards, and thus would not be consistent with Congressional intent. In short, we believe that Congress intended California's mobile source rules to undergo only one the EPA review process (i.e., the waiver process), not two.

In summary, the EPA has historically given SIP credit for waiver measures in our approval of attainment demonstrations and other planning requirements such as reasonable further progress and contingency measures submitted by California. We continue to believe that section 193 ratifies our long-standing practice of allowing credit for California's waiver measures notwithstanding the fact they are not approved into the SIP, and correctly reflects Congressional intent to provide California with the broadest possible discretion in the development and promulgation of on-road and nonroad vehicle and engine standards. Further, even without considering section 193, the Act's structure, evolution, and provision for the waiver of federal preemption for California mobile source emissions standards all support the EPA's long-standing interpretation of the CAA to allow California to rely on emission reductions resulting from waiver measures when developing SIP emission inventories, related attainment demonstrations, and contingency measures, even though the waiver measures are not in the SIP itself.

Comment 10: Referencing the District's commitments to monitor, assess, and report on program implementation and to remedy emission reduction shortfalls, Earthjustice characterizes the ''contingency measure'' as an ''enforceable commitment to adopt measures as needed'' and asserts that such ''committal SIPs'' have repeatedly been rejected by the courts. More fundamentally, Earthjustice argues, ''this commitment does not create enforceable *emission limits* or *control measures* as required by section 110(a)(2)(A)'' but rather ''creates an enforceable *duty to adopt* such emission limits or control measures as contingency measures'' (emphases in original). Earthjustice contends that this is a plain violation of section 110(a)(2)(A). Moreover, Earthjustice contends, ''this duty already exists under section 172(c)(9), so this proposed contingency measure adds nothing beyond what is already required by law.''

Response 10: We disagree with the commenter's characterization of the District's commitments in the Contingency Measure SIP as a ''committal SIP.'' Courts have rejected the EPA's use of the ''conditional approval'' procedure in CAA section 110(k)(4) to permit states to postpone statutory SIP deadlines by submitting ''committal SIPs'' that contain no specific remedial measures but instead merely promise to adopt such measures in the future. *See,* e.g., *Natural Resources Defense Council, Inc.* v. *EPA, et al,* 22 F.3d 1125 (D.C. Cir. 1994) and

[21] The EPA's historical practice in allowing California credit for waiver measures notwithstanding the absence of the underlying rules in the SIP is further documented by reference to the EPA's review and approval of a May 1979 revision to the California SIP entitled, ''Chapter 4, California Air Quality Control Strategies.'' In our proposed approval of the 1979 revision (44 FR 60758, October 22, 1979), we describe the SIP revision as outlining California's overall control strategy, which the State had divided into vehicular sources and non-vehicular (stationary source) controls. As to the former, the SIP revision discusses vehicular control measures as including technical control measures and transportation control measures. The former refers to the types of measures we refer to herein as waiver measures, as well as fuel content limitations, and a vehicle inspection and maintenance program. The 1979 SIP revision included several appendices, including appendix 4–E, which refers to ''ARB vehicle emission controls included in title 13, California Administrative Code, chapter 3 . . . ,'' including the types of vehicle emission standards we refer to herein as waiver measures; however, California did not submit the related portions of the California Administrative Code (CAC) to the EPA as part of the 1979 SIP revision submittal. With respect to the CAC, the 1979 SIP revision states: ''The following appendices are portions of the California Administrative Code. Persons interested in these appendices should refer directly to the code.'' Thus, the State was clearly signaling its intention to rely on the California motor vehicle control program but not to submit the underlying rules to the EPA as part of the SIP. In 1980, we finalized our approval as proposed (45 FR 63843, September 28, 1980).

Sierra Club v. *EPA,* 356 F.3d 296 (D.C. Cir. 2004). The District's commitments in the Contingency Measure SIP, however, are not promises to adopt measures in the future. Instead, these SIP commitments identify on-going emission reductions and *current* obligations that the District must satisfy on an ongoing basis.[22] Specifically, the District's SIP commitments obligate the District to track its ongoing implementation of the Prop 1B and Carl Moyer Program requirements for specific projects relied upon for SIP credit and to submit reports to the EPA, on an annual basis, that include detailed information regarding the type, location, and duration of each such project. *See* Response 13 (referencing SJVUAPCD Board Resolution No. 13–6–18 at pg. 3 and Rule 9610 at Section 4.5). As explained in supporting materials submitted by the District, all of the projects relied upon for SIP credit in the Contingency Measure SIP are subject to ''already-executed, legally binding contracts'' which ensure that the District's claimed emission reductions are currently being achieved. *See* SJVUAPCD, ''Quantification of Contingency Reductions for the *2008 $PM_{2.5}$ Plan''* (June 20, 2013) at 7, 8. Although the District's SIP commitments include an enforceable requirement to submit substitute measures in the event of a shortfall in expected emission reductions for 2015, this secondary obligation does nothing to undermine the District's current obligation to monitor, assess, and report on its implementation of the Prop 1B and Carl Moyer Program for the identified projects and the actual emission reductions achieved through these projects, consistent with the applicable requirements of Rule 9610. To the contrary, the secondary commitment to adopt and submit substitute measures is provided as an *additional* safeguard to ensure that, if the projects relied upon for SIP credit fail to achieve the expected emission reductions by the applicable implementation deadline (i.e., by December 5, 2015), the District will be required to implement a timely remedy, i.e., to adopt and submit substitute measures that achieve equivalent amounts of emission reductions by the same implementation deadline.[23] In sum, the District's SIP commitments establish current obligations as part of an enforceable sequence of actions leading to compliance with a December 5, 2015 emission reduction obligation, which the EPA or citizens may enforce under the CAA. *See* Response 13.

We also disagree with the commenter's characterization of the District's SIP commitments as a ''duty to adopt'' emission limits or control measures that violates the requirements of CAA section 110(a)(2)(A). CAA section 110(a)(2)(A) requires that each SIP ''include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), . . . as may be necessary or appropriate to meet the applicable requirements of [the Act].'' CAA section 110(a)(2)(A); *see also* CAA section 172(c)(6) (establishing substantively identical requirements for nonattainment areas). Thus, in addition to ''emission limitations'' and ''control measures,'' the Act allows for SIPs to be built upon other ''means or techniques'' as may be necessary or appropriate to provide for timely attainment of the NAAQS. *See BCCA Appeal Group* v. *EPA,* 355 F.3d 817 (5th Cir. 2003), *reh'g denied,* 2004 U.S. App. LEXIS 215 (5th Cir., January 8, 2004) (noting expansion of the EPA's authority under section 110(a)(2)(A) following Congress' addition of the ''means'' and ''techniques'' and ''as appropriate'' language as part of the 1990 CAA Amendments). Moreover, as explained in the EPA's proposed rule, both CAA section 110(a)(2)(A) and section 172(c)(6) explicitly provide for the use of economic incentives as one tool for states to use to achieve attainment of the NAAQS. *See* 78 FR 53113, 53118 (quoting reference in CAA section 110(a)(2)(A) to ''economic incentives such as fees, marketable permits, and auctions of emissions rights''). Nothing in the Act prohibits the District's use of economic incentives as part of a contingency measure plan that ensures an appropriate level of emission reduction progress if attainment is not achieved and additional planning by the State is needed.

The incentive programs relied upon in the Contingency Measure SIP provide emission reductions in excess of those relied on for RFP or for expeditious attainment in the SJV $PM_{2.5}$ SIP (78 FR 53113, 53123). These incentive programs do not alter any existing control requirement in the applicable SIP and do not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. *Id.* The District has submitted a SIP commitment to comply with detailed requirements of the Prop 1B program and Carl Moyer Program guidelines through a sequence of actions leading to compliance with a December 2015 emission reduction obligation, which the EPA or citizens may enforce under CAA sections 113 and 304, respectively. *See* Response 13. For all of these reasons, we conclude that the District's SIP commitments are both enforceable ''emission standards or limitations'' as defined in CAA section 304(f)[24] and appropriate ''means or techniques'' for achieving NO_X and $PM_{2.5}$ emission reductions under CAA sections 110(a)(2)(A) and 172(c)(6), and that these enforceable commitments are permissible components of a plan submitted to satisfy the attainment contingency measure requirement in CAA section 172(c)(9).

Comment 11: Earthjustice asserts that the EPA's reliance on the ''enforceable commitment'' to adopt control measures as an enforceable contingency measure is also a plain violation of section 172(c)(9), which requires that contingency measures ''take effect . . . without further action by the State or the Administrator.'' Citing the EPA's interpretive statements in the Addendum (59 FR 41998, August 16, 1994), Earthjustice contends that ''[t]he commitment to adopt new rules and measures is a blatant attempt to allow the District to defer adoption of enforceable contingency measures until after the attainment failure occurs'' and that ''[t]his undermines the entire purpose of the contingency measure requirement.'' Earthjustice concludes that the incentive program contingency measure therefore cannot be approved.

Response 11: We disagree. As explained in Response 10 above, the District's SIP commitments contain both a current obligation for the District to monitor, assess, and report on its ongoing implementation of the Prop 1B and Carl Moyer Program requirements with respect to specified projects and a secondary obligation for the District to implement a timely remedy, should the

[22] As we explained in our proposed rule (78 FR 53113, 53115), contingency measures may include Federal, state and local measures already scheduled for implementation that provide emission reductions in excess of those needed to provide for RFP or expeditious attainment. Nothing in the statute precludes a state from implementing such measures before they are triggered. *See, e.g., LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP). The EPA believes that its interpretation of the contingency measure requirement in section 172(c)(9) of the Act is reasonable because reductions from these contingency measures are continuing in nature.

[23] *See* n. 46, *infra* (discussing December 5, 2015 deadline for implementation of substitute measures under District's SIP commitment).

[24] *See* n. 31, *infra.*

identified projects fail to achieve the expected emission reductions. These SIP obligations take effect without further action by the State or the Administrator, in accordance with CAA section 172(c)(9).

Additionally, consistent with the EPA's longstanding interpretation of the contingency measure requirement in CAA section 172(c)(9) as requiring that all actions needed to effect full implementation of contingency measures occur within 60 days after the EPA notifies the State of a failure to attain the NAAQS by the applicable attainment date,[25] the District's SIP commitments ensure that all actions needed to effect full implementation of the incentive-based emission reductions will occur no later than December 5, 2015. Should the EPA find based on the 2014 annual demonstration report that the required amounts of NO_X and $PM_{2.5}$ emission reductions may not continue through 2015 as projected, the EPA will promptly notify the District of its potential obligation to implement substitute measures consistent with its Board commitment no later than December 5, 2015, so that the District has ample time for any rulemakings that may be necessary to meet this implementation deadline. Subsequently, should the EPA determine that the SJV area has failed to attain the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2015,[26] the District will be obligated under its SIP commitment either to confirm that the Prop 1B and Carl Moyer Program projects identified in the 2014 and 2015 annual demonstration reports will continue to achieve the required amounts of NO_X and $PM_{2.5}$ emission reductions in December 2015 as projected, or to adopt and submit substitute measures achieving equivalent amounts of emission reductions (4.15 tpd of NO_X reductions and 0.10 tpd of direct $PM_{2.5}$ reductions) no later than December 5, 2015.[27] *See* SJVUAPCD Board Resolution No. 13–6–18 at p. 3.

Earthjustice suggests that only those ''substitute'' measures that the District would be obligated to implement in the event of an emission reduction shortfall constitute enforceable contingency measures, and that the EPA's approval of this SIP commitment therefore impermissibly allows the District to delay adoption of required measures. As discussed above, however, the enforceable contingency measure here is the District's SIP commitment in its entirety, which includes a current obligation to monitor, assess, and report on the District's ongoing implementation of the Prop 1B and Carl Moyer Program requirements with respect to specified projects which collectively are expected to achieve 4.15 tpd of NO_X reductions and 0.10 tpd of direct $PM_{2.5}$ reductions in 2015. This current obligation constitutes an enforceable measure in itself, and should the District fail to fully account for the required amounts of NO_X and direct $PM_{2.5}$ emission reductions in annual demonstration reports submitted in 2014 and 2015 that satisfy the applicable requirements of Rule 9610, the EPA may make a finding of failure to implement the SIP under CAA section 179(a) and either the EPA or citizens may take enforcement action under CAA section 113 or 304, respectively. *See* Response 12 and Response 13. The secondary obligation to adopt and submit ''substitute'' measures is an additional safeguard to be effectuated only if the District fails to satisfy its current obligation to monitor, assess, and report on its ongoing emission reduction responsibilities. We therefore disagree with the commenter's assertion that the District's SIP commitment allows it to ''defer adoption of enforceable contingency measures until after the attainment failure occurs.''

In sum, the District's SIP commitments establish current obligations on the District to take action well before the applicable attainment date to achieve the required emission reductions by December 5, 2015, whether through annual demonstration reports submitted in 2014 and 2015 or through adoption and submission of substitute measures to be implemented by December 5, 2015. Given the District's long history of successful implementation and enforcement of Prop 1B and Carl Moyer Program grants and the detailed requirements in the associated incentive program guidelines, as discussed in our technical support document for the proposed rule (*see* U.S. EPA Region 9, ''Technical Support Document, Proposed Approval of Clean Air Act Section 172(c)(9) Contingency Measures, San Joaquin Valley State Implementation Plan for Attainment of the 1997 $PM_{2.5}$ Standards,'' August 15, 2013 (hereafter ''Proposal TSD'')) and further in these responses to comments, we expect that the District's implementation of these program requirements for the identified projects will achieve the District's claimed 4.15 tpd of NO_X reductions and 0.10 tpd of direct $PM_{2.5}$ reductions in 2015. However, should the EPA find based on documentation submitted by the District in 2014 that the required emission reductions may not occur in 2015 as projected, the District will be obligated under its SIP commitment to adopt and submit substitute measures achieving the required emission reductions by December 5, 2015. We find these SIP commitments adequate to ensure that an appropriate level of emission reduction progress will continue to be made should the SJV area fail to attain the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2015.

Comment 12: Earthjustice asserts that the incentive-based emission reductions are unenforceable by the EPA or citizens and that the EPA itself has described such emission reductions as ''not enforceable against individual sources,'' ''voluntary,'' and subject to a cap on SIP credit.

Response 12: We disagree with the commenter's assertion that these emission reductions are unacceptable because they are unenforceable by the EPA or citizens. As the commenter notes, the EPA has described ''voluntary'' measures as those that are not directly enforceable against individual sources and has recommended presumptive limits (sometimes referred to as ''caps'') on the

[25] *See* General Preamble at 13512, 13543–13544 and the Addendum at 42014–42015 (''EPA generally expects all actions needed to effect full implementation of the [contingency] measures to occur within 60 days after EPA notifies the State of the area's failure [to attain]'').

[26] Under CAA section 179(c), the EPA must determine whether the SJV area has attained the 1997 $PM_{2.5}$ NAAQS ''as expeditiously as practicable'' and no later than 6 months after the applicable attainment date, based on the area's air quality as of the attainment date. Because the applicable attainment date for the 1997 $PM_{2.5}$ NAAQS in the SJV area is April 5, 2015, the EPA must make this determination regarding attainment for the SJV no later than October 5, 2015.

[27] *See* n. 46, *infra* (discussing December 5, 2015 deadline for implementation of substitute measures under District's SIP commitment). In our proposed rule, we erroneously stated that following an EPA finding that the SJV area has failed to attain the 1997 $PM_{2.5}$ NAAQS, the District would be obligated to verify through the *2016* annual demonstration report whether the required amounts of NO_X and direct $PM_{2.5}$ reductions had occurred or to adopt and submit substitute rules consistent with its Board commitment (78 FR 53113, 53122). We hereby clarify that the *2014* annual demonstration report (not the 2016 report) is the vehicle through which the District must either demonstrate that the required amounts of emission reductions will continue through 2015 or identify substitute measures to be implemented by December 5, 2015. *See* Rule 9610, Section 4.4 (requiring that each annual demonstration report ''identify and quantify SIP commitment shortfalls, if any, and remedies for addressing said shortfalls''). We note, however, that under Rule 9610 the District remains subject to an ongoing obligation to retrospectively assess the performance of its incentive programs for potential future enhancements and that the 2016 annual demonstration report should, therefore, contain information adequate to verify whether the required amounts of NO_X and direct $PM_{2.5}$ reductions occurred in 2015. *See* Rule 9610, Section 4.7.

credit that may be allowed in a SIP for such measures. Such voluntary measures may be credited for SIP purposes only where the State submits other enforceable mechanisms to ensure that the required emission reductions are achieved, subject to EPA and citizen enforcement under the CAA. As discussed further below, the incentive-based emission reductions relied upon in the Contingency Measure SIP fall within the EPA's presumptive limits on credit for voluntary measures and are consistent with the EPA's recommendations for voluntary mobile source emission reduction programs. Additionally, these incentive-based emission reductions are consistent with the EPA's recommendations for discretionary economic incentive programs. We discuss below EPA's guidance on both voluntary measures and economic incentive programs (EIPs) and our rationale for concluding that the Contingency Measure SIP adequately addresses the applicable requirements of the Act, as described in these guidance documents.

The EPA believes that it is appropriate and consistent with the Act to allow a limited percentage of the total emission reductions needed to satisfy any statutory requirement to come from ''voluntary'' or ''emerging'' measures or other nontraditional measures and programs, where the State commits to certain safeguards and satisfies the statutory criteria for SIP approval. *See,* e.g., ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs),'' October 24, 1997 (hereafter ''1997 VMEP'') at 4–7; ''Incorporating Emerging and Voluntary Measures in a State Implementation Plan,'' September 2004 (hereafter ''2004 Emerging and Voluntary Measures Policy'') at 8–12; and ''Guidance on Incorporating Bundled Measures in a State Implementation Plan,'' August 16, 2005 (hereafter ''2005 Bundled Measures Guidance'') at 7–12. The EPA has described ''voluntary measures'' as measures or strategies that are not directly enforceable against individual sources, and ''emerging measures'' as those that are more difficult to accurately quantify than traditional SIP emission reduction measures.[28] *See* 1997 VMEP at 4; 2004 Emerging and Voluntary Measures Policy at 13, 19; and 2005 Bundled Measures Guidance at 2. ''Voluntary'' measures for stationary and area sources may include consumer-oriented programs to reduce the use of high-emitting paints or other consumer products during the ozone season; mechanisms to encourage pollution prevention or process changes at unregulated emission points; and voluntary wood stove changeout programs. *See* 2004 Emerging and Voluntary Measures Policy at 19, 20. ''Voluntary'' mobile source emission reduction programs (VMEPs)[29] may include employer-based transportation management programs to manage employee commute and travel behavior; area-wide rideshare incentives to encourage commuters to use alternatives to single-occupant vehicles; and auto restricted zones, no-drive days, or other limitations on vehicle use in a given geographic area. *See* 1997 VMEP at Attachment 1. ''Emerging'' measures include activities that indirectly reduce emissions by promoting more efficient energy use or that promote renewable resources (e.g., use of solar power, wind power, or biomass) and activities that improve air quality by means other than emission reductions (e.g., heat island measures that reduce criteria pollutant concentrations by lowering ambient temperatures). *See* 2004 Emerging and Voluntary Measures Policy at 14–15. Where a State submits a VMEP or other voluntary or emerging measure for SIP approval, the EPA evaluates it for consistency with four fundamental ''integrity elements'' and with SIP attainment and reasonable further progress (RFP) requirements, and to ensure that it does not interfere with other requirements of the Act. *See* 1997 VMEP at 6; *see also* 78 FR 53113, 53118 and Proposal TSD at 22–24.

In light of the increasing incremental cost associated with further stationary and mobile source emission reductions and the difficulty of identifying such additional sources of emission reductions, the EPA encourages innovative approaches to generating emission reductions through voluntary and emerging measures and other nontraditional measures and programs. *See* 1997 VMEP at 4–5; 2004 Emerging and Voluntary Measures Policy at 9; and 2005 Bundled Measures Guidance at 7. The EPA also recognizes, however, that these nontraditional measures raise novel issues related to enforceability and quantification of the associated emission reductions. Accordingly, the EPA's policies addressing nontraditional measures provide for some flexibility in meeting established SIP requirements for enforceability and quantification, provided the State takes clear responsibility for ensuring that the emission reductions necessary to meet applicable CAA requirements are achieved. *See* 1997 VMEP at 5–7; 2004 Emerging and Voluntary Measures Policy at 9; 2005 Bundled Measures Guidance at 7; and ''Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs into State and Tribal Implementation Plans,'' July 2012 (hereafter ''2012 Roadmap for EE/RE Programs'') at 37–38. Importantly, the EPA has consistently stated that any voluntary or other nontraditional measure submitted for SIP credit must be accompanied by an appropriate enforceable ''backstop'' commitment from the State to monitor emission reductions achieved and to rectify any shortfall in a timely manner. *See,* e.g., 1997 VMEP at 4–5; 2004 Emerging and Voluntary Measures Policy at 8–12; 2005 Bundled Measures Guidance at 7–12; and ''Guidance on SIP Credits for Emission Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures,'' August 5, 2004 (hereafter ''2004 Electric-Sector EE/RE Guidance'') at 6–7. Thus, although the State is not necessarily responsible for implementing a program dependent on voluntary actions, the State is obligated to monitor, assess and report on the implementation of any such program and the associated emission reductions, and to remedy emission reduction shortfalls in a timely manner should the voluntary measure not achieve the projected emission reductions. *See* 1997 VMEP at 6–7. The EPA believes that voluntary measures, in conjunction with the enforceable commitment to monitor emission reductions achieved and rectify any shortfall, meet the SIP control measure requirements of the Act. *See* 1997 VMEP at 5 and 2004 Emerging and Voluntary Measures Policy at 8–9.

Given the innovative nature of these nontraditional measures, the EPA has recommended ''presumptive'' limits on the amounts of emission reductions from such measures that may be credited in a SIP. Specifically, for VMEPs, the EPA has identified a presumptive limit of three percent (3%) of the total projected future year emission reductions required to attain the appropriate NAAQS, and for any particular SIP submittal to demonstrate attainment or maintenance of the NAAQS or progress toward attainment (RFP), 3% of the specific statutory

[28] A measure can be both emerging and voluntary. *See* 2004 Emerging and Voluntary Measures Policy at 1.

[29] A voluntary mobile source emission reduction program (VMEP) is a mechanism that supplements traditional emission reduction strategies through voluntary, nonregulatory changes in local transportation sector activity levels or changes in in-use vehicle and engine fleet composition, among other things. *See* 1997 VMEP at 3.

requirement. *See* 1997 VMEP at 5. As explained in the 2001 EIP Guidance, the EPA recommended this 3% cap (per pollutant) on the credit allowed for VMEPs because states are ''not required to play a direct role in implementing these programs, the programs are not directly enforceable against participating parties, and there may [be] less experience in quantifying the emission benefits from these programs.'' 2001 EIP Guidance at 158. For voluntary stationary and area source measures, the EPA has identified a presumptive limit of 6% of the total amount of emission reductions required for RFP, attainment, or maintenance demonstration purposes. *See* 2004 Emerging and Voluntary Measures Policy at 9 and 2005 Bundled Measures Guidance at 8. These limits are presumptive in that the EPA may approve emission reductions from voluntary or other nontraditional measures in excess of the presumptive limits where the State provides a clear and convincing justification for such higher amounts, which the EPA would review on a case-by-case basis. *See id.*

The incentive-based emission reductions in the Contingency Measure SIP are consistent with the EPA's recommendations in the 1997 VMEP. First, the Contingency Measure SIP and related support documents contain the State's and District's demonstrations that the claimed incentive-based emission reductions are quantifiable, surplus, enforceable and permanent consistent with EPA policy. *See* Proposal TSD at 29–42. Second, the SIP submission contains enforceable commitments by the District to monitor, assess and report on its implementation of specified portions of the Carl Moyer and Prop 1B programs and the associated emission reductions, and to remedy emission reduction shortfalls in a timely manner should these programs fail to achieve the projected amounts (i.e., 4.15 tpd of NO_X reductions and 0.10 tpd of direct $PM_{2.5}$ reductions) in 2015. *See* 78 FR 53113, 53121–53122 and Proposal TSD at 42–44. These commitments become federally enforceable by the EPA under CAA section 113 [30] and by citizens under CAA section 304 [31] upon the EPA's approval of the commitments into the SIP. Thus, although neither the EPA nor citizens can enforce these emission reductions directly against sources, as a result of today's action the EPA and citizens may enforce these emission reductions against the District,[32] pursuant to the District's SIP-approved commitments. *See* Proposal TSD at 42–44; *see also* Response 13 below (discussing EPA and citizen enforcement of SIP commitments under the CAA). Third, the incentive-based emission reductions relied upon in the Contingency Measure SIP amount to less than two percent of the total projected NO_X reductions and less than one percent of the total projected $PM_{2.5}$ reductions needed to attain the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley by April 5, 2015 (78 FR 53113, 53121, n. 29). These amounts of emission reductions fall within the EPA's recommended 3% cap (per pollutant) on the credit allowed for VMEPs. Finally, the incentive-based emission reductions do not interfere with requirements of the CAA and are consistent with the attainment and RFP requirements in the approved SJV $PM_{2.5}$ SIP (78 FR 53113, 53123 (discussing the EPA's evaluation of the Contingency Measure SIP in accordance with CAA section 110(l)).

Additionally, as explained in our proposed rule, the EPA evaluated the incentive-based emission reductions in the Contingency Measure SIP in accordance with the Agency's guidance on discretionary economic incentive programs (EIPs),[33] specifically ''financial mechanism EIPs'' (78 FR 53113, 53118, August 28, 2013). The EPA's approach to discretionary EIPs differs in several respects from its approach to ''voluntary'' and ''emerging'' measures. A discretionary EIP uses market-based strategies to encourage the reduction of emissions from stationary, area, and/or mobile sources in an efficient manner. *See* 2001 EIP Guidance at 3. To qualify for approval as a discretionary EIP, emission reductions or actions leading to reductions must be enforceable either by the State or by the EPA, and the State must be directly responsible for ensuring that program elements are implemented. *See id.* at 157–158 (states may use the 2001 EIP Guidance where ''[a]ctions and/or emission reductions by identifiable sources are enforceable by [the State] and/or by the EPA''). Additionally, the emission reductions resulting from an EIP must be quantifiable with a higher degree of certainty than the reductions resulting from an emerging measure. *See* 2004 Emerging and Voluntary Measures Policy at 5. Given these more rigorous approval criteria, the EPA's presumptive limits on SIP credit for voluntary and emerging measures do not apply to discretionary EIPs. *See* 2001 EIP Guidance at 158 (''[states] may use the EIP guidance to implement programs which will generate emission reductions beyond the 3 percent limit''); *see also* 2004 Emerging and Voluntary Measures Policy at 6 (''EIP measures are not subject to a percentage limitation that applies to voluntary measures'').

A ''financial mechanism EIP'' is an EIP that indirectly reduces emissions by increasing costs for high emitting activities—e.g., through subsidies targeted at promoting pollution-reducing activities or products. *See* 2001 EIP Guidance at 119–122 (Chapter 8.0). The EPA has identified several attributes that may make subsidy financial mechanism EIPs successful, including: (1) The relevant governmental body possesses legal

[30] Section 113 of the CAA authorizes the EPA to issue notices and compliance orders, assess administrative penalties, and bring civil actions against any ''person,'' including a State, who ''has violated or is in violation of any requirement or prohibition of an applicable implementation plan. . . .'' CAA section 113(a)(1)–(2), 42 U.S.C. 7413(a)(1)–(2); CAA section 302(e), 42 U.S.C. 7602(e) (defining ''person'' to include a State or political subdivision thereof). ''Applicable implementation plan'' is defined in CAA section 302(q), in relevant part, as ''the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of [title I of the Act] . . . and which implements the relevant requirements of [the Act].'' 42 U.S.C. 7602(q).

[31] CAA section 304(a)(1) authorizes any person to bring a civil action against any ''person,'' including a State, ''who is alleged to have violated or to be in violation of . . . an emission standard or limitation. . . .'' 42 U.S.C. 7604(a)(1); CAA section 302(e), 42 U.S.C. 7602(e) (defining ''person'' to include a State or political subdivision thereof). An ''emission standard or limitation'' is defined in section 304(f), in relevant part, to mean ''a schedule or timetable of compliance'' which is in effect under the Act ''or under an applicable implementation plan.'' 42 U.S.C. 7604(f)(1). ''Schedule and timetable of compliance'' is broadly defined in section 302(p) to mean ''a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.'' 42 U.S.C. 7602(p).

[32] The District Governing Board's commitments are also enforceable against the State through CARB's adoption of the Contingency Measure SIP. *See* State of California, Air Resources Board, ''San Joaquin Valley $PM_{2.5}$ Contingency Measures Update,'' Resolution 13–30 (June 27, 2013) (''the Board hereby adopts the $PM_{2.5}$ Contingency Measures Update as a revision to the California SIP and directs the Executive Officer to transmit it to the U.S. EPA'' as a SIP revision). Throughout this document, references to enforcement against the District include enforcement against the State, which has responsibility for ensuring adequate implementation of the SIP consistent with CAA section 110(a)(2)(E).

[33] The EPA has promulgated regulations for ''statutory EIPs'' required under CAA sections 182(g), 187(d)(3), or 187(g) and has issued guidance for ''discretionary EIPs.'' *See generally* 40 CFR part 51, subpart U; 59 FR 16690 (April 7, 1994); and 2001 EIP Guidance. A ''discretionary EIP'' is any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of CAA sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) (40 CFR 51.491). In today's action, we address only the requirements that apply to discretionary EIPs as the Contingency Measure SIP does not contain any statutory EIP.

authority to provide subsidies; (2) the subsidies address activities reasonably related to actual emissions or potential emissions; (3) where projected emission reductions are based on changes in behavior, methods for verifying that such reductions have taken place to the degree projected are generally accepted as unbiased and trustworthy; and (4) if needed, adequate penalty provisions are in place to ensure that the subsidy is used as expected. *See* 2001 EIP Guidance at 27 (''Attributes That Make Subsidy Financial Mechanism EIPs Successful'').

As explained further below, the incentive-based emission reductions in the Contingency Measure SIP are consistent with the EPA's recommendations for ''financial mechanism EIPs'' in the 2001 EIP Guidance. First, CARB and the District are directly responsible for ensuring that the Prop 1B program and Carl Moyer Program are implemented in accordance with State law. *See* 2010 Prop 1B guidelines at 1–4 (''Overview'') and 2011 Carl Moyer Program Guidelines at Chapter 1 (''Program Overview''). Second, these incentive funds address activities reasonably related to actual or potential air pollutant emissions by requiring grant recipients to purchase and operate newer, cleaner vehicles or equipment in place of older, more-polluting vehicles or equipment, subject to detailed contract requirements. *See* Response 13. Third, the 2008 and 2010 Prop 1B guidelines and the 2011 Carl Moyer Program Guidelines establish a number of methods for verifying that projected emission reductions have taken place through compliance with the terms and conditions of each funding contract. *See* Response 13 and Response 14. Finally, under the applicable guidelines, actions by grantees that lead to emission reductions are directly enforceable by the State and/or the District—e.g., CARB and/or the District may assess fiscal penalties and take certain corrective actions where contract violations are identified [34]—and EPA and citizens may, in turn, enforce the annual reporting and emission reduction obligations against the District. *See* Response 13 and Response 14.

Consistent with the EPA's recommendations for ''financial mechanisms EIPs,'' these provisions in the 2008 and 2010 Prop 1B guidelines and the 2011 Carl Moyer Program Guidelines are adequate to ensure that program funds are used as expected—i.e., to reduce emissions from higher-polluting vehicles and equipment by replacing them with newer, lower-polluting equipment and vehicles.

In sum, although the incentive-based emission reductions in the Contingency Measure SIP are not directly enforceable against individual sources by the EPA or citizens, the *District* may enforce specific emissions-reducing actions against individual sources, and the EPA and citizens may, in turn, enforce the emission reduction obligations against the District, pursuant to the District's SIP-approved commitments. Thus, whether the incentive-based emission reductions are characterized as dependent upon ''voluntary'' measures (*i.e.,* a VMEP) or resulting from a discretionary ''financial mechanism EIP,'' we find the District's SIP commitments in the Contingency Measure SIP adequate to ensure that the EPA and citizens may enforce these emission reductions under the Act. The Contingency Measure SIP and related support documents also adequately address all other applicable requirements of the CAA and the EPA's recommendations as set forth in the 1997 VMEP and 2001 EIP Guidance (78 FR 53113, 53118–53122, August 28, 2013). Given all of these considerations, we find that the incentive-based emission reductions in the Contingency Measure SIP satisfy the statutory criteria for SIP approval.

Comment 13: Citing both the 2001 EIP Guidance and the 2004 Emerging and Voluntary Measures Policy, Earthjustice highlights seven criteria for enforceability and asserts that the emission reductions identified in the Contingency Measure SIP do not meet these criteria.

Response 13: As an initial matter, we note that both the 2001 EIP Guidance and the 2004 Emerging and Voluntary Measures Policy set forth the EPA's recommendations for EIPs or voluntary measures submitted for SIP purposes and do not establish binding legal requirements. *See* 2001 EIP Guidance at 12 and 19 (stating that the EPA would determine through notice-and-comment rulemaking whether a particular EIP submission meets the applicable CAA requirements) and 2004 Emerging and Voluntary Measures Policy at 2. Moreover, the 2004 Emerging and Voluntary Measures Policy does not apply to mobile emission sources such as on-road and non-road vehicles.[35] *See* 2004 Emerging and Voluntary Measures Policy at 5. We have, however, evaluated the incentive-based emission reductions in the Contingency Measure SIP for consistency with the fundamental ''integrity elements'' outlined in the 2001 EIP Guidance, the 2004 Emerging and Voluntary Measures Policy, and other guidance on innovative measures as part of our evaluation of the SIP submission in accordance with CAA requirements.

Based on this evaluation, we disagree with the commenter's assertion that the incentive-based emission reductions in the Contingency Measure SIP fail to adequately address the enforceability recommendations provided in EPA policy. As the commenter notes, the 2001 EIP Guidance identifies enforceability considerations that are substantively identical to the recommendations in the 2004 Emerging and Voluntary Measures Policy. According to the 2001 EIP Guidance, emission reductions use, generation, and other required actions are enforceable if: (1) They are independently verifiable; (2) program violations are defined; (3) those liable for violations can be identified; (4) the State and the EPA maintain the ability to apply penalties and secure appropriate corrective actions where applicable; (5) citizens have access to all the emissions-related information obtained from the source; (6) citizens can file suits against sources for violations; and (7) they are practicably enforceable in accordance with other EPA guidance on practicable enforceability. *See* 2001 EIP Guidance at 35–36.

The actions required of grantees under the applicable portions of the Prop 1B and Carl Moyer Program guidelines, as discussed in our proposed rule, the Proposal TSD, and further below, adequately address these enforceability recommendations. First, the required actions are independently verifiable through (1) pre-project and post-project on-site inspections (with photographic documentation) that the District and/or CARB must carry out pursuant to the applicable guidelines, and (2) documents that each grantee is required to maintain and/or submit to the District in accordance with detailed contract provisions. *See generally* 2008 Prop 1B guidelines at Section III.D

[34] These State and District enforcement authorities distinguish both the Prop 1B program and the Carl Moyer Program from an entirely ''voluntary'' measure, which depends on actions by individual sources that cannot be enforced. *See, e.g.,* 2001 EIP Guidance at 157–58 (describing VMEPs as ''innovative mobile source air quality programs that are voluntary or that are operated by a non-governmental entity'' and distinguishing these from EIPs, for which the State is ''directly responsible for ensuring that program elements are implemented'').

[35] The Contingency Measure SIP relies on emission reductions from incentive programs that apply only to mobile emission sources—specifically, ''on-road vehicle replacement'' projects funded through the Prop 1B program and ''off-road vehicle replacement'' projects funded through the Carl Moyer Program (78 FR 53113, 53120).

(''Local Agency Project Implementation Requirements''), Section IV (''General Equipment Project Requirements''), and Appendix A, Section C (''Recordkeeping Requirements'') and Section D (''Annual Reporting Requirements''); 2010 Prop 1B guidelines at Section IV.A (''Project Implementation Requirements''), Section VI (''General Equipment Project Requirements''), and Appendix A, Section F (''Recordkeeping Requirements'') and Section G (''Annual Reporting Requirements''); and 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 (''Program Administration'').

For example, the 2008 and 2010 Prop 1B guidelines require, among other things, that (1) all project applications [36] include documentation of current equipment and activity information (e.g. engine make, model, horsepower and fuel type, annual vehicle miles of travel (VMT) in California, and estimated percentage of annual VMT in trade corridors); (2) that the District conduct a ''pre-inspection'' of each application deemed eligible for funding, to verify information regarding the baseline engine, vehicle, or equipment; (3) that the District conduct a ''post-inspection'' of each funded project to record, among other things, identifiers and specifications for the new engine/equipment (e.g., VIN numbers for new trucks, serial numbers for new engines), verification that the new engine/equipment is operational and consistent with the equipment described in the project application, and verification of the destruction of the old/replaced equipment, where applicable; and (4) that the District's pre-inspection and post-inspection project files include photographic documentation of each piece of equipment being inspected, including an engine serial number, visible distinguishing identification (e.g., a license plate), and a full view of the equipment. *See* Proposal TSD at 30–35; *see also* 2008 Prop 1B guidelines at Section III.D.8 (''Equipment project pre-inspections'), Section III.D.14 (''Equipment project post-inspections), Section IV.D (''Equipment Project Application Requirements'') and Appendix A, Section F (''Application Information''); and 2010 Prop 1B guidelines at Section IV.A.10 (''Equipment project pre-inspections'), Section IV.A.16 (''Equipment project post-inspections), Section VI.D (''Equipment Project Application Requirements'') and Appendix A, Section F (''Application Information'').

Similarly, the 2011 Carl Moyer Program Guidelines require, among other things, that (1) all project applications [37] include documentation of existing engine usage in previous years (e.g. miles traveled, hours operated, or fuel consumed per year); (2) that the District conduct a ''pre-inspection'' of each application deemed eligible for funding, to verify information regarding the baseline engine, vehicle, or equipment; (3) that the District conduct a ''post-inspection'' of each funded project to record, among other things, information regarding the new engines, vehicles/equipment, and retrofit devices as needed to provide a basis for emission calculations and to ensure contract enforceability; and (4) that the District's pre-inspection and post-inspection project files include photographic documentation of the engine, vehicle, or equipment information, including a legible serial number and/or other identifying markings. *See* Proposal TSD at 37–42; *see also* 2011 Carl Moyer Program Guidelines, Part I, Chapter 3, at Section W (''Minimum Project Application Requirements''), Section AA (''Project Pre-Inspection''), and Section BB (''Project Post-Inspection'').

Second, the applicable portions of the 2008 and 2010 Prop 1B guidelines and the 2011 Carl Moyer Program guidelines specifically define the required elements of each contract and the types of actions that constitute violations of such contracts. For example, under the 2008 and 2010 Prop 1B guidelines, each equipment project contract must include: (1) A unique ''tracking number''; (2) the equipment owner's contact information; (3) the original application submitted by the equipment owner; (4) requirements for the equipment owner to submit reports to the local agency annually or biennially [38]; (5) the equipment owner's agreement to allow ongoing evaluations and audits of equipment and documentation by the District, CARB, or their designated representative(s); and (6) requirements for the equipment owner to retain all records pertaining to the program (i.e., invoices, contracts, and correspondence) for at least two years after equipment project ends or three years after final payment, whichever is later. *See* 2008 Prop 1B guidelines at Section III.D.10 (''Equipment project contracts'') and 2010 Prop 1B guidelines at Section IV.A.11 (''Equipment project contracts''); *see also* Proposal TSD at 30–32. Additionally, under the same guidelines, the following actions (among others) are specifically identified as contract violations: (1) Failure to meet the terms and conditions of an executed equipment project contract, including equipment operating conditions and geographic restrictions; (2) failure to allow for an electronic monitoring device or tampering with an installed device or data; (3) insufficient, incomplete, or faulty equipment project documentation; and (4) failure to provide required documentation or reports in a timely manner. *See* 2008 Prop 1B guidelines at Section IV.G (''Equipment Project Non-Performance'') and 2010 Prop 1B guidelines at VI.I (''Equipment Project Non-Performance''); *see also* Proposal TSD at 30–32.

Similarly, under the 2011 Carl Moyer Program Guidelines, each equipment project contract must include: (1) The name and contact information of the grantee; (2) specified timeframes for ''project completion'' (the date the project post-inspection confirms that the project has become operational) and ''project implementation'' (the project life used in the project cost-effectiveness calculation); (3) detailed information on both baseline and new vehicles, equipment, and/or engines, including documentation adequate to establish historical annual usage; (4) requirements for the grantee to maintain the vehicle, equipment and/or engine according to the manufacturer's specifications for the life of the project; (5) annual reporting requirements; (6) a provision authorizing the District, CARB, and their designees to conduct fiscal audits and to inspect the project engine, vehicle, and/or equipment and

[36] Each project application must be incorporated by reference into the equipment project contract, which the equipment owner must maintain for at least two years after equipment project ends or three years after final payment, whichever is later. *See* 2008 Prop 1B guidelines at Section III.D.10 (''Equipment project contracts'') and 2010 Prop 1B guidelines at Section IV.A.11 (''Equipment project contracts'').

[37] A project application that is ''accurate and complete'' may be included as an attachment to the contract to satisfy the ''project specification'' requirements of the 2011 Carl Moyer Program Guidelines. *See* 2011 Carl Moyer Program Guidelines at Section Z.6 (stating that ''[a]ll contracts must include detailed information on the baseline and new vehicles, equipment, and/or engines that were used in the project cost-effectiveness calculation''). Each contract must be retained by the grantee for at least two years after contract expiration or three years after final project payment, whichever is later. *See id.* at Z.10 (''On-Site Inspections and Audits'').

[38] Under the 2008 Prop 1B guidelines, all grant recipients are required to submit reports to the District annually. *See* 2008 Prop 1B guidelines at Appendix A (''Trucks Serving Ports and Intermodal Rail Yards''), Section D (''Annual Reporting Requirements''). The 2010 Prop 1B guidelines also require annual reports except that certain owners of equipment with PM retrofits with a 2-year contract may report at the end of the 2-year project life. *See* 2010 Prop 1B guidelines, Appendix A (''Heavy Duty Diesel Trucks''), Section G (''Annual Reporting Requirements'').

associated records during the contract term, and (7) requirements to maintain and retain project records for at least two years after contract expiration or three years after final project payment, whichever is later. *See* 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 at Section Z (''Minimum Contract Requirements''); *see also* Proposal TSD at 37–38 (describing requirements for Off-Road Compression Ignition engine replacement projects in 2011 Carl Moyer Program Guidelines, Part I, Chapter 9 at Section C (''Project Criteria'')). Additionally, the 2011 Carl Moyer Program Guidelines explicitly require that each contract ''specify that by executing the contract, the grantee understands and agrees to operate the vehicle, equipment, and/or engine according to the terms of the contract'' and describe the potential repercussions to the grantee for non-compliance with contract requirements. *See* 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 at Section Z.11 (''Repercussions for Non-Performance'') and Section FF (''Nonperforming Projects'').[39] The 2011 Carl Moyer Program Guidelines also specifically identify types of actions on the part of the District that CARB may treat as violations of program requirements—e.g., misuse of Carl Moyer Program funds and insufficient, incomplete, or inaccurate project documentation. *See* 2011 Carl Moyer Program Guidelines at Section U (''Program Non-Performance'').

Third, grantees that are liable for violations of these contract provisions can be identified by the State and/or District and, through the annual demonstration reports submitted to the EPA, by the EPA and citizens as well. Specifically, as discussed above, under the 2008 Prop 1B guidelines, the 2010 Prop 1B guidelines, and the 2011 Carl Moyer Program guidelines, each contract executed by the District must require the grantee to maintain project records for at least two years after contract expiration or three years after final project payment, whichever is later, and to submit annual or biennial reports to the District. *See* 2008 Prop 1B guidelines at Section III.D.10 (''Equipment project contracts''), 2010 Prop 1B guidelines at Section IV.A.11 (''Equipment project contracts''),[40] and 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 at Section Z (''Minimum Contract Requirements''); *see also* Proposal TSD at 30–32 and 37–40. Additionally, the 2008 and 2010 Prop 1B guidelines require that each contract contain a provision stating the equipment owner's agreement to allow ongoing evaluations and audits of equipment and documentation by the District, CARB, or their designated representative(s), and the 2011 Carl Moyer Program Guidelines similarly require that all contracts authorize the District, CARB, or their designees to conduct fiscal audits of the project and/or to inspect the project engine, vehicle, and/or equipment and associated records during the contract term. *See id.* These provisions in the Prop 1B and Carl Moyer Program guidelines enable both the State and District to identify grantees that violate their contract provisions.

The EPA and citizens, in turn, can identify violators through the annual demonstration reports that the District is obligated under its SIP commitment to make publicly available (on the District's Web site) and to submit to the EPA by August 31 of each year. *See* SJVUAPCD Board Resolution No. 13–6–19 (June 20, 2013) at 3 and Rule 9610, Section 5.0. Specifically, Section 6.1 of Rule 9610 (as adopted June 2013)[41] states that ''[a]ll documents created and/or used in implementing the requirements of Section 4.0 shall be kept and maintained as required by the applicable incentive program guidelines . . . [and] shall be made available for public review'' consistent with the California Public Records Act and other related requirements. Section 6.1 also states that ''[i]nformation regarding the process for the public review of such records shall be included in the annual demonstration report.'' Rule 9610, Section 6.1. Consistent with these requirements, the 2013 Annual Demonstration Report submitted by the District states that the public may request documents created and/or used in implementing the requirements of Section 4.0 (of Rule 9610) through the District's Public Records Release Request form, which is available on the District Web site. *See* SJVUAPCD, ''2013 Annual Demonstration Report'' (January 31, 2014) at 8. The District has confirmed that both the EPA and citizens may use this form to request copies of the required records for any Prop 1B or Carl Moyer Program project that the District has relied upon for SIP credit, which will be identified in the District's annual demonstration reports going forward. *See* email dated December 18, 2013, from Jeannine Tackett, SJVUAPCD, to Idalia Perez, U.S. EPA Region 9, ''RE: question needed for response to comments on contingency measure SIP.''[42]

Fourth, the State maintains the ability to apply penalties and secure appropriate corrective actions where contract terms are violated, and the EPA maintains the ability to require appropriate corrective actions of the District where projected emission reductions are not achieved. For example, under the 2008 and 2010 Prop 1B guidelines, where the District finds that a grantee has violated a contract term, the District is authorized to recover all or a portion of program funds, assess fiscal penalties on equipment owners based on the severity of the non-performance, and prohibit the equipment owner from participating in future State incentive programs, among other things. *See* 2008 Prop 1B guidelines at Section IV.G (''Equipment Project Non-Performance'') and 2010 Prop 1B guidelines at Section VI.I (''Equipment Project Non-Performance''). Under the 2011 Carl Moyer Program Guidelines, both CARB and the District are authorized to ''seek any remedies available under the law for noncompliance with Carl Moyer Program requirements and nonperformance with the contract,'' including withholding of program funds, and should CARB determine that the District's oversight and enforcement

[39] The 2011 Carl Moyer Program Guidelines authorize the District to grant a ''waiver'' to a grantee who demonstrates to the District's satisfaction that certain conditions justify contract noncompliance for a defined period. *See* 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 at Section FF.4(D). We note that, for any project that the District has relied upon for SIP credit, Section 4.3 of Rule 9610 requires the District to annually adjust its calculation of SIP-creditable emission reductions to reflect periods of noncompliance under any such waiver.

[40] *See also* n. 38, supra.

[41] All references to Rule 9610 herein are to the rule as adopted by the District on June 20, 2013.

[42] In its December 18, 2013 email, the District confirmed that it ''will include information in future annual demonstration reports as necessary to ensure the ongoing tracking of projects claimed in prior annual demonstration reports, including adjustments necessary under Section 4.3 [of Rule 9610].'' We note that beginning with the 2014 annual demonstration report, the District must identify the *specific projects* (by unique project identification number) that the District has relied upon for emission reduction credit in the Contingency Measure SIP, including adjustments made as required by Section 4.3 of Rule 9610, to ensure that the EPA and citizens can track the District's progress in satisfying its SIP commitments. *See* Rule 9610, Section 4.5; *see also* Proposal TSD at 27, n. 17. The District may satisfy this requirement by including, in its annual demonstration report, the list of specific projects in the attachments to the EPA's Proposal TSD (as adjusted consistent with Rule 9610, Section 4.3), which the EPA developed because the 2013 Annual Demonstration Report does not specifically identify the projects relied upon for credit in the Contingency Measure SIP. *See* Proposal TSD at Attachment A (''Prop 1B: On-Road Vehicle Replacement projects achieving emission reductions through 2015'') and Attachment B (''Carl Moyer Program: Off-Road Vehicle Replacement projects achieving emission reductions through 2015'').

of the program is insufficient, CARB may recapture funds granted to the District that have not yet been awarded to approved projects. *See* 2011 Carl Moyer Program Guidelines, Chapter 3 at Section U (''Program Non-Performance''). Additionally, as explained further below, the EPA maintains the ability to enforce the District's SIP commitments—i.e., to require the District to submit annual demonstration reports consistent with the requirements of Rule 9610 and/or to adopt and submit substitute measures on a fixed timeframe, where projected emission reductions are not achieved.

Fifth, citizens have access to all of the emissions-related information obtained from the source. As explained in our proposed rule, the Board commitments submitted with the Contingency Measure SIP obligate the District to ''account for'' its claimed NO_X and $PM_{2.5}$ emission reductions ''in annual demonstration reports pursuant to the requirements of Rule 9610.'' *See* SJVUAPCD Board Resolution No. 13–6–18 at 3. Rule 9610 requires the District to submit to the EPA, no later than August 31 of each year, an ''annual demonstration report'' that includes detailed information about *each specific project* that the District has relied upon to achieve SIP-creditable emission reductions (e.g., unique project identification numbers, project implementation dates, applicable incentive program guideline(s), and quantified emission reductions per year and aggregated over the project life, by pollutant). *See* 78 FR 53113, 53121 (citing Rule 9610, sections 4.1–4.6 and 5.0) (emphases added). Additionally, Rule 9610 requires that ''[a]ll documents created and/or used in implementing the requirements of Section 4.0 shall be kept and maintained as required by the applicable incentive program guidelines'' and that ''such records shall be made available for public review.'' Rule 9610, Section 6.1. Under the 2008 and 2010 Prop 1B guidelines, all grant recipients must, among other things, retain ''all documents, invoices, and correspondence associated with the application, award, contract, monitoring, enforcement, and reporting requirements'' for at least two years after the equipment project contract term or three years after final payment, whichever is later''; must make records readily available and accessible to the District, CARB, or their designees upon request; and must submit regular reports to the District that include information about annual miles traveled, certification and documentation of travel within California's trade corridors, and certification that the project was operated in accordance with the signed contract. *See* 2008 Prop 1B guidelines, Appendix A (''Trucks Serving Ports and Intermodal Rail Yards''), Section C (''Recordkeeping Requirements'') and Section D (''Annual Reporting Requirements'') at A–4 and 2010 Prop 1B guidelines, Appendix A (''Heavy Duty Diesel Trucks''), Section F (''Recordkeeping Requirements'') and Section G (''Annual Reporting Requirements'') at A–19. The 2011 Carl Moyer Program Guidelines contain substantially similar recordkeeping and reporting requirements for grantees in Chapter 3, Section Z.9 (''Reporting''), Section Z.10 (''On-Site Inspections and Audits''), and Section DD (''Grantee Annual Reporting''). Pursuant to section 6.1 of Rule 9610, all of these documents must be made available for public review upon request.[43] *See* Rule 9610, Section 6.1.

Sixth, although citizens cannot file suits against sources for violations, both the EPA and citizens may file suits against the *District* for violations of its commitments to ensure that the projected emission reductions are achieved in 2015. Specifically, the SJVUAPCD Governing Board has submitted a commitment to quantify SIP-creditable emission reductions in the amount of 4.15 tpd of NO_X reductions and 0.10 tpd of $PM_{2.5}$ reductions using the incentive program guidelines and related documents identified in Rule 9610 and to ''account for these NO_X and $PM_{2.5}$ emission reductions in annual demonstration reports pursuant to the requirements of Rule 9610'' for purposes of satisfying the $PM_{2.5}$ contingency measure requirement for 2015. SJVUAPCD Board Resolution No. 13–6–18 at p. 3. Additionally, the Board's commitment states that ''[if] there is a shortfall in expected emission reductions for 2015, the District will adopt and submit to EPA substitute rules and measures that will achieve equivalent emission reductions as expeditiously as practicable and no later than any applicable implementation deadline in the CAA or EPA's implementing regulations, by no later than December 31, 2016.'' *Id.* As explained in our proposed rule (78 FR 53113, 53121), the EPA interprets these District commitments as applying to emission reductions to be achieved in 2015 through specific types of Prop 1B and Carl Moyer Program projects,[44] and the EPA expects that the 2014 annual demonstration report will then specify the individual projects relied upon to achieve these emission reductions, consistent with the requirements of Rule 9610, Section 4.5. *See* Proposal TSD at 25–27, n. 13 and n. 17 (referencing Proposal TSD at Attachment A and Attachment B). These Board commitments, which become federally enforceable by the EPA and by citizens upon approval into the SIP,[45] impose clear and specific requirements on the District to account for specific amounts of NO_X and $PM_{2.5}$ emission reductions through annual demonstration reports that satisfy the requirements of Rule 9610 and, if the identified projects fail to achieve the projected emission reductions in 2015, to adopt and submit to the EPA substitute measures that will achieve equivalent amounts of emission reductions as expeditiously as practicable and no later than December 5, 2015.[46] Should the EPA determine

[43] The 2008 Prop 1B guidelines require the District to retain all ''program records'' (e.g., invoices, contracts, and correspondence) for at least two years after the project ends or three years after final payment, whichever is later. *See* 2008 Prop 1B guidelines, Chapter II, Section D.10.b (''General Program provisions''). The 2010 Prop 1B guidelines require the District to retain ''program records'' for 35 years after the bond issuance date providing the funds for the grant, or to send all records to ARB by the end date of the grant agreement. *See* 2010 Prop 1B guidelines, Chapter II, Section E.10.b (''General Program provisions''). Under the Carl Moyer Program Guidelines, the District must keep each ''project file'' for a minimum of two years after the end of the contract term or a minimum of three years after final payment, whichever is later. *See* 2011 Carl Moyer Program Guidelines, Chapter 3, Section V (''ARB Audit of Air Districts'') at 3–25. A ''project file'' generally includes a copy of the application, a completed pre- and post-inspection form, and the annual reports submitted by the grantee. *See id.* at Section X.6, Section AA.4, Section BB.1.(G), and Section DD.3.

[44] This interpretation is consistent with information in the District's 2013 Annual Demonstration Report, which identifies ''agricultural off-road vehicle replacement projects funded through the Carl Moyer Program'' and ''on-road vehicle replacement projects funded through the Prop 1B program'' as the projects relied upon for contingency measure purposes. *See* 2013 Annual Demonstration Report at 26 (Table 5).

[45] *See* notes 30 and 31, *supra.*

[46] Consistent with the EPA's longstanding interpretation of CAA section 172(c)(9) as requiring that all actions needed to effect full implementation of contingency measures occur within 60 days after the EPA notifies the State of a failure to attain the NAAQS by the applicable attainment date (78 FR 53113, 53115), we interpret the phrase ''applicable implementation deadline'' in the District's SIP commitment to mean 60 days after October 5, 2015, which is the latest date by which the EPA must determine whether the SJV area has attained the 1997 $PM_{2.5}$ NAAQS pursuant to CAA section 179(c). In our proposed rule, we stated that the District's commitment obligated it to adopt and submit any substitute measures necessary to correct a shortfall in emission reductions ''no later than December 31, 2016'' (78 FR 53113, 53121, 53122). In this final action, however, we are clarifying our interpretation of the SIP commitment to mean that any substitute measures necessary to correct a shortfall in 2015 emission reductions must be adopted and submitted to the EPA no later than the applicable

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that the SJV area has failed to attain the 1997 $PM_{2.5}$ standards by the applicable attainment date (April 5, 2015), the EPA and citizens may enforce both components of the District's SIP commitment under sections 113 and 304 of the CAA, respectively, as follows: (1) If the Board fails to annually account for its claimed NO_X and $PM_{2.5}$ emission reductions consistent with the requirements of Rule 9610, the EPA or citizens may enforce the District's obligation to submit the required reports; and (2) if the District's 2014 annual demonstration report indicates that the specific projects identified therein will not achieve the District's claimed amounts of NO_X and $PM_{2.5}$ emission reductions (4.15 tpd of NO_X reductions and 0.10 tpd of $PM_{2.5}$ reductions) in 2015 as projected, the EPA or citizens may enforce the District's obligation to adopt and submit substitute measures that will achieve equivalent amounts of emission reductions by December 5, 2015. *See* Proposal TSD at 42–44. We find these provisions adequate to ensure that the EPA and citizens may secure appropriate corrective actions where projected emission reductions are not achieved.

Finally, the emission reductions to be achieved through the identified Prop 1B and Carl Moyer Program projects are practicably enforceable consistent with EPA policy on enforceability requirements. The EPA generally considers a requirement to be ''practically enforceable'' if it contains a clear statement as to applicability; specifies the standard that must be met; states compliance timeframes sufficient to meet the standard; specifies sufficient methods to determine compliance, including appropriate monitoring, record keeping and reporting provisions; and recognizes relevant enforcement consequences. *See* ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' September 3, 1987 (''1987 Potter Memo'') and ''Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits,'' January 25, 1995 (''1995 PTE Policy'') at 5, 6. The actions associated with the incentive-based emission reductions in the Contingency Measure SIP are practicably enforceable on two levels. First, as explained above, the actions required of grantees under the 2008 and 2010 Prop 1B guidelines and the 2011 Carl Moyer Program Guidelines are practicably enforceable by the State and District. Specifically, under the applicable portions of the Prop 1B and Carl Moyer Program guidelines (*see* Proposal TSD at 29–42), each grant of incentive funds must be subject to contract provisions that clearly identify the funded equipment or vehicle; specify the actions required of the grantee; identify relevant compliance timeframes (e.g., a ''project life''); specify sufficient methods to determine the grantee's compliance with contract provisions, including detailed monitoring, recordkeeping and reporting requirements; and identify potential enforcement consequences in cases of contract non-compliance. Taken together, these provisions of the 2008 and 2010 Prop 1B guidelines and the 2011 Carl Moyer Program Guidelines ensure that the actions required of grantees are practically enforceable consistent with EPA policy.

Second, the actions required of the *District* under its SIP commitment are practicably enforceable by the EPA and citizens. As discussed above, the District has submitted an enforceable commitment to account for specified amounts of NO_X and direct $PM_{2.5}$ emission reductions through annual demonstration reports meeting the requirements of Rule 9610 and, should the projects identified in those reports [47] fail to achieve the specified reductions in 2015, to adopt and submit substitute measures achieving equivalent amounts of reductions on a fixed schedule. This commitment clearly identifies the District as the responsible entity; specifies the requirement that must be met and the compliance timeframes (i.e., to account for specific amounts of incentive-based NO_X and $PM_{2.5}$ emission reductions or to adopt and submit substitute measures by fixed dates); and, through reference to the requirements of Rule 9610, specifies sufficient methods to determine compliance (i.e., the requirements under Section 4.0 of Rule 9610 that each annual demonstration report must satisfy). Should the District fail to submit annual demonstration reports meeting the requirements of Rule 9610 that confirm that its claimed NO_X and $PM_{2.5}$ emission reductions occurred in 2015 as projected, the EPA may make a finding of failure to implement the SIP under CAA section 179(a), which starts an 18-month period for the State/District to correct the non-implementation before mandatory sanctions are imposed. Additionally, the EPA or citizens may enforce the District's obligation to adopt and submit substitute measures that will achieve equivalent emission reductions no later than December 5, 2015.

Taking into account all of these provisions of the applicable incentive program guidelines and the District's SIP commitments, we find the incentive-based emission reductions relied upon in the Contingency Measure SIP to be practically enforceable consistent with EPA policy.

Comment 14: Earthjustice asserts that the incentive-based emission reductions are not independently verifiable because the EPA and citizens can only rely on data submitted to or collected by the District. Additionally, Earthjustice contends that the EPA has no authority to inspect sources for compliance with the contracts between the District and the source, and that the EPA also lacks the ability to apply penalties or secure corrective actions against the sources. Finally, Earthjustice asserts that because the emission reductions are secured through contracts between the source and the District, compliance with those agreements cannot be enforced by the public or the EPA, and that the District ''has discretion to modify these contracts and redefine violations without any EPA or public oversight.''

Response 14: First, we disagree with the commenter's claim that the incentive-based emission reductions are not independently verifiable. Although enforcement of these emission reductions by the EPA or citizens generally depends upon project-related information maintained by the District, this does not preclude independent verification of the emission reductions if sufficient safeguards are in place to ensure that the District will obtain and maintain adequate compliance-related records and make these records available to the EPA and the public. As discussed above, the applicable incentive program guidelines (the 2008 and 2010 Prop 1B guidelines and the 2011 Carl Moyer Program Guidelines) require that the District maintain specific documentation of pre-project and post-project inspections for each

implementation deadline for these contingency measures under CAA section 172(c)(9), which is December 5, 2015. This interpretation is consistent with the text of the District's SIP commitment, which states that in the event of a shortfall, the District will ''adopt and submit to EPA substitute rules and measures that will achieve equivalent emission reductions as expeditiously as practicable and *no later than any applicable implementation deadline* in the CAA or EPA's implementing regulations, by no later than December 31, 2016.'' *See* SJVUAPCD Board Resolution No. 13–6–18 at p. 3 (emphases added). As a practical matter, because a December 2015 deadline for implementation of the remedy requires the District to begin developing any necessary substitute measures well before that date, the EPA intends to determine by late 2014 (based on the District's 2014 annual demonstration report and other available documentation) whether there will be any shortfall in projected emission reductions that triggers the District's obligation to adopt and submit substitute measures.

[47] *See* n. 42, *supra.*

funded project and that all grantees submit detailed compliance-related documentation to the District on an annual or biennial basis. The District, in turn, is obligated under its SIP commitment to make these project records available to the EPA and to the public upon request. *See* Response 13. Furthermore, as a result of the EPA's approval of the District's commitments into the SIP, the EPA may require under CAA section 114(a) that the District provide information necessary for the purpose of determining whether the District is in violation of these SIP commitments—including all compliance-related documentation that the District maintains in accordance with the applicable incentive program guidelines. *See* CAA section 114(a) (authorizing the EPA to require submission of information from ''any person'' who may have information necessary for the purpose of determining whether a SIP requirement has been violated) and section 302(e) (defining ''person'' to include a State or political subdivision thereof). We find the monitoring, recordkeeping and reporting requirements of the applicable incentive program guidelines, together with the District's enforceable SIP commitments, adequate to ensure that the incentive-based emission reductions can be independently verified.

Second, although the commenter correctly states that the EPA is not authorized to inspect sources for compliance with their funding contracts or to apply penalties or secure corrective actions against individual sources, we do not believe such authorities are necessary in order to enforce these emission reductions under the CAA. As discussed in Response 13 above, both the District and CARB are authorized to inspect sources for compliance with their funding contracts and to apply penalties or secure corrective actions against sources that violate their contracts. Rule 9610 requires the District to maintain records of all such inspections and enforcement actions (*see* Rule 9610, Section 6.1), and under section 114(a) of the CAA, the EPA may require the District to provide these project-related records for purposes of determining whether the District is in violation of its SIP commitment. Both the EPA and citizens may also obtain these records from the District through submission of a ''Public Records Release Request.'' *See* Response 13. Based on these project-related records, the EPA and citizens may verify whether the District has adequately accounted for 4.15 tpd of NO_X reductions and 0.10 tpd of $PM_{2.5}$ reductions in 2015, consistent with its SIP commitments. Additionally, where the documentation evidences a shortfall in the required emission reductions, the District would be obligated—subject to the EPA and citizen enforcement under the CAA—to adopt and submit substitute measures that achieve equivalent emission reductions no later than December 5, 2015. We find these provisions adequate to ensure that the incentive-based emission reductions in the Contingency Measure SIP may be enforced under the CAA.

Finally, although we agree with the commenter's claim that neither the EPA nor citizens can enforce compliance with the contracts between sources and the District, we disagree with the claim that the District has discretion to ''redefine violations without any EPA or public oversight.'' As explained above, upon approval into the SIP the District's commitments become federally enforceable by the EPA and by citizens under sections 113 and 304 of the Act, respectively. *See* Response 13. These SIP-approved commitments cannot be modified, nor can the District ''redefine violations'' thereof, except through a SIP revision adopted by the State after reasonable notice and public hearing and approved by the EPA through notice-and-comment rulemaking. *See* CAA section 110(l); 5 U.S.C. section 553; 40 CFR 51.105; *see also* Response 8.

Comment 15: Earthjustice cites the EPA's 2001 EIP Guidance to support its assertion that to be enforceable, a ''financial mechanism EIP'' must meet the general programmatic and source-specific definitions of enforceable. Earthjustice asserts that the EPA's analysis does not include any review of the programmatic requirements outlined in EPA policy and that the Valley's incentive program ''violates several of these criteria.'' Additionally, as to the ''source-specific'' definition of enforceable in EPA policy, Earthjustice asserts that the EPA lacks the ability to independently verify compliance because the EPA is reliant upon information collected by the State and District and cannot collect its own information, conduct inspections, demand additional reporting, or enforce the failure to submit required reports. Earthjustice further contends that the limited reporting required under the Carl Moyer program does not allow the EPA to independently verify compliance given ''EPA must rely on the limited documentation submitted by the owner and will not even see reports on usage of the new equipment unless that data happens to be collected by the State or District and shared with EPA.'' Earthjustice concludes that the incentive program contingency measure thus fails to be ''enforceable'' either at the programmatic level or the source-specific level.

Response 15: We disagree with Earthjustice's characterization of the EPA's recommendations in the 2001 EIP Guidance. The EPA stated in the 2001 EIP Guidance that ''[t[he emission reductions associated with a financial mechanism EIP are enforceable if they meet the general programmatic and source-specific definitions of enforceable.'' 2001 EIP Guidance at 120. Additionally, the EPA stated that although a program containing these elements would assure that the program would meet the applicable CAA provisions, the EPA would also evaluate programs submitted by states that do not contain all of these elements and would determine, through notice-and-comment rulemaking, whether such programs satisfied the applicable CAA requirements. *See* 2001 EIP Guidance at 119; *see also* 2001 EIP Guidance at 12 and 19. Because the enforceability considerations highlighted in the 2001 EIP Guidance are non-binding recommendations, the EPA does not apply them as regulatory criteria in its evaluation of an EIP submission.

We have, however, evaluated the incentive-based emission reductions in the Contingency Measure SIP for consistency with the EPA's recommendations in the 2001 EIP Guidance and find them generally consistent with the general programmatic and source-specific definitions of ''enforceable'' in this document. As Earthjustice notes, the ''programmatic'' definition of enforceable highlights seven key factors that should be considered in determining whether an EIP is enforceable. *See* 2001 EIP Guidance at 35–36. We addressed each of these seven factors in Response 13 above. The ''source-specific'' definition of enforceable highlights three key factors that should be considered in determining whether an EIP is enforceable: (1) The source is liable for any violations; (2) the liable party is identifiable; and (3) the State, the public, and the EPA can independently verify a source's compliance. *See* 2001 EIP Guidance at 40. With respect to the first two factors (the source's liability for violations and the ability to identify the liable party), *see* Response 13 above. With respect to the third factor (the ability of the State, the public, and the EPA to independently verify a source's compliance), *see* Response 14 above.

We also disagree with Earthjustice's assertion that the EPA cannot collect the

information necessary to independently verify compliance and that the reporting required under the Carl Moyer program does not allow the EPA to independently verify compliance. As discussed above, the applicable incentive program guidelines (the 2008 and 2010 Prop 1B guidelines and the 2011 Carl Moyer Program Guidelines) require that the District maintain specific documentation of pre-project and post-project inspections for each funded project and that all grantees submit detailed compliance-related documentation to the District on an annual or biennial basis. The District, in turn, is obligated under its SIP commitment to maintain these project records and make them available to the EPA and to the public upon request. *See* Response 13; *see also* n. 43 *supra.* Furthermore, as a result of the EPA's approval of the District's commitments into the SIP, the EPA may require under CAA section 114(a) that the District provide information necessary for the purpose of determining whether the District is in violation of its SIP commitments—including all compliance-related documentation that the District maintains in accordance with the applicable incentive program guidelines. *See id.* and Response 14. We find these provisions adequate to ensure that the EPA can collect the information necessary to independently verify the District's compliance with its SIP commitments.

All SIP measures have some level of uncertainty, whether it comes from the uncertainty associated with the emissions factors for certain sources, the level of compliance with existing SIP measures, or the modeling for an attainment demonstration. The issue is how best to apply assumptions and tools to reduce the uncertainty to a manageable factor. *See* 2004 Electric-Sector EE/RE Guidance at 11. As explained in our Proposal TSD and further in these responses to comments, the incentive programs relied upon in the Contingency Measure SIP are subject to detailed monitoring, recordkeeping, reporting, and emissions quantification requirements under State law, all of which are designed to ensure that program grants are used to reduce air pollution through the replacement of older, higher-polluting vehicles and equipment with newer, cleaner vehicles and equipment and to ensure that the resulting emission reductions are calculated consistent with established quantification protocols. *See* Proposal TSD at 29–42; *see also* Response 13. We find these requirements of the Prop 1B program and Carl Moyer Program adequate to reduce the uncertainties in calculating associated emission reductions to a manageable factor and to provide a reasonable basis for approval of the incentive-based emission reductions in the Contingency Measure SIP.

Comment 16: The District notes that the EPA did not review emission reductions achieved through the National Resources Conservation Service Environmental Quality Incentives Program (NRCS EQIP) for the replacement of agricultural equipment (as included in Rule 9610 and documented through the District's *2013 Annual Demonstration Report*). It describes efforts that have been taken toward developing procedures for crediting these emission reductions for SIP purposes including the statement of principles agreed upon by the District, NRCS, EPA, and CARB in December 2010 [48] and the document signed by the EPA and NRCS in July 2012.[49] The District states that the agencies that signed these statements agreed to work collaboratively to develop a mechanism to provide SIP credit for emission reductions from federal, state, and local incentive programs that meet the EPA integrity principles of being surplus, quantifiable, enforceable, and permanent. The District comments that it appreciates the EPA's efforts over the last several years in reviewing the NRCS EQIP Program in the context of these agreements and Rule 9610 and looks forward to the EPA's approval of this program as SIP-creditable in the near future.

Response 16: We did not evaluate the EQIP as part of our action on the Contingency Measure SIP because the District did not specifically identify any emission reductions from the EQIP as part of its contingency measure plan and because emission reductions from the Carl Moyer and Prop 1B projects identified in our proposed rule and the Proposal TSD provide sufficient emission reductions to meet the CAA contingency measure requirement for the 1997 $PM_{2.5}$ NAAQS in the SJV. *See* Contingency Measure SIP at 7–9 and 2013 Annual Demonstration Report at Table 5; *see also* Proposal TSD at 25–27, n. 13 and n. 17. Comments regarding the EQIP program are therefore outside the scope of this action.

Comment 17: Citing the EPA's discussion of voluntary and discretionary economic incentive programs in the proposed rule, the District states that the EPA has generally limited the amount of emission reduction credit allowed in a SIP for discretionary incentive programs to three percent of the total projected future year emission reductions required to attain the relevant NAAQS. The District states that ''[t]his three percent cap does not affect this contingency measure demonstration and should be removed from the proposed rule, since EPA notes the amount of incentive-based emission reductions used in this contingency demonstration is less than two percent of the total projected emission reductions needed to attain the 1997 $PM_{2.5}$ NAAQS in the Valley.'' It further asserts that ''the District should not be limited to a three percent limit for incentive-based reductions achieved through SIP-creditable processes, such as Rule 9610.'' In support of these assertions, the District quotes from the EPA's stated rationale in the 2001 EIP Guidance (at pg. 139) for the recommended 3 percent cap on SIP credit for voluntary programs and the EPA's statement that states ''may use the EIP guidance to implement programs which will generate emission reductions beyond the 3 percent limit, or when [the state has] already reached the 3 percent limit under the voluntary measures guidance.'' Finally, the District notes that the 2001 EIP Guidance sets forth only non-binding policy and does not represent final EPA action on the requirements for EIPs.

Response 17: With respect to voluntary mobile source emission reduction programs (VMEPs), the EPA has generally limited the amount of emission reductions allowed in a SIP to three percent (3%) of the total projected future year emission reductions required to attain the relevant NAAQS, and for any particular SIP submittal to demonstrate attainment or maintenance of the NAAQS or progress toward attainment (RFP), 3% of the specific statutory requirement. *See* 1997 VMEP at 5. Similarly, with respect to voluntary and emerging measures for stationary sources, the EPA has generally limited the amount of emission reductions allowed in a SIP to 6% of the total amount of emission reductions required for RFP, attainment, or maintenance demonstration purposes. *See* 2004 Emerging and Voluntary Measures Policy at 9 and 2005 Bundled Measures Guidance at 8. These limits are

[48] SJVAPCD, EPA, US Department of Agriculture NRCS, and CARB; *Statement of Principles Regarding the Approach to State Implementation Plan Creditability of Agricultural Equipment Replacement Incentive Programs Implemented by the USDA Natural Resources Conservation Service and the San Joaquin Valley Air Pollution Control District,* December 2010.

[49] USDA and EPA, *Implementation Principles for Addressing Agricultural Equipment under the Clean Air Act,* July 26, 2012.

''presumptive'' in that the EPA may approve emission reductions from voluntary or other nontraditional measures in excess of the presumptive limits where the State provides a clear and convincing justification for such higher amounts, which the EPA would review on a case-by-case basis. *See id.; see also* Response 12.

It appears the District may have misunderstood the EPA's intent in discussing this presumptive 3% limit on the emission reduction credit allowed in a SIP for VMEPs. In the proposed rule (78 FR 53113, 53118), we discussed the presumptive 3% limit both to provide context on the applicable EPA guidance to date and to indicate that the incentive-based emission reductions in the Contingency Measure SIP adequately address the EPA's recommendations in the 1997 VMEP, as applicable (78 FR 53113, 53118 and 53121). Our proposed rule made clear, however, that we were evaluating the Contingency Measure SIP in accordance with the fundamental integrity elements identified in several EPA guidance documents, as applied not only to VMEPs but also to discretionary ''financial mechanism EIPs.'' *See id.* at 53118 (citing both 2001 EIP Guidance and 1997 VMEP). Although we observed in the proposed rule that the NO_X and direct $PM_{2.5}$ emission reductions attributed to Carl Moyer Program and Prop 1B projects in the Contingency Measure SIP each amounted to less than 2 percent of the total projected emission reductions needed to attain the 1997 $PM_{2.5}$ NAAQS in the SJV (78 FR 53113, 53121), this factual observation was intended to provide additional support for our proposal and was not a necessary basis for our action. *See* Response 12. Our discussion of the presumptive 3% limit provides relevant context on the EPA's guidance on voluntary and incentive programs to date, and we disagree with the District's statement that this discussion should be excluded from the analyses supporting our rulemaking action.

We agree, however, with the District's suggestion that it is not necessarily limited to a 3% cap on the amount of SIP emission reduction credit allowed for incentive programs. As the District correctly notes, the 2001 EIP Guidance sets forth only non-binding policy and does not represent final EPA action on the requirements for EIPs. *See* 2001 EIP Guidance at 12. Likewise, the presumptive 3% limit on the SIP credit allowed for a VMEP under the 1997 VMEP policy is also a non-binding policy recommendation. In addition, the 2001 EIP Guidance explicitly provides that states may use it to implement programs which will generate emission reductions beyond the 3 percent limit, provided the state is directly responsible for ensuring that program elements are implemented. *See* 2001 EIP Guidance at 139. The EPA will review each SIP submitted by California that relies on emission reductions from incentive programs on a case-by-case basis in accordance with the applicable CAA requirements and, for any SIP that relies on incentive programs for emission reductions exceeding the EPA's presumptive caps, the EPA will determine through notice-and-comment rulemaking whether the State has provided adequate justification for such higher amounts and whether the submission, as a whole, satisfies the requirements of the Act. Because the incentive-based emission reductions in the Contingency Measure SIP fall below the EPA's recommended 3% limit, we do not need to decide in today's action whether the State has provided adequate justification for higher amounts of emission reduction credit.

Comment 18: The District disagrees in part with the EPA's description of the effect of a ''case-by-case determination'' under the Carl Moyer Program and with the EPA's statement that such determinations give the State broad discretion without EPA oversight or public process. First, the District states that case-by-case determinations are defined under Rule 9610 as ''alternative procedures approved by ARB for specific projects, as authorized under the Carl Moyer Program Guidelines'' and that these are not limited to ''determinations that provide for a longer project life.'' Second, the District states that ''all case-by-case determinations submitted for review to ARB are made available to the public via public Web posting at ARB's Carl Moyer Program Web site, and [that] the District is required by the Carl Moyer Program Guidelines to keep a copy of the determination in the project file.'' Third, the District states that under Section 3.2.2 of Rule 9610, no case-by-case determination may be used to quantify emission reductions under the rule unless each determination is reviewed through a public process and submitted to the EPA in accordance with Section 7.0. Finally, the District confirms the EPA's understanding that emission reductions from projects subject to case-by-case determinations are *not* included in the 2013 Annual Demonstration Report but disagrees with the EPA's statement in the proposed rule that such projects ''are not eligible for SIP credit,'' noting that the reason these are not included in the 2013 Annual Demonstration Report is that they are ''extremely rare and make up less than one percent of District administered incentive programs.'' In conclusion, the District maintains that case-by-case determinations made in accordance with Rule 9610 should be eligible for SIP credit.

Response 18: We do not dispute the District's statement that ''case-by-case determinations'' under the Carl Moyer Program are not limited to determinations that allow for a longer project life and note the broad definition of the term ''case-by-case determination'' in Section 2.4 of Rule 9610. We discussed case-by-case determinations in the proposed rule only to note that, although the portions of the three incentive program guidelines that we reviewed generally establish criteria consistent with the requirements of the Act, the provisions regarding case-by-case determinations in these portions of the guidelines do not adequately address the Act's requirements for SIP emission reduction credit (78 FR 53113, 53120). We referenced, as an example, a provision in the 2011 Carl Moyer Program guideline entitled ''Project Life'' and noted that emission reductions from any project subject to a case-by-case determination under such a provision would not be eligible for SIP credit ''unless the District submits the individual determination for EPA review and approval through the SIP process'' (78 FR 53113, 53120 (referencing 2011 Carl Moyer Program guideline at Chapter 9, Section C.1(c)(5)). The purpose of this discussion was to make clear that the EPA is not, through this rulemaking, authorizing the District to rely on any project subject to a case-by-case determination under the referenced incentive program guidelines, nor is the EPA approving any such case-by-case determination.

As the District correctly notes, Rule 9610 specifically prohibits the District from using a case-by-case determination to quantify emission reductions under the rule ''unless such determination is reviewed through a public process and submitted to EPA in accordance with Section 7.0.'' Rule 9610, Section 3.2.2. Section 7.0 of the rule states, in relevant part, that ''[e]ach SIP submission in which the District relies on [projections of SIP-creditable emission reductions] shall contain a demonstration that the applicable incentive program guideline(s) continues to provide for SIP-creditable emission reductions. . . .'' Read together, these provisions require the District to submit any case-by-case determination that it

intends to rely on for SIP credit to the EPA in a formal SIP submission, together with a demonstration that the determination and the project(s) subject to it provide for emission reductions that are surplus, quantifiable, enforceable, and permanent. *See* Rule 9610, Section 7.0 (establishing requirements for SIP submissions) and Section 2.25 (defining ''SIP-Creditable Emission Reduction''). Upon the EPA's approval of such a SIP consistent with CAA requirements, projects subject to the identified case-by-case determination would be eligible for SIP credit.

In sum, case-by-case determinations under the Carl Moyer Program are not currently eligible for SIP credit but may become eligible for credit through the EPA's approval of SIP submissions going forward. Should the District intend to rely on emission reductions from a project subject to a case-by-case determination to satisfy a SIP requirement, it may do so only following its submission of the determination to the EPA as part of a SIP that meets the requirements of Rule 9610, Section 7.0 and the EPA's approval of such SIP consistent with the requirements of the CAA.

The EPA appreciates the District's statement confirming that projects subject to case-by-case determinations are not included in the 2013 Annual Demonstration Report and is approving the incentive-based emission reductions in the Contingency Measure SIP based on our understanding that it does not rely on any case-by-case determination.

C. General Comments

Comment 19: Earthjustice urges the EPA not to approve the San Joaquin Valley contingency measures for the San Joaquin Valley's $PM_{2.5}$ SIP. Earthjustice argues that the Contingency Measure SIP ''does not comply with the Clean Air Act and would leave Valley residents without meaningful air quality protections if and when the Valley fails to attain the 1997 $PM_{2.5}$ standards.''

Response 19: For the reasons discussed in our proposed rule and further explained in our responses to comments above, we have determined that the Contingency Measure SIP corrects the deficiency that prompted our partial disapproval of the SJV $PM_{2.5}$ SIP and strengthens the SIP and are, therefore, approving it into the California SIP.

We disagree with the claim that the approval of this Contingency Measure SIP would leave SJV residents ''without meaningful air quality protections'' should the SJV fail to meet the 1997 $PM_{2.5}$ standards by the applicable attainment date of April 5, 2015. The Contingency Measure SIP demonstrates that California has adopted measures that will achieve substantial emission reductions in and after 2015 that will provide significant on-going air quality benefits to SJV residents. Specifically, the Contingency Measure SIP shows that in calendar year 2015, adopted and implemented federal and State mobile source control measures will reduce NO_X emissions by 21 tpd; State and local incentive grant funds will reduce NO_X emissions by an additional 4.15 tpd; and the SIP-approved contingency provision in the District's residential woodburning rule, Rule 4901, will provide 3.1 tpd of direct $PM_{2.5}$ reductions should we determine that the SJV has failed to attain the 1997 $PM_{2.5}$ standards by the applicable attainment date of April 5, 2015 (78 FR 53113, 53123). Compared to projected 2014 levels of NO_X and direct $PM_{2.5}$ emissions in the SJV, these contingency measures will provide an additional 9 percent reduction in NO_X emissions and an additional 5 percent reduction in direct $PM_{2.5}$ emissions in 2015.[50]

Comment 20: Earthjustice objects to the EPA's statement that contingency measures must be implemented ''quickly without significant additional action by the state,'' stating that the addition of ''significant'' in 40 CFR 51.1012 was the result of a scrivener's error and is not consistent with the plain statutory language of CAA section 172(c)(9). Quoting from the preamble to the EPA's 2007 $PM_{2.5}$ Implementation Rule, Earthjustice notes that the EPA acknowledged this error in its adoption of the rule.

Response 20: We agree that the inclusion of ''significant'' in 40 CFR 51.1012 was in error and note the correction.

Comment 21: Mr. Unger comments that the SJV area has not met the $PM_{2.5}$ standards and that air quality has not improved much in the past few years. He also states that both the SJV's citizens and the District are reluctant to do more to improve air quality. For these reasons, he urges the EPA to not approve the SIP for the 1997 annual and 24-hour $PM_{2.5}$ standards. He disagrees with our statement that ''the State has most likely done all it can to correct the deficiency'' given the continuing nonattainment in the San Joaquin Valley. He states that if the EPA were to impose sanctions on the SJV, it would encourage California to adopt controls sufficient to attain the standards. He includes a list of suggested measures in his comments.

Response 21: In 2011, we approved all but one element of California's SIP to attain the 1997 annual and 24-hour $PM_{2.5}$ standards in the SJV (76 FR 69896, November 9, 2011). Our action here is to approve the last outstanding element of that SIP, the contingency measures for failure to make RFP or attain. Our approval is based on our determination that the Contingency Measure SIP corrects the deficiency that prompted our 2011 disapproval of the contingency measure provisions in the SJV $PM_{2.5}$ SIP. Although the commenter asserts generally that SJV citizens and the District are ''reluctant'' to do more to improve air quality, that the SJV area has not complied with the NAAQS for many years, and that the threat of sanctions might encourage further regulatory action, the commenter fails to identify any specific basis under the CAA for disapproving the Contingency Measure SIP.

The purpose of contingency measures is to continue progress in reducing emissions while the SIP is being revised to meet a missed RFP milestone or correct continuing nonattainment. Should the EPA determine that the SJV has failed to attain the 1997 standards by the applicable attainment date (April 5, 2015), the State and District will be required to implement these contingency measures and to revise the SIP to assure expeditious attainment consistent with applicable CAA requirements.

We appreciate the list of control measures and will forward it to the District for its consideration during development of the next $PM_{2.5}$ SIP for the Valley.

III. Final Actions

The EPA is approving the Contingency Measure SIP (adopted June 20, 2013 and submitted July 3, 2013) based on the Agency's conclusion that this SIP submission corrects the deficiency in the CAA section 172(c)(9) attainment contingency measures that was one of two bases for the EPA's partial disapproval of the SJV $PM_{2.5}$ SIP on November 9, 2011 (76 FR 69896).

The EPA also finds that the CAA section 172(c)(9) RFP contingency measure requirement for the 2012 RFP milestone year is moot as applied to the SJV nonattainment area because the area has achieved its SIP-approved emission reduction benchmarks for the 2012 RFP milestone year. This finding corrects the deficiency in the CAA section 172(c)(9) RFP contingency measures that was the second of two bases for the EPA's partial

[50] Total NO_X and direct $PM_{2.5}$ emissions in the SJV are projected to be 291 tpd and 63.3 tpd, respectively, in 2014. *See* 2011 Progress Report, Appendix C, Table C–1.

disapproval of the SJV $PM_{2.5}$ SIP on November 9, 2011 (76 FR 69896).

Finally, the EPA is approving enforceable commitments by the District to monitor, assess, and report on actual NO_X and direct $PM_{2.5}$ emission reductions achieved through its implementation of specific Prop 1B and Carl Moyer Program grants and to remedy any identified emission reduction shortfall in a timely manner as found on page 3 of the SJVUPACD Governing Board Resolution No. 13–6–18, dated June 20, 2013.

Today's final actions lift the CAA section 179(b)(2) offset sanctions and terminate the CAA section 179(b)(1) highway funding sanction clock triggered by the 2011 partial disapproval of the SJV $PM_{2.5}$ SIP. These actions also terminate the EPA's obligation under CAA section 110(c) to promulgate a corrective Federal implementation plan within two years of the partial disapproval.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: April 28, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS.

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(438) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(438) The following plan was submitted on July 3, 2013, by the Governor's Designee.

(i) [Reserved]

(ii) Additional materials.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) ''Quantifying Contingency Reductions for the 2008 $PM_{2.5}$ Plan'' (dated June 20, 2013), adopted October 7, 2011.

(*2*) SJVUAPCD Governing Board Resolution No. 13–6–18, dated June 20, 2013, ''In the Matter of: Authorizing Submittal of the 'Quantification of Contingency Reductions for the 2008 $PM_{2.5}$ Plan' to EPA.''

(*3*) *Electronic mail,* dated July 24, 2013, from Samir Sheikh, SJVUAPCD, to Kerry Drake, EPA Region 9, ''RE: Per our conversation earlier.''

(B) State of California Air Resources Board.

(*1*) CARB Executive Order 13–30, dated June 27, 2013, ''San Joaquin Valley $PM_{2.5}$ Contingency Measures Update.''

[FR Doc. 2014–11681 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0794; FRL–9911–24–Region 4]

Approval and Promulgation of Implementation Plans; Kentucky; Stage II Requirements for Hertz Corporation Facility at Cincinnati/Northern Kentucky International Airport in Boone County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a source-specific State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on January 17, 2014, for the purpose of exempting a Hertz Corporation facility from the Clean Air Act (CAA or Act) Stage II vapor control requirements. The subject Hertz Corporation facility is currently being constructed at the Cincinnati/Northern Kentucky International Airport in Boone County, Kentucky. EPA's approval of this revision to Kentucky's SIP is based on the December 12, 2006, EPA policy memorandum from Stephen D. Page, entitled ''*Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated.*'' This action is being taken pursuant to the CAA.

DATES: This rule will be effective June 23, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0794. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this source specific SIP revision, contact Ms. Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is (404) 562–9222; email address: *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA Amendments of 1990, EPA designated and classified three Kentucky Counties (Boone, Campbell and Kenton) and four Ohio Counties (Butler, Clermont, Hamilton and Warren) (collectively referred to as the ''Cincinnati/Northern Kentucky Area'') as a ''moderate'' nonattainment area for the 1-hour ozone national ambient air quality standards (NAAQS). *See* 56 FR 56694, effective January 6, 1992. The designation was based on the Area's 1-hour ozone design value of 0.157 parts per million for the three year period of 1988–1990.

Pursuant to the requirements of section 182(b)(3) of the CAA, KDAQ developed the Kentucky Administrative Regulation (KAR) 401 KAR 59:174 *Stage II controls at gasoline dispensing facilities,* and submitted the rule to EPA for approval as part of Kentucky's ozone SIP. The rule was adopted by Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998. *See* 63 FR 675896. Under this regulation, gasoline dispensing facilities with a monthly throughput of 25,000 gallons or more located in a Kentucky County in which the entire County is classified as severe, serious, or moderate nonattainment for ozone are required to install Stage II vapor recovery systems.

On October 29, 1999, KDAQ submitted to EPA an ozone maintenance plan and request for redesignation to attainment for the Kentucky portion of the Cincinnati/Northern Kentucky Area. At that time the Kentucky portion of the Cincinnati/Northern Kentucky Area had three years of attaining data (1996–1998) and Kentucky had implemented all measures then required by the CAA for a moderate 1-hour ozone nonattainment area. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides and volatile organic compounds (VOC) emissions in the Kentucky portion of the Cincinnati/Northern Kentucky Area would remain below the 1990 ''attainment year's'' levels. In making these projections, KDAQ factored in the emissions benefit (primarily VOC) of the Kentucky portion of the Cincinnati/Northern Kentucky Area's Stage II program, and did not remove this program from the Kentucky SIP. The redesignation request and maintenance plan were approved by EPA, effective June 19, 2000 (65 FR 37879). Since the Kentucky Stage II program was already in place and had been included in the Commonwealth's October 29, 1999, redesignation request and 1-hour ozone maintenance plan for the Kentucky portion of the Cincinnati/Northern Kentucky Area, KDAQ elected not to remove the program from the SIP at that time.

On April 6, 1994, EPA promulgated regulations requiring the phase-in of onboard refueling vapor recovery (ORVR) systems on new motor vehicles. Under section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards.

KDAQ submitted a SIP revision on January 17, 2014, to exempt Stage II vapor control requirements for the Hertz Corporation facility located at the Cincinnati/Northern Kentucky International Airport in Boone County. On February 14, 2014, EPA published a proposed rulemaking to approve Kentucky's January 17, 2014, SIP revision related to Stage II requirements at the Hertz Corporation facility. Detailed background for today's final rulemaking can be found in EPA's February 14, 2014, proposed rulemaking. *See* 79 FR 8923. The comment period for this proposed rulemaking closed on March 17, 2014. EPA did not receive any comments, adverse or otherwise, during the public comment period.

II. Final Action

EPA is taking final action to approve the aforementioned source-specific SIP revision request from Kentucky. VOC emissions from vehicles at the Cincinnati/Northern Kentucky International Airport Hertz Corporation facility are controlled by ORVR, therefore, EPA has concluded that removal of Stage II requirements at this facility would not result in an increase of VOC emissions, and thus would not contribute to ozone formation. The Commonwealth has requested removal of this requirement for this facility and

EPA has determined that Kentucky has fully satisfied the requirements of section 110(l) of the CAA. Therefore, EPA is taking final action to approve this source-specific SIP revision, as being consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF PLANS

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

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

Subpart S—Kentucky

■ 2. Section 52.920(c) is amended, under Table 1, by revising the entry for ''401 KAR 59:174'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/Subject	State effective date	EPA Approval date	Explanation
*	*	*	*	*
Chapter 59 New Source Standards				
*	*	*	*	*
401 KAR 59:174	Stage II controls at gasoline dispensing facilities.	01/17/14	05/22/2014 [Insert citation of publication].	Exemption from Stage II vapor control requirements for rental fleet vehicle refueling at the Cincinnati/Northern Kentucky International Airport Enterprise Holdings, Inc., facility and Hertz Corporation facility.
*	*	*	*	*

* * * * *

[FR Doc. 2014–11781 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0380; FRL–9911–25–Region 6]

Finding of Failure To Submit a Prevention of Significant Deterioration State Implementation Plan Revision for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$); Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finding that the State of Arkansas has not made a necessary Prevention of Significant Deterioration (PSD) State Implementation Plan (SIP) submission to address the PSD permitting of $PM_{2.5}$ emissions, as required by the Clean Air Act (CAA). Specifically, the EPA is determining that Arkansas has not submitted a SIP revision to address the $PM_{2.5}$ PSD increments and implementing regulations as promulgated by EPA on October 20, 2010. The deadline for the State to make the required submittal was July 20, 2012. The CAA requires EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding PSD SIP elements by no later than 24 months after the effective date of this finding. EPA is making this finding in accordance with section 110 and part C of the CAA.

DATES: The effective date of this rule is May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions to meet the requirement. No additional fact gathering is necessary. Thus, notice and public procedure are unnecessary. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the CAA for making such determinations. EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994). The EPA finds that these constitute good cause under 5 U.S.C. 553(b)(B).

EPA has also determined that today's Finding of Failure to Submit for Arkansas is effective immediately upon publication because this final action falls under the good cause exemption in 5 U.S.C. 553(d)(3) of the APA. The expedited effective date for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The EPA has determined that there is good cause for making this rule effective upon publication because the PSD SIP element is already overdue and the state has been made aware of applicable provisions of the CAA relating to overdue SIP revisions. The State of Arkansas failed to submit a required PSD SIP revision by the mandated deadline of July 20, 2012. We have previously alerted Arkansas through meetings that it has failed to make the submittal by the deadline. Also on May 9, 2014, we sent a letter to Arkansas, explaining that we were planning to take the action we are finalizing today. Consequently, the State has been on notice that today's action was pending. The State and general public are aware of applicable provisions of the CAA that relate to failure to submit a required implementation plan. In addition, this action only starts a 24-month ''clock'' wherein the EPA must promulgate a Federal Implementation Plan. Furthermore, the purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to prepare before the final rule takes effect. Whereas here, the affected parties, such as the State of Arkansas and sources within the State, do not need time to adjust and prepare before the Finding of Failure to Submit takes effect. After numerous discussions with the Arkansas Department of Environmental Quality to resolve outstanding issues, the EPA has determined that moving as expeditiously as practicable on this finding is in the best interest of the implementation of the required PSD permitting program. The EPA finds that the above reasons support an effective date prior to thirty days after the date of publication and constitute good cause under 5 U.S.C. 553(d)(3).

Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background and Overview

A. Overview of the PM NAAQS Requirements

The EPA initially established National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) under section 109 of the CAA in 1971. Since then, the EPA has made a number of changes to these standards to reflect

continually expanding scientific information. The revisions to the PM NAAQS are briefly summarized below.

• In 1971, the EPA established NAAQS for PM, measured as Total Suspended Particles (TSP) (36 FR 8186). The primary standards were 260 μg/m³ 24-hour average, not to be exceeded more than once per year, and 75 μg/m³, annual geometric mean. The secondary standard was 150 μg/m³, 24-hour, not to be exceeded more than once per year.

• In July 1987, the EPA changed the indicator for PM from TSP to PM_{10}, the latter including particles with an aerodynamic diameter less than or equal to a nominal 10 μm. (52 FR 24634). The EPA also revised the primary standards by (1) replacing the 24-hour TSP standard with a 24-hour PM_{10} standard of 150 μg/m³ with no more than one expected exceedance per year, and (2) replacing the annual TSP standard with a PM_{10} standard of 50 μg/m³, annual arithmetic mean. The secondary standard was revised by replacing it with 24-hour and annual PM_{10} standards identical in all respects to the primary standards.

• In July 1997, the EPA determined that although the PM NAAQS should continue to focus on PM_{10}, the fine and coarse fractions of PM_{10} should be considered separately (62 FR 38652). New standards were added, using $PM_{2.5}$ as the indicator for fine particles. The PM_{10} standards were retained for the purpose of regulating the coarse fraction of PM_{10}. The EPA established two new $PM_{2.5}$ standards: an annual standard of 15 μg/m³, based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations from single or multiple monitors sited to represented community-wide air quality and a 24-hour standard of 65 μg/m³, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within the area.

• On October 17, 2006, the EPA promulgated revisions to the NAAQS for $PM_{2.5}$ and PM_{10} with an effective date of December 18, 2006 (71 FR 61144). We lowered the 24-hour NAAQS for $PM_{2.5}$ from 65 μg/m³ to 35 μg/m³, and retained the existing annual $PM_{2.5}$ NAAQS of 15 μg/m³. In addition, we retained the existing PM_{10} 24-hour NAAQS of 150 mg/m³, and revoked the annual PM_{10} NAAQS (set at 50 mg/m³).

• On January 15, 2013, the EPA promulgated revisions to the NAAQS for $PM_{2.5}$ and PM_{10} with an effective date of March 18, 2013 (78 FR 3086). We lowered the annual standard for $PM_{2.5}$ to 12 μg/m³ and retained the 24-hour $PM_{2.5}$ standard at the level of 35 μg/m³. For PM_{10}, the EPA retained the current 24-hour PM_{10} primary and secondary standards.

B. Revisions to the PSD Program To Implement the PM NAAQS

To implement the PM NAAQS for PSD purposes, EPA issued two separate final rules that establish the New Source Review (NSR) permitting requirements for $PM_{2.5}$: the NSR $PM_{2.5}$ Implementation Rule promulgated on May 16, 2008 (73 FR 28321), and the $PM_{2.5}$ PSD Increments—Significant Impact Levels (SILs)—Significant Monitoring Concentration (SMC) Rule promulgated on October 20, 2010 (75 FR 64864).

1. Required Components of the 2008 NSR $PM_{2.5}$ Implementation Rule

EPA's final NSR $PM_{2.5}$ Implementation Rule required states to submit applicable SIP revisions to EPA no later than May 16, 2011, to address this rule's PSD and nonattainment NSR SIP requirements. With respect to PSD permitting, the SIP revision submittals are required to: (1) Address directly emitted $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)) that contribute to the secondary formation of $PM_{2.5}$; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants; and (3) account for gases that condense to form particles (condensables) in $PM_{2.5}$ and PM_{10} applicability determinations and emission limits in PSD permits.

2. Required Components of the 2010 $PM_{2.5}$ PSD Increment—SILs—SMC Rule

The $PM_{2.5}$ PSD Increment—SILs—SMC Rule required states to submit SIP revisions to EPA by July 20, 2012, adopting provisions equivalent to or at least as stringent as the $PM_{2.5}$ PSD increments and associated implementing regulations. Specifically, the SIP rule requires a state's submitted PSD SIP revision to adopt and submit for EPA approval the $PM_{2.5}$ increments issued pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. States were also required to adopt and submit for EPA approval revisions to the definitions for ''major source baseline date,'' ''minor source baseline date,'' and ''baseline area'' as part of the implementing regulations for the $PM_{2.5}$ increment.

3. Optional Components of the 2010 $PM_{2.5}$ PSD Increment—SILs—SMC Rule

The $PM_{2.5}$ PSD Increment—SILs—SMC Rule also allowed States to discretionarily adopt and submit for EPA approval: (1) SILs, which are used as a screening tool to evaluate the impact a proposed new major source or major modification may have on the NAAQS or PSD increment; and (2) a SMC (also a screening tool) which is used to determine the subsequent level of data gathering required for a PSD permit application for emissions of $PM_{2.5}$. However, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia granted a request from the EPA to vacate and remand portions of the federal PSD regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) establishing the SILs for $PM_{2.5}$ so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. *Sierra Club* v. *EPA,* 705 F.3d 458, 463–64. The court declined to vacate the portion of the federal PSD regulations (40 CFR 51.165(b)(2)) establishing SILs for $PM_{2.5}$ that did not contain the same inconsistency in the regulatory text. *Id.* at 465–66. The court further vacated the portions of the PSD regulations (40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*)) establishing a $PM_{2.5}$ SMC, finding that the EPA lacked legal authority to adopt and use the $PM_{2.5}$ SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. *Id.* at 468–69. On December 9, 2013, EPA issued a good cause final rule formally removing the affected SILs and SMC provisions from the CFR. See 78 FR 73698. As such, SIP submittals should no longer include the vacated $PM_{2.5}$ SILs at 40 CFR 51.166(k)(2) and 52.21(k)(2) and vacated $PM_{2.5}$ SMC provisions at 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*) for $PM_{2.5}$ PSD permitting. EPA notes that today's finding of failure to submit for the State of Arkansas does not include the optional SILs and SMC component of the $PM_{2.5}$ PSD Increment—SILs—SMC Rule.

II. Finding of Failure To Submit

The EPA is making a finding that the State of Arkansas has failed to submit a required PSD SIP revision to address the implementation and permitting of $PM_{2.5}$ emissions in the Arkansas PSD program. Specifically, we are finding that Arkansas failed to submit a SIP revision, addressing the required $PM_{2.5}$ PSD elements establishing increments and the implementing regulations by the specified deadline of July 20, 2012, as required by the 2010 $PM_{2.5}$ PSD Increments—SILs—SMC Rule. By no later than 24 months after the effective date of this ruling, the EPA is required by the Act to promulgate a FIP for Arkansas to address the $PM_{2.5}$ PSD requirements for increment. In addition, CAA section 110(c) provides that EPA

can promulgate a FIP immediately after making the finding of failure to submit a required SIP, as late as two years after making the finding, or any time in between. This finding of failure to submit does not impose sanctions or set deadlines for imposing sanctions as described in section 179 of the CAA, because this finding does not pertain to the elements of a part D, title I plan for nonattainment areas as required under section 110(a)(2)(I) and because this action is not a SIP call pursuant to section 110(k)(5). This action will be effective on May 22, 2014.

This action also does not make a finding of failure to submit for Arkansas regarding the required $PM_{2.5}$ PSD SIP revision due on May 19, 2011, pursuant to the 2008 NSR $PM_{2.5}$ Implementation Rule. EPA previously promulgated a partial approval and partial disapproval of the Arkansas infrastructure SIP for the 1997 ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS on August 20, 2012. See 77 FR 50033. The partial disapproval was specific to the Arkansas PSD program for failing to include the required PSD elements from the May 16, 2008 NSR $PM_{2.5}$ Implementation Rule. EPA's disapproval as to these required SIP revisions started a separate FIP clock because the Arkansas PSD program lacked the $PM_{2.5}$ PSD revisions as required by the 2008 rule. This separate FIP clock will expire on September 19, 2014.

EPA recognizes that the $PM_{2.5}$ PSD elements from 2008 and 2010 are necessary for proper functioning of the PSD program for issuing permits for $PM_{2.5}$. As described above, we also acknowledge that we now have two separate FIP clocks running for $PM_{2.5}$ PSD elements with respect to Arkansas. The first clock, expiring on September 19, 2014, is for the PSD revisions required by the 2008 NSR $PM_{2.5}$ Implementation Rule. The second clock, ending 24-months from the effective date of today's finding, addresses the PSD revisions required by the 2010 $PM_{2.5}$ PSD Increments—SILs—SMC Rule. Pursuant to the CAA, EPA will promulgate a FIP to address the entirety of the $PM_{2.5}$ PSD permitting requirements in order to satisfy both FIP clocks and section 110(c) of the CAA.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under EO 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit PSD SIPs under section 166(b) to satisfy certain prevention of significant deterioration requirements under the CAA for the $PM_{2.5}$ NAAQS. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. 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 OMB control numbers for the EPA's regulations in the CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions. For the purpose of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration (SBA) size standards *(See* 13 CFR 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This action relates to the requirement in the CAA for states to submit PSD SIPs under section 166(b) to satisfy certain prevention of significant deterioration requirements of the CAA for the $PM_{2.5}$ NAAQS. Because EPA has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA and any other statute, it is not subject to the regulatory flexibility provisions of the RFA.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538 for state, local and tribal governments and the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action relates to the requirement in the CAA for states to submit PSD SIPs under section 166(b) to satisfy certain prevention of significant deterioration requirements under the CAA for the $PM_{2.5}$ NAAQS. This rule merely finds that Arkansas has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector result from this action.

Additionally, because EPA has made a ''good cause'' that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

EO 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is

defined in the EO to include regulations that have ''substantial direct effects on the states, or the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government.'' This final rule does not have federalism implications. It 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, as specified in EO 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the states and the EPA for purposes of developing programs to implement the NAAQS. Thus, EO 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

EO 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have tribal implications, as specified in EO 13175. This rule responds to the requirement in the CAA for states to submit PSD SIPs under section 166(b) to satisfy certain prevention of significant deterioration requirements under the CAA for $PM_{2.5}$ NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 166(b) within 21 months of promulgation of PSD regulations under section 166(a).

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets EO 13045 (62 FR 19885, April23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it merely finds that Arkansas has failed to make a submission that is required under the Act to implement the $PM_{2.5}$ NAAQS.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not a ''significant energy action'' as defined in EO 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is making a finding that the State of Arkansas failed to submit a SIP revision that provides certain basic permitting requirements for the $PM_{2.5}$ NAAQS.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make any rule effective ''at such time as the Federal agency promulgating the rule determines'' if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 22, 2014. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 22, 2014.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 9, 2014.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2014–11785 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0183, FRL–9911–09–Region–10]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the February 14, 2012, State Implementation Plan (SIP) submittal from Idaho demonstrating that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for lead (Pb) on October 15, 2008. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that it meets the infrastructure requirements necessary to implement the new or revised NAAQS. The EPA finds that the Idaho SIP meets the CAA infrastructure requirements for the 2008 Pb NAAQS.

DATES: This final rule is effective on June 23, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2012–0183. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at: (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

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

I. Background

Section 110 of the CAA specifies the general requirements for states to submit SIPs to attain and maintain the NAAQS and the EPA's actions regarding approval of those SIPs. On February 14, 2012, Idaho submitted a SIP revision to the EPA demonstrating that the SIP meets the infrastructure requirements of the CAA for the 2008 Pb NAAQS. On March 26, 2014, we proposed approval of Idaho's February 14, 2012, submittal (79 FR 16722). An explanation of the CAA requirements and implementing regulations that are met by this SIP revision, a detailed explanation of the revision, and the EPA's reasons for the proposed action were provided in the notice of proposed rulemaking on March 26, 2014, and will not be restated here (79 FR 16722). The public comment period for our proposed action ended on April 25, 2014, and we received no comments.

II. Final Action

The EPA is approving the February 14, 2012, submittal from Idaho demonstrating that the SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the 2008 Pb NAAQS. Specifically, we find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2008 Pb NAAQS: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). This action is being taken under section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: May 1, 2014.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. In § 52.670, the table in paragraph (e) is amended by adding an entry at the end of the table for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.''

The addition reads as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	* *		* *	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.	State-wide	2/14/2012	5/22/2014 [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–11508 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2014–0139 FRL–9911–23–Region–10]

Approval and Promulgation of Implementation Plans; State of Oregon; Approval of Substitution for Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is making an administrative change to update the Code of Federal Regulations (CFR) to reflect a change made to the Oregon State Implementation Plan (SIP) on December 11, 2013. The EPA has concurred on a substitute transportation control measure (TCM) for the Portland Area Carbon Monoxide Maintenance Plan portion of the Oregon SIP. On January 14, 2014, the Oregon Department of Environmental Quality (ODEQ) submitted a revision to the Oregon SIP requesting that the EPA update its SIP to reflect a substitution of a TCM. The substitution was made pursuant to the TCM substitution provisions contained in the Clean Air Act (CAA). The EPA concurred with this substitution on April 16, 2014. In this administrative action, the EPA is updating the non-regulatory provisions of the Oregon SIP to reflect the substitution. The substitution that the EPA concurred with is an equivalent method for assessing the transit service increase TCM.

DATES: This action is effective May 22, 2014.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following location: US Environmental Protection Agency, Region 10, Office of Air, Waste, and Toxics (OAWT–107), 1200 Sixth Avenue, Seattle, Oregon 98101. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo, EPA Region 10, (206) 553–6125, *spenillo.justin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, it is intended to refer to the EPA.

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I. This Action
II. Statutory and Executive Order Review

I. This Action

On April 16, 2014, the EPA concurred with a determination by the ODEQ and Metro, the metropolitan planning organization for the Portland area, that the replacement of a transit service increase TCM with an equivalent substitute transit service increase TCM met the requirements of CAA section 176(c)(8). (See also EPA's Guidance for Implementing the CAA section 176(c)(8) Transportation Control Measure Substitution and Addition Provision contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users which was signed into law on August 10, 2005, dated January 2009.) This action provides notice of the EPA's concurrence with this substitution, and codifies the substitute transportation control measure in the Federally approved Oregon SIP. The substitution replaces the existing transit service increase TCM with a TCM containing an equivalent method for assessing the transit service increase. The substituted TCM is: ''Transit Service Increase: Regional transit service revenue hours (weighted by capacity) shall be increased 1.0% per year. The increase shall be assessed on the basis of

cumulative average of actual hours for assessment conducted for the entire second ten-year Portland Area Carbon Monoxide Maintenance Plan (2007–2017). Transit service increase will be assessed on the basis of fiscal year (July 1–June 30) beginning with FY 2008.''

The TCM substitution process is collaborative, and includes participation by all affected jurisdictions and agencies, consultation with the EPA, and reasonable notice and opportunity for public comment. To develop a substitute TCM, the ODEQ and Metro consulted with the Transportation Policy Advisory Committee (TPAC), a technical advisory committee of the Joint Policy Advisory Committee on Transportation (JPACT) that is comprised of elected officials and representatives of agencies involved in transportation in the Portland area and includes representatives from the community, state and regional partners, and local jurisdictions. Public notice and comment was provided by Metro in coordination with the ODEQ. The public notice was published in *The Oregonian* on July 15, 2013, along with being posted on the ODEQ's Web page on July 15, 2013, published in the August 2013 *Oregon Bulletin,* and multiple other forms of notice as described in the docket.

Through the concurrence process, the EPA determined that the requirements of CAA section 176(c)(8) were satisfied, including the requirements that the substitute measures (1) achieve equivalent or greater emissions reductions than the control measure to be replaced, (2) are implemented on a schedule consistent with the schedule for the existing TCM, (3) have adequate personnel, funding and authority under state or local law to implement, monitor and enforce, and (4) are jointly concurred upon by the ODEQ, the EPA and Metro. Upon the EPA's concurrence, the transit service increase TCM substitution took effect as a matter of Federal law. A copy of the EPA's concurrence letter along with the ODEQ's letter submittal and additional support material is included in the Docket for this action. This letter can be accessed at *www.regulations.gov* using Docket ID No. EPA–R10–OAR–2014–0139. In accordance with the requirements for TCM substitution, on January 14, 2014, the ODEQ submitted a request for the EPA to update the Portland Area Carbon Monoxide portion of the Oregon SIP to reflect the EPA's concurrence on transit service increase TCM substitution in its SIP (the subject of this administrative change). Today, the EPA is taking administrative action to update the non-regulatory provisions of the Oregon SIP in 40 CFR 52.1970 (e) to reflect the EPA's concurrence on the transit service TCM substitution.

STATE OF OREGON AIR QUALITY CONTROL PROGRAM

SIP citation	Title/subject	State effective date	EPA approval date	Explanation
Section 4	Control Strategies for Nonattainment Areas.	4.58 12/15/2004;	4.58 1/24/2006, 71 FR 3768;	4.58 Portland Area CO Maintenance Plan 2nd 10-year.
		4.58 12/11/2013;	4.58 5/22/2014 [Insert FR number]	4.58 Portland Area CO Maintenance Plan 2nd 10-year; TCM substitution update 4.58.3.2.2.

Immediate notice of this action in the *Federal Register* benefits the public by providing the public notice of the updated Federally approved Oregon SIP and ''Identification of Plan'' portion of the *Code of Federal Regulations.*

II. Statutory and Executive Order Reviews

This action does not have federalism implications. It 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, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, the EPA did consult with representatives of state and local governments in taking this action. This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), as it does not affect any tribal groups. Thus, Executive Order 13175 does not apply to this action.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this administrative action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference.

Dated: May 6, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. Section 52.1970(e), the table titled ''State of Oregon Air Quality Control Program'' is amended by revising entry 4.58 under ''Section 4: ''Control Strategies for Nonattainment Areas'' to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(e) * * *

* * * * *

STATE OF OREGON AIR QUALITY CONTROL PROGRAM

SIP citation	Title/subject	State effective date	EPA Approval date	Explanation
*	*	*	*	*
Section 4	Control Strategies for Nonattainment Areas			
*	*	*	*	*
		4.58 12/15/2004;	4.58 1/24/2006, 71 FR 3768;	4.58 Portland Area CO Maintenance Plan 2nd 10-year.
		4.58 12/11/2013;	4.58 5/22/2014 [Insert FR number];	4.58 Portland Area CO Maintenance Plan 2nd 10-year; TCM substitution update 4.58.3.2.2.

* * * * *

[FR Doc. 2014–11790 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2013–0028; FRL–9908–52–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) published a final rule regarding reasonably available control technology requirements for Massachusetts in the **Federal Register** on September 9, 2013. An error in Table 52.1167 was identified and is corrected in this action.

DATES: This rule is effective on June 23, 2014.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA, 02109–3912, telephone number (617) 918–1046, fax number (617) 918–0046, email *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In rule FR Doc. 2013–21618 published on September 9, 2013 (78 FR 54960), make the following correction. On page 54962, the sixth column of Table 52.1167 incorrectly contained the placeholder language ''Insert next available paragraph number in sequence'' in two locations. Rather than this language, table 52.1167 should have indicated the number ''138'' instead.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 1, 2014.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. In § 52.1167, Table 52.1167 is amended by revising the entries for ''310 CMR 7.18(8) for Solvent Metal Degreasing for 6/1/10'' and ''310 CMR 7.24(6) for Dispensing of Motor Vehicle Fuel for 6/1/10'' to read as follows:

§ 52.1167—EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

[See Notes at end of table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/ unapproved sections
*	*	*	*	*	*	
310 CMR 7.18(8) ...	Solvent Metal Degreasing	6/1/10	9/13/2013	78 FR 54960	138	
*	*	*	*	*	*	
310 CMR 7.24(6) ...	Dispensing of Motor Vehicle Fuel	6/1/10	9/13/2013	78 FR 54960	138	
*	*	*	*	*	*	

Notes:

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless stated otherwise in comments or title section.

[FR Doc. 2014–11490 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2013–0787; FRL–9911–13–OAR]

Approval of States' Requests To Relax the Federal Reid Vapor Pressure Volatility Standard in Florida, and the Raleigh-Durham-Chapel Hill and Greensboro/Winston-Salem/High Point Areas in North Carolina

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of adverse comments, the Environmental Protection Agency (EPA) is withdrawing the March 31, 2014, direct final rule to approve requests from Florida and North Carolina for the EPA to relax the Reid Vapor Pressure (RVP) Standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year in six counties in Florida, and in counties in the Raleigh-Durham-Chapel Hill Area (also referred to as the ''Triangle Area'') and the Greensboro/Winston-Salem/High Point Area (also referred to as the ''Triad Area'') in North Carolina. The EPA is considering these comments and will address the comments in a subsequent action that is to be published soon. The EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 79 FR 17889 on March 31, 2014, is withdrawn as of May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Rudolph Kapichak, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4574; fax number 734–214–4052; email address: *kapichak.rudolph@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 31, 2014 (79 FR 17889), the EPA published a direct final rule approving a request from Florida to change the summertime RVP standard for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas counties in Florida from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). Additionally, in that direct final rule the EPA approved a request from North Carolina to change the summertime RVP standard for the Triangle and Triad Areas from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). The Triangle Area is comprised of Durham and Wake Counties, and the Dutchville Township portion of Granville County. The Triad Area is comprised of the counties of Davidson, Forsyth and Guilford in their entirety, and the portion of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River. In previous rulemakings, the EPA approved state implementation plan revisions from Florida and North Carolina which provided technical analyses that demonstrated that removal of the Federal RVP requirements of 7.8 psi for gasoline sold between June 1 and September 15 of each year in the six counties in Florida, and the North Carolina Triangle and Triad Areas would not interfere with maintenance of the national ambient air quality standards in these areas. In the direct final rule, the EPA stated that if adverse comments were received by April 30, 2014, the rule would be withdrawn and not take effect. On March 29, 2014, the EPA received a comment letter. The EPA interprets the comments in that letter as adverse and, therefore, the EPA is withdrawing the direct final rule. The EPA will address these comments in a separate final action based upon the proposed rulemaking action at 79 FR 17966 (March 31, 2014). The EPA will not institute a second comment period on this action.

Accordingly, the amendment to 40 CFR 80.27 which published in the **Federal Register** on March 31, 2014, at 79 FR 17895 is withdrawn as of May 22, 2014.

Dated: May 15, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–11910 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2013–0787; FRL–9911–12–OAR]

Approval of States' Requests To Relax the Federal Reid Vapor Pressure Volatility Standard in Florida, and the Raleigh-Durham-Chapel Hill and Greensboro/Winston-Salem/High Point Areas in North Carolina

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve requests from Florida and North Carolina for the EPA to relax the Reid Vapor Pressure (RVP) Standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year in six counties in Florida, and in counties in the Raleigh-Durham-Chapel Hill Area (also referred to as the ''Triangle Area'') and the Greensboro/Winston-Salem/High Point Area (also referred to as the ''Triad Area'') in North Carolina. Specifically, the EPA is approving amendments to the regulations to change the RVP standard for six counties in Florida, and for the counties in the Triangle and Triad Areas from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline. Additionally, the EPA is responding to adverse comments received for this action. The EPA has determined that these changes to the Federal RVP regulation are consistent with the applicable provisions of the Clean Air Act (CAA or Act).

DATES: This final rule will become effective on May 30, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–HQ–OAR–2013–0787. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Rudolph Kapichak, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4574; fax number (734) 214–4052; email address: *kapichak.rudolph@epa.gov.*

SUPPLEMENTARY INFORMATION: *Organization of this document.* The following outline is provided to aid in locating information in this preamble.

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VII. Response to Comments
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IX. Statutory and Executive Order Reviews
X. Legal Authority and Statutory Provisions

Effective date. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. The EPA is issuing this final rule under CAA section 307(d)(1). Section 307(d)(1) states: ''The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on May 30, 2014. APA section 553(d) allows an effective date less than 30 days after publication for a rule that ''that grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). This rule fits within that exception because it lifts the restriction on the introduction into commerce of gasoline with a RVP of greater than 7.8 psi sold in areas in Florida and North Carolina between June 1 and September 15 of each year. Because today's action can be considered to relieve a restriction that would otherwise prevent the introduction into commerce of gasoline with a RVP of greater than 7.8 psi, the EPA is making this action effective on May 30, 2014.

I. General Information

Throughout this document, ''the Agency'' is used to mean the EPA.

Entities potentially affected by this rule are fuel producers and distributors who do business in Florida and in North Carolina. Regulated entities include:

Examples of potentially regulated entities	NAICS Codes [a]
Petroleum refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

[a] North American Industry Classification System (NAICS).

This table provides only a guide for readers regarding entities likely to be regulated by this action. You should carefully examine the regulations in 40 CFR 80.27 to determine whether your facility is impacted. If you have further questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

II. Actions Being Taken

This final rule approves a request from Florida to change the summertime RVP standard for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas counties in Florida from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). Additionally, this final rule approves a request from North Carolina to change the summertime RVP standard for the Triangle and Triad Areas from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). The Triangle Area is comprised of Durham and Wake Counties, and the Dutchville Township portion of Granville County. The Triad Area is comprised of the counties of Davidson, Forsyth and Guilford in their entirety, and the portion of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River.

In previous rulemakings, the EPA approved state implementation plan (SIP) revisions from Florida and North Carolina which provided technical analyses that demonstrated that removal of the Federal RVP requirements of 7.8 psi for gasoline sold between June 1 and September 15 of each year in the six counties in Florida, and the North Carolina Triangle and Triad Areas would not interfere with maintenance of the national ambient air quality standards (NAAQS) in these areas. For more information on Florida's SIP revision for the six Florida counties and the EPA's analysis of Florida's SIP revision refer to the January 6, 2014, final rule at 79 FR 573; on North Carolina's SIP revision for the Triangle Area refer to the January 2, 2014 final rule at 79 FR 47; and on North Carolina's SIP revision for the Triad Area refer to the January 24, 2014 final rule at 79 FR 4082.

As mentioned above, this final rule approves requests from Florida and North Carolina to change the summertime RVP standard for six Florida counties, and for the Triangle and Triad Areas from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). The preamble for this rulemaking is organized as follows. Section III provides the history of federal gasoline volatility regulation. Section IV describes the policy regarding relaxation of volatility standards in ozone nonattainment areas that are redesignated as attainment areas. Section V provides information specific to Florida's request for the six counties currently subject to the 7.8 psi summertime RVP requirements. Section VI provides information specific to North Carolina's requests for the counties in the Triangle and Triad Areas that are currently subject to the 7.8 psi summertime RVP requirements. Section VII provides EPA's response to the adverse comment received. Finally, Section VIII presents the final action in response to the requests from Florida and North Carolina.

III. History of the Gasoline Volatility Requirement

On August 19, 1987 (52 FR 31274), the EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under section 211(c) of the CAA, the EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), the EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum

RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS).

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires the EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h) prohibits the EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that the Agency may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), the EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, the EPA will rely on states to initiate changes to the volatility program. The EPA's policy for approving such changes is described in Section IV of this preamble.

Florida and North Carolina initiated these changes by requesting that the EPA relax the 7.8 psi RVP standard for counties that are in ozone maintenance areas. Accordingly, the States revised their original modeling and maintenance demonstrations for these areas to reflect continued attainment under the relaxed 9.0 psi RVP standard that the States have requested. See Section V of this action for information specific to Florida's request for the six counties currently subject to the 7.8 psi summertime RVP requirements. See Section VI of this action for information specific to North Carolina's requests for the counties in the Triangle and Triad Areas that are currently subject to the 7.8 psi summertime RVP requirements.

IV. The EPA's Policy Regarding Relaxation of Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas

As stated in the preamble for the EPA's amended Phase II volatility standards (56 FR 64706), any change in the volatility standard for a nonattainment area that was subsequently redesignated as an attainment area must be accomplished through a separate rulemaking that revises the applicable standard for that area. Thus, for former 1-hour ozone nonattainment areas where the EPA mandated a Phase II volatility standard of 7.8 psi RVP in the December 12, 1991 rulemaking, the 7.8 psi RVP will remain in effect, even after such an area is redesignated to attainment, until a separate rulemaking is completed that revises the RVP standard in that area from 7.8 psi to 9.0 psi.

As explained in the December 12, 1991, rulemaking, the EPA believes that relaxation of an applicable RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, section 107(d)(3) of the Act requires the state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for ten years. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, the EPA will not relax the volatility standard unless the state requests a relaxation and the maintenance plan demonstrates, to the satisfaction of the EPA, that the area will maintain attainment for ten years without the need for the more stringent volatility standard.

V. The EPA's Analysis of Florida's Request To Relax the Federal RVP Requirements in the State

On November 6, 1991, the EPA designated and classified the Southeast Florida area (i.e., Broward, Dade and Palm Beach counties) as Moderate; the Jacksonville area (i.e., Duval County) as Transitional; and the Tampa area (i.e., Hillsborough and Pinellas counties) as Marginal nonattainment areas for the 1-hour ozone NAAQS. See 56 FR 56694 (November 6, 1991). Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain RVP standards for gasoline sold commercially during the high ozone season. See 55 FR 23658 (June 11, 1990). Thus, the RVP requirements for gasoline sold in these three 1-hour ozone nonattainment areas was 7.8 psi from June 1 through September 15 of each year. Subsequently, each area was redesignated to attainment for the 1-hour ozone NAAQS.[1] Florida's redesignation requests did not include a request for relaxation of the gasoline volatility standard.[2] [3]

On August 15, 2013, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a request for the EPA to relax the Federal RVP requirement of 7.8 psi in Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties in Florida. The State also submitted a technical analysis which demonstrated that the less-stringent RVP in these counties would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard.[4] Specifically, the State updated the 10-year maintenance plans that were submitted for the three 1-hour ozone maintenance areas under section 110(a)(1) of the CAA for the 1997 ozone NAAQS.[5] As required, these section 110(a)(1) maintenance plans provided for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the effective date of these areas' designation as attainment for the 1997 8-hour ozone NAAQS. These plans also included components demonstrating how each area will continue to attain the 1997 8-hour ozone NAAQS, and provided contingency measures should an area violate the NAAQS. Florida's previous ozone redesignation requests and maintenance plans for these areas did

[1] 60 FR 41, (January 3, 1995); 60 FR 10326 (February 24, 1995); and 60 FR 62748 (December 7, 1995), respectively.

[2] Effective on June 15, 2004, Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties were designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS. See 69 FR 23857.

[3] Effective on July 20, 2012, the same counties were designated as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. See 77 FR 30088.

[4] Maintenance areas for the 1-hour ozone standard designated attainment/unclassifiable for the 1997 8-hour ozone standard are required to submit a maintenance plan under section 110(a)(1) of the CAA demonstrating maintenance out to 10 years after designation. See 69 FR 23996 (April 30, 2004).

[5] The EPA has determined that redesignated 1-hour ozone attainment areas that are designated 8-hour ozone attainment areas may rely on the section 110(a)(1) maintenance plan for purposes of requesting relaxation of the more stringent volatility standard. See 73 FR 8202, 8205 (February 13, 2008).

not remove the 7.8 psi RVP standard. See 75 FR 29671 (May 27, 2010).

As mentioned above, on August 15, 2013, FDEP submitted changes to the three CAA section 110(a)(1) maintenance plans that collectively cover Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties in Florida. Florida's August 15, 2013, SIP revision modifies the existing section 110(a)(1) maintenance plans to account for a less stringent applicable RVP gasoline requirement of 9.0 psi for these areas. Specifically, Florida's August 15, 2013, SIP revision included an evaluation of the impact that the removal of the 7.8 psi RVP requirement would have on maintenance of the 1997 and 2008 ozone standards, and on other applicable NAAQS. The EPA evaluated Florida's August 15, 2013, SIP revision in a previous rulemaking that was subject to public notice-and-comment and no comments were received. The EPA approved Florida's August 15, 2013, SIP revision on January 6, 2014. See 79 FR 573. In this final action, based on the previous approval of Florida's August 15, 2013, SIP revision, and the fact that the areas are currently attaining all ozone NAAQS, the EPA is approving Florida's request to relax the high ozone season RVP standard for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas counties from 7.8 psi to 9.0 psi.

VI. The EPA's Analysis of North Carolina's Requests To Relax the Federal RVP Requirements in the Triangle and Triad Areas

The following two sections provide the EPA's analysis of North Carolina's requests to relax the Federal RVP requirements in the Triangle and Triad Areas.

A. The EPA's Analysis of North Carolina's Requests To Relax the Federal RVP Requirement in the Triangle Area

On November 6, 1991, the EPA designated and classified Durham and Wake Counties, and the Dutchville Township portion of Granville County (also known as the Triangle Area at the time) as a Moderate nonattainment area for the 1-hour ozone NAAQS. See 56 FR 56694 (November 6, 1991). Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain RVP standards for gasoline sold commercially during the high ozone season. See 55 FR 23658 (June 11, 1990). Thus, the RVP requirement for gasoline sold in the Triangle Area was 7.8 psi from June 1 through September 15 of each year. On April 18, 1994, the Triangle Area was redesignated to attainment for the 1-hour ozone standard. See 59 FR 18300. North Carolina's redesignation request for the Triangle Area did not include a request for relaxation of the gasoline volatility standard.[6 7 8]

On March 27, 2013, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), submitted a request for the EPA to relax the Federal RVP requirement of 7.8 psi in Wake and Durham Counties, and the Dutchville Township portion of Granville County that was originally included in the 1-hour ozone nonattainment area. The State also submitted a technical analysis that demonstrated that the less-stringent RVP in these counties would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard. Specifically, the State updated the 10-year maintenance plan that was submitted for the Triangle 1997 8-hour ozone maintenance area under section 175A of the CAA. As required, this section 175A maintenance plan provided for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the EPA's redesignation of the area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. This plan also included components demonstrating how the area will continue to attain the 1997 8-hour ozone NAAQS, and provided contingency measures should the area violate the NAAQS. North Carolina's previous ozone redesignation requests and maintenance plans for this area did not remove the 7.8 psi RVP standard. See 72 FR 72948 (December 26, 2007).

As mentioned above, on March 27, 2013, NC DENR submitted changes to the section 175A maintenance plan for the Triangle Area. North Carolina's March 27, 2013, SIP revision modifies the existing section 175A maintenance plan to account for a less stringent applicable RVP gasoline requirement of 9.0 psi for the Triangle Area. Specifically, North Carolina's March 27, 2013, SIP revision included an evaluation of the impact that the removal of the 7.8 psi RVP requirement would have on maintenance of the 1997 and 2008 ozone standards, and on other applicable NAAQS. The EPA evaluated North Carolina's March 27, 2013, SIP revision in a previous rulemaking that was subject to public notice-and-comment. No adverse comments and one supportive comment were received on that proposed action. The EPA approved North Carolina's March 27, 2013, SIP revision on January 2, 2014. See 79 FR 47. In this action, based on the EPA's previous approval of North Carolina's March 27, 2013, SIP revision, and the fact that the Triangle Area is currently attaining all ozone NAAQS, the EPA is approving North Carolina's request to relax the RVP standard for Wake and Durham Counties, and a portion of Granville County in North Carolina from 7.8 psi to 9.0 psi from June 1 through September 15 of each year.

B. The EPA's Analysis of North Carolina's Requests To Relax the Federal RVP Requirement in the Triad Area

On November 6, 1991, the EPA designated Davidson, Forsyth and Guilford counties in their entirety and the portion of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in the Triad Area as a Moderate nonattainment area for the 1-hour ozone NAAQS. See 56 FR 56694 (November 6, 1991). Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain RVP standards for gasoline sold commercially during the ozone season. See 55 FR 23658 (June 11, 1990). Thus, the RVP requirement for gasoline sold in the Triad Area was 7.8 psi from June 1 through September 15 of each year. On April 18, 1994, the Triad Area was redesignated to attainment for the 1-hour ozone standard. See 59 FR 18300. North Carolina's redesignation request for the Triad Area did not include a request for the relaxation of the gasoline volatility standard.[9 10 11 12]

[6] Effective on June 15, 2004, the nonattainment area for the Triangle Area for the 1997 ozone NAAQS was expanded from Durham and Wake Counties, and the Dutchville Township portion of Granville County, to also include Franklin, Johnston, Orange, and Person Counties, and the remainder of Granville County and Baldwin, Center, New Hope and Williams Townships in Chatham County. See 69 FR 23857.

[7] On December 26, 2007 the Triangle Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. See 72 FR 72948.

[8] Effective on July 20, 2012, the same counties were designated as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. See 77 FR 30088.

[9] Effective June 15, 2004 for the 1997 ozone NAAQS, the Triad Area was designated as nonattainment with a deferred effective date as part of the Early Action Compact (EAC) program. As part of this action the Triad Area was expanded to include the entire county of Davie, and Alamance, Caswell, Randolph, and Rockingham Counties in their entirety. See 69 FR 23857.

[10] For more information on the EAC program, see *http://www.epa.gov/airquality/eac/fs20080331_eac.html.*

Continued

On April 12, 2013, the State of North Carolina, through NC DENR, submitted a request for the EPA to relax the Federal RVP requirement of 7.8 psi in Davidson, Forsyth and Guilford Counties and the relevant portion of Davie County. The State also submitted a technical analysis which demonstrated that the less-stringent RVP in the aforementioned counties would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard. Specifically, the State updated the 10-year maintenance plan that was submitted for the Triad 1-hour ozone maintenance area under section 110(a)(1) of the CAA for the 1997 ozone NAAQS.[13] As required, this section 110(a)(1) maintenance plan provided for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the effective date of the area's designation as attainment for the 1997 8-hour ozone NAAQS. This plan also included components demonstrating how the area will continue to attain the 1997 8-hour ozone NAAQS, and provided contingency measures should the area violate the NAAQS. North Carolina's previous ozone redesignation request and maintenance plan for this area did not remove the 7.8 psi RVP standard. See 77 FR 3611 (January 25, 2012).

As mentioned above, on April 12, 2013, NC DENR submitted changes to the section 110(a)(1) maintenance plan for the Triad Area. North Carolina's April 12, 2013, SIP revision modifies the existing section 110(a)(1) maintenance plan to account for a less stringent applicable RVP gasoline requirement of 9.0 psi for the area. Specifically, North Carolina's April 12, 2013, SIP revision included an evaluation of the impact that the removal of the 7.8 psi RVP requirement would have on maintenance of the 1997 and 2008 ozone standards, and on other applicable NAAQS. The EPA evaluated North Carolina's April 12, 2013, SIP revision in a previous rulemaking that was subject to public notice-and-comment. No adverse comments and one supportive comment were received on that proposed action. The EPA approved North Carolina's April 12, 2013, SIP revision on January 24, 2014. See 79 FR 4082. In this action, based on the previous approval of North Carolina's April 12, 2013, SIP revision, and the fact that the Triad Area is currently attaining all ozone NAAQS, the EPA is approving North Carolina's request to relax the high ozone season RVP standard for Davidson, Forsyth and Guilford Counties and a portion of Davie County from 7.8 psi to 9.0 psi.

VII. Response to Comments

On March 31, 2014 (79 FR 17889), the EPA published a direct final rule to approve requests from Florida and North Carolina for the EPA to relax the RVP standard in six counties in Florida and in the Triangle Area and Triad Area in North Carolina. The EPA published a parallel proposal in the event that adverse comments were received such that the direct final rule would need to be withdrawn. Specifically, in the direct final rule, the EPA stated that if adverse comments were received by April 30, 2014, the direct final rule would be withdrawn and not take effect. The EPA further stated that the corresponding proposed rule would remain in effect and that any adverse comments received would be responded to in a subsequent final rule provided the EPA was able to address such comments.[14] On March 29, 2014, EPA received comments on the rulemaking. Although, for the reasons discussed below, these comments are outside of the scope of today's action, the EPA viewed these comments as adverse. Therefore, the EPA has withdrawn the direct final rule in a separate **Federal Register** notice and is providing a summary of comments received and the EPA's responses to the comments in today's action.

Comments: The commenter stated ''EPA must disapprove this proposal because EPA has failed to conduct a Clean Air Act 110(l) analysis of the impacts the increased emissions will have on the 2008 ozone NAAQS. In addition, EPA would need to reconsider its analysis for Florida and North Carolina's CAA 110(a)(2)(D)(i) for the 1997 ozone NAAQS and consider this rule rollback for 110(a)(2)(D)(i) for the 2008 ozone NAAQS. This includes impacts in downwind nonattainment areas. Furthermore, ozone monitors in Forsyth and Guildford Counties have 2010–2012 design values above the 2008 ozone NAAQS.''

Response: The EPA disagrees with the commenter's assertions that EPA should disapprove the proposal, and generally believes these comments are beyond the scope of today's action. Section 110(l) of the Clean Air Act applies to revisions to a state implementation plan submitted by a State. However, this rulemaking does not approve any SIP revisions. Rather, it revises federal regulations (40 CFR Part 80) applicable to gasoline introduced into commerce in certain areas. Moreover, contrary to the commenter's claims, EPA did evaluate the impacts of change to the summertime RVP (consistent with CAA section 110(l)) in relation to the States' requests for the EPA to relax the RVP requirements for six counties in Florida and for the Triad and Triangle Areas in North Carolina. The EPA's analyses in relation to the States' requests for the EPA to relax the RVP requirement in the aforementioned areas were included in previous rulemakings (see 79 FR 47 (January 2, 2014), 79 FR 573 (January 6, 2014), and 79 FR 4082 (January 24, 2014)) through which the EPA approved Florida and North Carolina's SIP revisions that address these changes. The EPA's analyses (which also included evaluation of impacts to the 2008 8-hour ozone standard in addition to other applicable requirements of the CAA) for each area were subject to a 30-day public notice-and-comment, and no adverse comments were received on any of the proposed actions. The opportunity for the commenter to express concerns regarding the requirements of Section 110(l), and the EPA's analyses of whether the change to the Federal RVP requirements for the six counties in Florida and for the Triangle and the Triad areas would interfere with attainment or maintenance of the NAAQS was during the EPA's previous rulemakings where the EPA specifically solicited comment on this. The notices for this rulemaking did not reopen any of those actions.

With regard to the commenter's assertion that ''. . . ozone monitors in Forsyth and Guildford Counties have 2010–2012 design values above the 2008 ozone NAAQS,'' we note (as included in the EPA's rulemaking for the Triad area (79 FR 4082)) that based on the 2011–2013 design values, the ozone monitors in Forsyth and Guilford Counties were not above the 2008 8-hour ozone NAAQS.

The commenter also mentions that ''EPA would need to reconsider its analysis for Florida and North Carolina's CAA 110(a)(2)(D)(i) for the

[11] The Triad Area attained the 1997 ozone NAAQS and on February 2, 2008, the EPA finalized an action for 13 nonattainment areas with deferred effective dates, including the Triad Area, designating these areas attainment for the 1997 8-hour ozone NAAQS. However, as a former 1-hour ozone maintenance area the Triad Area was required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA. See 73 FR 17897.

[12] Effective July 20, 2012, the Triad Area counties were designated as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. See 77 FR 30088.

[13] The EPA has determined that redesignated 1-hour ozone attainment areas that are designated 8-hour ozone attainment areas may rely on the section 110(a)(1) maintenance plan for purposes of requesting relaxation of the more stringent volatility standard. 73 FR 8202, 8205 (February 13, 2008).

[14] The EPA also noted that an additional public comment period would not be instituted for the action.

1997 ozone NAAQS and consider this rule rollback for 110(a)(2)(D)(i) for the 2008 ozone NAAQS.'' This comment is not directly relevant to this action as the comment does not address whether or not the EPA should finalize the proposed action, but instead identifies additional actions the commenter believes the EPA would need to take if this action is finalized. Also, the comment does not clearly identify any specific analysis that should be reconsidered by the EPA. The EPA is currently working on a proposed rule to quantify state obligations with respect to section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS and will be accepting public comment on all aspects of that proposal. The EPA has not recently acted on SIP submissions addressing the requirements of section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS for either Florida or North Carolina.[15]

VIII. Final Action

The EPA is taking final action to approve requests from Florida and North Carolina for the EPA to relax the RVP applicable to gasoline introduced into commerce from June 1 to September 15 of each year in six counties in Florida, and in the counties of the Triangle and Triad Areas in North Carolina. Specifically, this action amends the applicable RVP standard from 7.8 psi to 9.0 psi provided at 40 CFR 80.27(a)(2) for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas counties in Florida; Wake and Durham Counties, and a portion of Dutchville Township in Granville County in the Triangle Area in North Carolina; and Davidson, Forsyth and Guilford Counties and a portion of Davie County in the Triad Area.

[15] Florida and North Carolina both submitted SIPs intended to address the requirements of 110(a)(2)(D)(i)(I) through participation in the CAIR trading programs. These SIP submissions were approved by EPA. *See* 72 FR 58016 (October 12, 2007) (Florida), 72 FR 56914 (October 5, 2007) (North Carolina). The D.C. Circuit, however, subsequently remanded CAIR, finding that participation in the CAIR trading programs could not be said to satisfy states' 110(a)(2)(D)(i)(I) obligations. In response to the remand of CAIR, the EPA has finalized a new rule to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Cross-State Air Pollution Rule'' or CSAPR). This rule was vacated by the D.C. Circuit in 2012. *EME Homer City Generation L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted* 133 S.Ct. 2857 (2013) On April 29, 2014 the Supreme Court reversed the judgment of the U.S. Court of Appeals for the D.C. Circuit and remanded the case for further proceedings. (*EPA et al.* v. *EME Homer City Generation L.P., et al.,* Slip Op.No. 12–1182, S. Ct. 2013, April 29, 2014)

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IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

As of January 24, 2014, the Office of Management and Budget (OMB), determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the Florida and North Carolina areas and gasoline distributors and retail stations in those areas.

This action will relax the Federal RVP standard for gasoline sold in portions of Florida and North Carolina, during the ozone control season (June 1 to September 15), from 7.8 psi to 9.0 psi, and is therefore expected not to have a significant economic impact on a substantial number of small entities. The rule does not impose any requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA Section 211(h) Volatility Control program.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's final rule affects portions of Florida and North Carolina of which the EPA estimates lower fuel costs as a result of this action, therefore reducing cost on businesses and consumers. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It 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, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have tribal implications, as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this

action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule will relax the applicable volatility standard of gasoline during the summer possibly resulting in slightly higher mobile source emissions. However, Florida and North Carolina have demonstrated in maintenance plans that this action will not interfere with attainment of the 8-hour ozone NAAQS and therefore disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective on May 30, 2014.

L. Petitions for Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rule is ''nationally applicable'' within the meaning of section 307(b)(1). This rule establishes RVP requirements for multiple counties in different States. At the core of this rulemaking is the EPA's interpretation of the requirements of section 211(h) of the CAA, and its application of that interpretation to different areas of the country.

For the same reasons, the Administrator also is determining that this action is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to two different judicial circuits. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

X. Legal Authority and Statutory Provisions

Authority for this final action is in sections 211(h) and 301(a) of the CAA, 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 15, 2014.

Gina McCarthy,

Administrator.

Title 40, chapter I, part 80 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

■ 2. In § 80.27(a)(2)(ii), the table is amended by:

■ a. Revising the entry for Florida;

■ b. Revising the entry for North Carolina; and

■ c. Adding footnotes 5, 6, and 7.

The revisions and additions read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

(ii) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * *	*	*	*	*	
Florida	9.0	9.0	9.0	9.0	9.0
Southeast Florida, Tampa Bay and Jacksonville [5]	9.0	9.0	9.0	9.0	9.0
* * *	*	*	*	*	
North Carolina					
Triad [6]	9.0	9.0	9.0	9.0	9.0
Triangle [7]	9.0	9.0	9.0	9.0	9.0
All other volatility nonattainment areas	9.0	7.8	7.8	7.8	7.8
* * *	*	*	*	*	

[1] Standards are expressed in pounds per square inch (psi).

* * * * * * *

[5] The standard for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties from June 1 until September 15 in 1992 through 2013 was 7.8 psi.

[6] The standard for Davidson, Forsyth and Guilford Counties and a portion of Davie County from June 1 until September 15 in 1992 through 2013 was 7.8 psi.

[7] The standard for Durham and Wake Counties, and a portion of Dutchville Township in Granville County from June 1 until September 15 in 1992 through 2013 was 7.8 psi.

* * * * *

[FR Doc. 2014–11911 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 436 and 452

RIN 0599–AA21

Agriculture Acquisition Regulation, Fire Suspension Suppression and Liability

AGENCY: Office of Procurement and Property Management, Department of Agriculture.

ACTION: Interim rule.

SUMMARY: The Office of Procurement and Property Management (OPPM) of the Department of Agriculture (USDA) amends the Agriculture Acquisition Regulation (the ''AGAR'') by adding a new clause entitled ''Fire Suppression and Liability.''

Section 8205 of the Agricultural Act of 2014 (2014 Act) provided the USDA Forest Service with permanent authority for stewardship end results contracting by adding a new section 604 to the Healthy Forests Restoration Act of 2003. Section 8205 contains a requirement that the agency use a fire liability provision in all stewardship contracts and agreements that is in substantially the same form as the fire liability provisions contained in the integrated resource timber contract in Forest Service contract numbered 2400–13, part H, section H.4. This interim rule establishes a new clause in the AGAR, the USDA supplement to the Federal Acquisition Regulation (FAR), for use in Integrated Resource Service Contracts (IRSC) subject to the FAR. This new AGAR clause addresses fire liability on stewardship contracts as requred in the 2014 Agricultural Act.

DATES: This interim rule is effective May 22, 2014. Interested parties should submit written comments on this interim rule, to the Department of Agriculture before June 23, 2014 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified in the subject line as ''48 CFR 436 Interim Rule'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Procurement.policy@usda.gov.*
- *Mail:* Office of Procurement and Property Management, Procurement Policy Division, MAIL STOP 9306, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9303.
- *Hand Delivery/Courier:* Procurement Policy Division, Room 262, Reporters' Building, 300 7th Street SW., Washington, DC 20025.

Instructions: All submissions must be identified as ''48 CFR 436 Interim Rule'' for this rulemaking. Please include your name, company name (if applicable), email address and/or phone number where you can be contacted if additional clarification is required regarding your comment(s).

FOR FURTHER INFORMATION CONTACT: Please contact Curt Brown, Office of Procurement and Property Management, by telephone at (202) 720–0840, by email at *Curt.Brown@dm.usda.gov,* or by mail at OPPM, MAIL STOP 9304—U.S. Department of Agriculture—1400 Independence Avenue SW., Washington, DC 20250–9303. Please cite ''48 CFR 436 (Interim Rule)'' in all correspondence.

Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. Background

Beginning in 1998 with the enactment of section 347 of the Department of the Interior and Related Agencies Appropriation Act, 1999, the Forest Service has been authorized to carry out Stewardship End Results Contracting Projects; first on a pilot basis and then, through a succession of subsequent

amendments, this authority was expanded. The enactment of Section 8205 of the Agricultural Act of 2014 sets forth the permanent authority for the conduct of Stewardship End Resulting Contracting Projects by adding a new section 604 to the Healthy Forests Restoration Act of 2003. Section 8205 contains a provision that ''not later than 90 days after the date of enactment of this section, the Chief and the Director shall issue for use in all contracts and agreements under this section fire liability provisions that are in substantially the same form as the fire liability provisions contained in—(A) integrated resource timber contracts, as described in the Forest Service contract numbered 2400–13, part H, section H.4; and (B) timber sale contracts conducted pursuant to section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a).''

This interim rule establishes a new AGAR clause for use in stewardship contracts subject to the FAR. This clause addresses fire liability on stewardship end results contracts as required in the 2014 Agricultural Act. The text of the clause is closely specified in the law. Therefore, it has been determined that this rule should become effective upon publication. However, comments are requested with regard to the interim rule.

2. Regulatory Certifications

Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. There is no additional submission required as a result of this action. The rule will not have a significant impact on the small business community or on a substantial number of small businesses. The Department invites comment on its estimates for the potential impact of this rulemaking on small businesses.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any record keeping or information collection requirements that require approval by the Office of Management and Budget.

Environmental Impact

The USDA has determined that this interim rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This interim rule would not interfere with an action taken or planned by another agency, nor raise new legal or policy issues. Finally, this interim rule would not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this interim rule is not subject to Office of Management and Budget (OMB) review under Executive Order (E.O.) 12866.

No Takings Implications

The USDA has analyzed this interim rule in accordance with the principles and criteria contained in E.O. 12630 and determined that the rule would not pose the risk of a taking of private property.

Civil Justice Reform Act

The USDA has reviewed this interim rule under E.O. 12778, Civil Justice Reform. Under this rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this interim rule; and (3) it would require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The USDA has considered this interim rule under the requirements of E.O. 13132 on federalism and has determined that this rule conforms to the federalism principles in the E.O. The rule would not impose any compliance costs on the States; and would not have any substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Moreover, this interim rule does not have tribal implications as defined by E.O. 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes is not required.

Energy Effects

The USDA has reviewed this interim rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use and has determined that this rule would not constitute a significant energy action as defined in the E.O.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the USDA assessed the effects of this interim rule on State, local, and tribal governments and the private sector. This rule would not compel the expenditure of $100 million, or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 48 CFR Parts 436 and 452

Government procurement.

For the reasons set forth in the preamble, the Department of Agriculture amends 48 CFR Chapter 4, in the following manner:

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for part 436 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 436.5—Contract Clauses

■ 2. Section 436.578 is added to read as follows:

436.578 Contract clause.

Insert the clause at *452.236–78, Fire Suppression and Liability,* as applicable, in solicitations and contracts for Integrated Resource Service Contracts (IRSC) awarded for the Forest Service.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for part 452 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

■ 4. Section 452.236–78 is added to read as follows:

452.236–78 Fire Suppression and Liability.

As prescribed in § 436.578, the following clause may be inserted in contracts awarded fir Intergrated Resource Service Contracts (IRSC) awarded for the Forest Service.

Fire Suppression and Liability (May 2014)

(a) *Contractor's Responsibility for Fire Fighting.* The Contractor, under the provisions of FAR clause 52.236–9, *Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements,* shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees subject to the following fire classifications:

(b) *Fire Suppression Costs.* The Contractor's obligations for cost of fire suppression vary according to three classifications of fires as follows:

(1) *Operations Fire.* An ''operations fire'' is a fire caused by the Contractor's operations other than a negligent Fire. The Contractor agrees to reimburse Forest Service for such cost for each operations fire, subject to a maximum of the dollar amount of $___ *[Contracting Officer insert amount]*___. The cost of the Contractor's actions, supplies, and equipment on any such fire, or otherwise provided at the request of Forest Service, shall be credited toward such maximum. If the Contractor's actual cost exceeds contractor's obligation stated above, Forest Service shall reimburse the contractor for the excess.

(2) *Negligent Fire.* A ''negligent fire'' is a fire caused by the negligence or fault of the Contractor's operations including, but not limited to, one caused by smoking by persons engaged in the Contractor's operations during the course of their employment, or during rest or lunch periods; or if the Contractor's failure to comply with requirements under this contract results in a fire starting, or permits a fire to spread. Damages and the cost of suppressing negligent fires shall be borne by the Contractor.

(3) *Other Fires on Contract Area.* Forest Service shall pay the Contractor, at firefighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Contractor at the request of Forest Service, on any fire on contract area other than an operations fire or a negligent fire.

(c) *Contractor's Responsibility for Notification in Case of Fire.* The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(d) *Contractor's Responsibility for Responding to Emergencies.* When directed by the Contracting Officer, the Contractor shall temporarily redirect employees and equipment from the work site for emergency work (anticipated to be restricted to firefighting). This is considered to be within the general scope of the contract. An equitable adjustment for any such redirection of employees and equipment will be made under the CHANGES clause, FAR 52.243–4.

(e) *Performance by the Contractor.* Where the Contractor's employees, agents, contractors, subcontractors, or their employees or agents perform the Contractor's operations in connection with fire responsibilities, the Contractor's obligations shall be the same as if performance was by Contractor.

(f) *State Law.* The Contractor shall not be relieved by the terms of this contact of any liability to the United States for fire suppression costs recovered in an action based on State law, except for such costs resulting from operations fires. Amounts due to the Contractor for firefighting expenditures on operations fires shall not be withheld pending settlement of any such claim or action based on State law.

(End of Clause)

Dated: May 15, 2014.

Lisa M. Wilusz,

Director, Office of Procurement and Property Management.

[FR Doc. 2014–11770 Filed 5–21–14; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140117052–4402–02]

RIN 0648–XD094

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2014 Summer Flounder Specifications; 2015 Summer Flounder, Scup, and Black Sea Bass Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2014 summer flounder fishery, and the 2015 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries. This action prohibits federally permitted commercial fishing vessels from landing summer flounder in Delaware in 2014 due to continued quota repayment from previous years' overages. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act. The intent of this action is to establish harvest levels and other management measures to ensure that these species are not overfished or subject to overfishing in 2014 and 2015.

DATES: Effective May 22, 2014, through December 31, 2015.

ADDRESSES: Copies of the specifications document, consisting of an Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Scientific and Statistical Committee (SSC), are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov.* The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Fishery specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit (RHL)), and research set-aside (RSA) established for the upcoming fishing year. Details of each subdivision appear later in this rule.

The FMP and its implementing regulations establish the Council's process for establishing specifications. All requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the 10 national standards, also apply to specifications.

The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern

border of North Carolina northward to the U.S./Canada border, scup (*Stenotomus chrysops*), and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2014 and 2015 specifications for these fisheries was provided in the proposed specifications (March 31, 2014; 79 FR 17995). That information is not repeated here.

NMFS will establish the 2014 recreational management measures (i.e., minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** at a later date.

2014 and 2015 Specifications

This action specifies the allowed harvest limits for the commercial and recreational fisheries for the 2014 summer flounder fishery, and the 2015 summer flounder, scup, and black sea bass fisheries. Specifications for all three species for fishing year 2014 were implemented in 2012 (December 31, 2012; 77 FR 76942). This rule modifies the 2014 summer flounder specifications based an updated stock assessment conducted by the NMFS Northeast Fisheries Science Center (NEFSC) in July 2013, and establishes the 2015 summer flounder specifications. This rule also establishes the 2015 scup and black sea bass specifications. This rule makes no changes to the 2014 scup specifications, previously established in 2012, and the 2014 black sea bass specifications, last revised in 2013 (June 21, 2013; 78 FR 37475). This action will establish the following specifications:

TABLE 1—SUMMARY OF THE PROPOSED 2014–2015 SUMMER FLOUNDER SPECIFICATIONS AND 2015 SCUP AND BLACK SEA BASS SPECIFICATIONS

		Summer flounder		Scup	Black sea bass
		2014	2015	2015	2015
ABC	million lb	21.94	22.77	33.77	5.50
	mt	9,950	10,329	15,320	2,494
Commercial ACL	million lb	12.87	13.34	26.34	2.60
	mt	5,837	6,049	11,950	1,180
Recreational ACL	million lb	9.07	9.44	7.43	2.90
	mt	4,113	4,280	3,370	1,314
Commercial ACT	million lb	12.87	13.34	26.34	2.60
	mt	5,837	6,049	11,950	1,180
Recreational ACT	million lb	9.07	9.44	7.43	2.90
	mt	4,113	4,280	3,370	1,314
Commercial Quota	million lb	10.51	10.77	20.60	2.17
	mt	4,767	4,870	9,343	986
RHL	million lb	7.01	7.16	6.60	2.26
	mt	3,179	3,247	2,991	1,026

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction.

Additional detail for each species' specifications is provided, as follows.

Summer Flounder

The summer flounder stock was declared rebuilt in 2011. The new (2013) stock assessment utilized to derive specification recommendations indicates that summer flounder were not overfished and that overfishing did not occur in 2012, the most recent year of available data.

The overfishing limit (OFL) for 2014 was estimated to be 26.76 million lb (12,138 mt). Based on this information, the 2014 ABC for summer flounder is 23.94 million lb (9,950 mt). The OFL for 2015 is projected to be 27.06 million lb (12,275 mt), and the 2015 ABC for summer flounder is 22.77 million lb (10,329 mt). Consistent with the summer flounder regulations, the sum of the recreational and commercial sector ACLs is equal to the ABC. ACL is an expression of total catch (i.e., landings and dead discarded fish). To derive the ACLs, the sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and 40 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABC by the allocation percentages to derive the sector ACLs. Although the derived ACLs are not split exactly 60/40, the landing portions of the ACLs preserve the 60/40 allocation split, consistent with the FMP. This process results in a commercial ACL of 12.89 million lb (5,837 mt) for 2014, and 13.34 million lb (6,049 mt) for 2015. The recreational ACLs are 9.07 million lb (4,113 mt) for 2014 and 9.44 million lb (4,280 mt) for 2015. The ACTs (both commercial and recreational) are equal to their respective ACL for both 2014 and 2015. Removing the estimated discards and 3 percent of the TAL for RSA, the commercial summer flounder quotas are 10.51 million lb (4,767 mt) for 2014 and 10.74 million lb (4,870 mt) for 2015. The RHLs are 7.01 million lb (3,179 mt) for 2014 and 7.16 million lb (3,247 mt) for 2015.

TABLE 2—SUMMER FLOUNDER SPECIFICATIONS

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. quota (minus 3% RSA)	RHL (minus 3% RSA)
2014 (Current)	million lb	22.40	12.05	10.19	12.05	10.19	11.39	7.60
	mt	10,088	5,467	4,621	5,467	4,621	5,166	3,444

TABLE 2—SUMMER FLOUNDER SPECIFICATIONS—Continued

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. quota (minus 3% RSA)	RHL (minus 3% RSA)
2014 (Proposed)	million lb	21.94	12.87	9.07	12.87	9.07	10.51	7.01
	mt	9,950	5,837	4,113	5,837	4,113	4,767	3,179
2015 (Proposed)	million lb	22.77	13.34	9.44	13.34	9.44	10.77	7.16
	mt	10,329	6,049	4,280	6,049	4,280	4,870	3,247

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction.

Table 3 presents the final allocations for 2014, by state, with the commercial portion of the RSA deduction. In December 2013, NMFS published a document (78 FR 78786) indicating what, if any, adjustments would be required to the state commercial summer flounder quotas as a result of commercial sector overages. Those overages have been applied to the new specifications for fishing year 2014 as well, and are presented in Table 3. Any commercial quota adjustments to account for overages will be published prior to the start of the 2015 fishing year. As described in the document, consistent with the quota-setting procedures for the FMP, summer flounder overages are determined based upon landings for the period January-October 2013, plus any previously unaccounted for overages. Table 3 summarizes, for each state, the commercial summer flounder percent shares as outlined in § 648.102 (c)(1)(i), the resultant 2014 commercial quotas (both initial and after deducting the RSA), the quota overages as described above, and the final adjusted 2014 commercial quotas, after deducting the RSA.

TABLE 3—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2014

State	FMP percent share	2014 Initial quota		2014 Initial quota, less RSA		Quota overages (through 10/31/13)		Adjusted 2014 quota, less RSA and overages	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	5,153	2,338	4,998	227	0	0	4,998	2,267
NH	0.00046	50	23	48	2	0	0	48	22
MA	6.82046	739,046	335,226	716,792	32,513	28,199	12,791	688,593	312,340
RI	15.68298	1,699,364	770,818	1,648,193	74,761	0	0	1,648,193	747,608
CT	2.25708	244,571	110,935	237,206	10,760	0	0	237,206	107,595
NY	7.64699	828,606	375,850	803,656	36,453	79,355	35,995	724,301	328,537
NJ	16.72499	1,812,273	822,033	1,757,702	79,728	0	0	1,757,702	797,280
DE	0.01779	1,928	874	1,870	85	52,384	23,760	0	0
MD	2.0391	220,951	100,222	214,298	9,720	0	0	214,298	97,204
VA	21.31676	2,309,824	1,047,719	2,240,271	101,617	0	0	2,240,271	1,016,170
NC	27.44584	2,973,954	1,348,963	2,884,403	130,834	0	0	2,884,403	1,308,343
Total	100	10,835,720	4,915,000	10,509,436	476,700	155,376	70,476	10,354,060	4,696,523

Notes: 2013 quota overage is determined by comparing landings for January through October 2013, plus any landings in 2012 in excess of the 2012 quota (that were not previously addressed in the 2013 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all states with an allocation. A state with a negative number has a 2014 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Table 4 presents the initial allocations of summer flounder for 2015, by state, with and without the commercial portion of the RSA deduction. These state quota allocations for 2015 are preliminary and are subject to change if there are overages of states' quotas carried over from a previous fishing year, as well as any adjustments needed after the 2015 RSA projects are awarded. The final commercial quota allocations will be announced in a **Federal Register** document prior to the start of the 2015 fishing year.

TABLE 4—2015 PRELIMINARY SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	FMP percent share	Initial quota (TAL)		Initial quota (TAL) less RSA [1]	
		lb	kg [2]	lb	kg [2]
ME	0.04756	5,265	2,388	5,106	2,316
NH	0.00046	51	23	49	22
MA	6.82046	754,985	342,461	732,280	332,156
RI	15.68298	1,736,013	787,456	1,683,805	763,761
CT	2.25708	249,845	113,330	242,332	109,920
NY	7.64699	846,477	383,962	821,020	372,408
NJ	16.72499	1,851,358	839,776	1,795,681	814,507
DE	0.01779	1,969	893	1,910	866
MD	2.0391	225,716	102,385	218,928	99,304
VA	21.31676	2,359,640	1,070,333	2,288,676	1,038,126

TABLE 4—2015 PRELIMINARY SUMMER FLOUNDER STATE COMMERCIAL QUOTAS—Continued

State	FMP percent share	Initial quota (TAL)		Initial quota (TAL) less RSA [1]	
		lb	kg [2]	lb	kg [2]
NC	27.44584	3,038,093	1,378,079	2,946,726	1,336,612
Total [3]	100	11,069,410	5,021,085	10,736,512	4,870,000

[1] Preliminary Research Set-Aside amount is 587,100 lb (266 mt).
[2] Kilograms are as converted from pounds and do not sum to the converted total due to rounding.
[3] Rounding of quotas results in totals exceeding 100 percent.

Delaware Summer Flounder Closure

Table 3 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2014. As a result, there is no quota available for 2014 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Greater Atlantic Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2014 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2014 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

Using the appropriate control rule and applying the Council's risk policy, the ABC for scup is 33.77 million lb (15,320 mt) for fishing year 2015. The stock assessment review upon which the specifications are based indicates that scup biomass is currently lower than in recent years. Therefore, the catch limits are lower than those for fishing year 2014, but are still relatively high compared to recent landings.

The scup management measures specify that the ABC is equal to the sum of the commercial and recreational sector ACLs. It was recommended that the ACTs (both commercial and recreational) should be set equal to the respective ACLs for fishing year 2015. Therefore, the 2015 commercial sector ACL/ACT is 26.35 million lb (11,950 mt) and the 2015 recreational sector ACL/ACT is 7.43 million lb (3,370 mt). After 840,990 lb (381 mt) of RSA and discards (commercial: 5.11 million lb (2,321 mt); recreational: 630,000 lb (285 mt)) are removed, the 2015 commercial quota is 20.60 million lb (9,343 mt) and the 2015 recreational harvest limit is 6.60 million lb (2,991 mt).

TABLE 5—2015 SCUP SPECIFICATIONS

	million lb	mt
ABC	33.77	15,320
Commercial ACL	26.35	11,950
Recreational ACL	7.43	3,370
Commercial ACT	26.35	11,950
Recreational ACT	7.43	3,370
Commercial Quota	20.60	9,343
RHL	6.60	2,991

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction.

The scup commercial quota is divided into three commercial fishery quota periods. If there is a commercial overage applicable to the 2015 scup commercial quota, a document will be published prior to the start of the 2015 fishing year. The period quotas, after deducting for RSA, are detailed in Table 6. Unused Winter I quota may be carried over for use in the Winter II period. The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation.

TABLE 6—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2015 BY QUOTA PERIOD

Quota period	Percent share	Initial quota		Initial quota less overages (through 10/31/2013)		Adjusted quota less overages and RSA	
		lb	mt	lb	mt	lb	mt
Winter I	45.11	9,578,008	4,345	N/A	N/A	9,290,668	4,214
Summer	38.95	8,270,083	3,751	N/A	N/A	8,021,980	3,639
Winter II	15.94	3,384,470	1,535	N/A	N/A	3,282,936	1,489
Total	100.0	21,232,561	9,631	N/A	N/A	20,595,585	9,342

Notes: Metric tons are as converted from pounds and may not necessarily total due to rounding.
N/A = Not applicable.

An increase in the Winter II commercial scup possession limit from 2,000 lb (907 kg) to 12,000 lb (5,443 kg) is also being implemented in this action. Because the commercial fishery has under-harvested the scup quota in recent years, this increase in the possession limit is expected to increase efficiency in the scup fishery. The quota period possession limits are shown in Table 7. The increase in the Winter II possession limit does not impact the potential additional increase as a result of a quota transfer from Winter I. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the **Federal Register**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 8.

TABLE 7—COMMERCIAL SCUP POSSESSION LIMITS BY QUOTA PERIOD

Quota period	Percent share	Federal possession limits (per trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

TABLE 8—POTENTIAL INCREASE IN 2014 WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0–499,999	0–226,796	0	0	12,000	5,443
12,000	5,443	500,000–999,999	226,796–453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000–1,499,999	453,592–680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000–1,999,999	680,389–907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000–2,500,000	907,185–1,133,981	6,000	2,722	18,000	8,165

Black Sea Bass

The 2015 black sea bass ABC is 5.50 million lb (2,494 mt), equal to the 2013 and 2014 fishing years' ABC. The fishing year 2015 commercial ACL and ACT are 2.60 million lb (1,180 mt), the recreational ACL and ACT are 2.90 million lb (1,314 mt), the commercial quota is 2.17 million lb (986 mt), and the RHL is 2.26 million lb (1,026 mt). The quotas include reductions for RSA (3 percent) and discards.

TABLE 9—BLACK SEA BASS 2015 SPECIFICATIONS

	million lb	mt
ABC	5.50	2,494
Commercial ACL	2.60	1,180
Recreational ACL	2.90	1,314
Commercial ACT	2.60	1,180
Recreational ACT	2.90	1,314
Commercial Quota	2.17	986
RHL	2.26	1,026

Comments and Responses

On March 31, 2014, NMFS published proposed specifications for public notice and comment. NMFS received one letter containing comments on three issues. The one commenter suggested that the quotas should be reduced by 50 percent, that exempted fishing permits (discussed under the RSA sections) were unnecessary, and that the scup possession limit should not be increased.

NMFS disagrees with each of those statements. The quotas established through this final rule were based on the best available science, as recommended by the Council's SSC. Thus, NMFS did not take the suggestion to reduce the quotas by 50%. The RSA program continues to provide a mechanism to fund research and compensate vessel owners through the sale of fish harvested under the research quota. This program provides valuable scientific information and fosters cooperative research throughout the region. Further, the scup quota has not been fully harvested in several years and the Council has concluded that a Winter II possession limit closer to the Winter I possession limit of 20,000 lb would allow the industry to fish more efficiently. Thus, for this reason, NMFS did not implement the suggestion that the scup possession limit should not be increased.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

These specifications are exempt from the procedures of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA//IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule, is contained in the preambles to the proposed rule and this final rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

No changes to the proposed rule were required to be made as a result of public comments. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. For a summary of the comments received, and the responses thereto, refer to the ''Comments and Responses'' section of this preamble.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The Small Business Administration defines a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to $5.0 and $19.0 million for shellfish and for finfish business, respectively. A small business in the recreational fishery is a firm with receipts of up to $7.0 million. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the 2014–2015 specifications could affect 986 entities that are small and 6 that are large, assuming average revenues for the 2010–2013 period. The majority of the permitted vessels readily fall within the definition of small business. Estimates of costs associated with this rule are discussed further below.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken To Minimize Economic Impact on Small Entities

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. For 2014 and 2015, this final rule implements one such measure: Increasing the scup Winter II possession limit. Therefore, the economic impact analysis of the action is evaluated on the different levels of quota specified in the alternatives and the increase in the possession limit. While the overall scup catch limits have been decreasing slightly, the scup quota has been significantly under-harvested in recent years. As a result, the increase in the scup possession limit is intended to offset the quota decrease by allowing the fleet to fish more efficiently. The ability of NMFS to minimize economic impacts for this action is constrained to approving quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2014–2015 ABC level for all three stocks. NMFS considers these recommendations to be consistent with National Standard 2. Establishing catch levels higher than the SSC ABC recommendations is not permitted under the Magnuson-Stevens Act.

The economic analysis for the 2014–2015 specifications assessed the impacts for quota alternatives that achieve the aforementioned objectives. The Council analyzed three sets of combined catch limit alternatives for the 2014–2015 summer flounder, scup, and black sea bass fisheries, even though the 2014 scup and black sea bass catch limits are not being considered for modification. Of these, one alternative, labeled Alternative 3 for each species, contained the most restrictive options (i.e., lowest total landing levels) for each fishery: Commercial quotas of 9.18 million lb (4,164 mt) for summer flounder, 10.68 million lb (4,844 mt) for scup, and 1.09 million lb (494 mt) for black sea bass; and recreational harvest limits of 6.12 million lb (2,776 mt) for summer flounder, 3.01 million lb (1,365 mt) for scup, and 1.14 million lb (517 mt) for black sea bass. The catch limits associated with Alternative 3 pre-date the ABC framework, thus the information for this alternative is presented in terms of landing levels. Please see the EA for a detailed discussion on this alternative. While the Alternative 3 measures would achieve the objectives of the proposed action for each of three species, they have the highest potential adverse economic impacts on small entities in the form of potential foregone fishing opportunities. Alternative 3 was not preferred by the Council because the other alternatives considered are expected have lower adverse impacts on small entities while achieving the stated objectives of sustaining the summer flounder, scup, and black sea bass stocks, consistent with the FMP and Magnuson-Stevens Act.

Another alternative, Alternative 2 (status quo), would maintain the current 2014 ABC for summer flounder of 22.24 million lb (10,088 mt). Alternative 2 (status quo) would implement the following ABCs in 2015: Summer flounder, 22.24 million lb (10,088 mt); scup, 35.99 million lb (16,325 mt); and black sea bass, 5.5 million lb (2,494 mt). This alternative is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. The status quo alternative would result in fishing limits for the 2014 summer flounder fishery and for the 2015 summer flounder and scup fisheries which are higher than the recommended levels. This could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species, contrary to laws and regulations.

Likewise, a ''true'' no action alternative, wherein no quotas are adjusted for 2014 or established for 2015, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Implementation of the no action alternative in 2014 or 2015 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to implement specifications for these fisheries on an annual basis, and for up to 3 years. The no action alternative would result in no fishing limits for 2015 and would maintain a fishing limit for the 2014 summer flounder fishery which is higher than the recommended level. This could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species, contrary to laws and regulations.

Through this final rule, NMFS implements Alternative 1 (the Council's preferred alternative). Under this alternative, NMFS would implement the ABCs in 2014 for summer flounder (21.94 million lb (9,950 mt)). This final

rule also implements the following ABCs for 2015: Summer flounder, 22.77 million lb (10,329 mt); scup, 33.77 million lb (15,320 mt); and black sea bass, 5.5 million lb (2,494 mt). This alternative consists of the quota levels that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. The respective specifications contained in this final rule for all three species were selected because they satisfy NMFS' obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The F rates associated with the catch limits for all three species all have very low likelihoods of causing overfishing to occur in 2014 or 2015.

The revenue decreases associated with allocating a portion of available catch to the RSA program are expected to be minimal (approximately between $300 and $1,000 per vessel), and are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program can be sold, and the profits used to offset the costs of research. As such, total gross revenues to the industry are not expected to decrease substantially, if at all, as a result of this final rule authorizing RSA for 2014 and 2015.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.nero.noaa.gov*.

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

Dated: May 15, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–11665 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BD57

[Docket No. 130802674–4422–02]

Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restrictions

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

ACTION: Temporary rule.

SUMMARY: Pursuant to its emergency authority, NMFS renews an emergency action that implemented, among other measures, mandatory monitoring (VMS) and observer requirements (pre-trip notification and a 100% deep water closure zone unless a NMFS-certified observer was on board) in the California thresher shark/swordfish drift gillnet (mesh size ≥14 inches) (DGN) fishery during the August 15, 2013 to January 31, 2014 fishing season, and would have immediately shut down the fishery for the calendar year in the event of a sperm whale interaction in the DGN fishery. This renewing action is necessary to ensure that the conservation measures continue to provide protection for sperm whales until permanent measures are in place. Specifically, per recommendations of the Pacific Offshore Cetacean Take Reduction Team, NMFS is currently developing a rule under authority of the Marine Mammal Protection Act (MMPA) in order to adequately monitor the DGN fishery and reduce the risk of sperm whale interactions.

DATES: This rule is effective from May 22, 2014, through August 5, 2014. Comments must be received on or before June 23, 2014.

ADDRESSES: Requests for copies of documents supporting the temporary rule may be obtained from the West Coast Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

You may submit comments on the temporary rule, identified by NOAA–NMFS–2013–0131, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0131,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* 562–980–4047; Attention: Craig Heberer.
- *Mail:* Craig Heberer, Southwest Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

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.

Requests for copies of documents supporting this rule may be obtained from the West Coast Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802

FOR FURTHER INFORMATION CONTACT: Craig Heberer, telephone: 706–431–9440 (#303), fax: 562–980–4047, email: *craig.heberer@noaa.gov.*

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The HMS FMP was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by regulations at 50 CFR part 660.

Background

On September 4, 2013, NMFS published in the **Federal Register** a temporary rule (78 FR 54548) for emergency action to modify the California swordfish/thresher shark DGN fishery for the 2013–2014 fishing season under authority of section 305(c)(1) of the MSA. The purpose of

the temporary rule stems from the observed entanglement of two sperm whales by a DGN fishing vessel in 2010 and the need to reduce the risk associated with sperm whale bycatch in the DGN fishery for the 2013–2014 fishing season, in accordance with the MSA, Endangered Species Act (ESA) and the MMPA. Implementation of the temporary regulations allowed NMFS to issue an MMPA 101(a)(5)(E) permit providing coverage for sperm whale takes in the DGN fishery. The temporary regulations implemented, among other measures, mandatory monitoring (VMS) and observer requirements (pre-trip notification and a 100% deep water closure zone unless a NMFS-certified observer was on board), and would have immediately shut down the fishery for the calendar year in the event of a sperm whale interaction. A full discussion of the background and justification for the temporary rule emergency measures was presented in the preamble prepared for that action and is not repeated here.

The temporary rule expired on January 31, 2014, which corresponded with the traditional end of the DGN fishing season. From February 1 through April 30, the DGN fishery is prohibited from operating inside the West Coast Exclusive Economic Zone (EEZ). See 50 CFR 660.713(d). No fishing effort has occurred during this period due to the distance involved in transiting to fishing areas beyond the EEZ, coupled with a lack of swordfish availability. The DGN fishery is allowed access inside the EEZ off the coasts of California and Oregon from May 1 through August 14, but is prohibited from operating within 75 miles of the coast. Very little DGN fishing effort typically takes place during this time due mainly to the lack of swordfish availability. The core of the DGN fishery, and virtually all of the contemporary fishing effort, takes place from August 15 through January 31. NMFS took public comment on the original temporary rule commencing September 4, 2013, and ending on October 4, 2013.

This action is necessary to retain in force the earlier temporary regulations, while NMFS develops a permanent rule to adequately monitor the DGN fishery and minimize sperm whale interactions by the fishery. Without the temporary regulations remaining in place, the DGN fishery may not be properly monitored, and therefore might risk additional negative sperm whale interactions, contrary to the MMPA and ESA.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds that providing the public with notice and an opportunity comment on this action would be contrary to the public interest, and therefore waives this requirement of the Administrative Procedure Act (APA).

An owner/operator of a federally-permitted DGN fishing vessel has informed NMFS that he may fish for thresher shark/swordfish on or after May 1, 2014, when the DGN fishery can legally operate within the EEZ, but outside 75 miles from the coast of California. Prohibiting unobserved DGN vessels from fishing in the EEZ off California in waters seaward of the 1,100 fm (2,012 m) depth contour, and setting a limit of one serious injury/mortality to sperm whales interacting with DGN gear, will protect sperm whales from potential interactions with the DGN fishery, such as occurred in 2010, where two sperm whales became entangled in DGN fishing gear. NMFS' long term research vessel sightings of sperm whales in the California Current indicate that 90 percent of sightings occurred in waters deeper than 1,100 fm (2,012 m). Further, NMFS' analyses of DGN observer data indicate that an average of approximately 13 percent of total annual DGN fishing occurred in the deeper water zone in years 2009 through 2011. NMFS' Southwest Fisheries Science Center scientists have suggested that reducing spatial overlap of fishing effort and sperm whale habitat may be an effective means to reduce the risk of sperm whale bycatch. There is no action that NMFS can take through the normal rulemaking process that would enable NMFS to implement the requirement for observer monitoring of DGN vessels in the deeper water area and the cap of one sperm whale serious injury/mortality for the DGN fishery to reduce the bycatch risk of this species before the DGN fishery begins actively fishing in waters inhabited by sperm whales. This emergency action enables NMFS to keep the fishery operating while a permanent rule is under development, thus avoiding unnecessary adverse biological and economic impacts.

Without this rule, sperm whales will be at risk of unauthorized takings, possibly leading to injury or death, which is contrary to the public interest in protecting these marine mammals. Due to the urgent need to protect sperm whales before NMFS issues any final rule, NMFS is waiving the public notice and opportunity for comment under the APA. However although this action is being implemented without notice and request for advance public comment, NMFS is seeking public comment on this rule for purposes of identifying possible measures for long-term management.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the full 30-day delay in effectiveness for this rule. It would be contrary to the public interest if this rule does not become effective immediately, because the DGN fishery can fish within 75 nautical miles of shore starting May 1 through August 14. Without this emergency rule, NMFS would not provide 100 percent observer coverage in the deeper water area with higher concentrations of sperm whales, or be able to close the fishery in the event that there is one serious injury or mortality to a sperm whale in the DGN fishery. These measures are needed to provide adequate protections for sperm whales during the 2014–2015 DGN fishing season while a permanent rule is under development. For these reasons, there is good cause to waive the requirement for delayed effectiveness. The need to implement these measures in a timely manner constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to make the rule effective immediately upon publication in the **Federal Register**.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866. A Regulatory Impact Review was completed and is available upon request from the NMFS, Southwest Region.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

■ 2. In § 660.713, paragraph (f) is added to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(f) *Sperm whale take mitigation measures.* (1) Drift gillnet (mesh size ≥14 inches) fishing without a NMFS-trained observer is prohibited in the portion of the California EEZ bounded by lines connecting, in order, the following points:

Point	North lat.	West long.	
A	42°0′0″	125°10′12″	Oregon Border at 1100 fm.
B	40°22′12″	124°45′0″	
C	40°22′12″	125°45′0″	
D	38°21′0″	123°52′12″	
E	37°29′24″	123°18′0″	
F	37°29′24″	123°30′36″	
G	37°0′0″	123°30′0″	
H	36°36′0″	122°27′0″	
I	36°16′12″	122°31′12″	
J	35°52′30″	122°16′48″	
K	35°0′0″	121°45′0″	
L	34°54′0″	122°0′0″	
M	34°0′0″	122°0′0″	
N	34°0′0″	121°9′0″	
O	32°21′0″	120°0′0″	
P	31°6′0″	118°45′0″	
Q	30°32′31″	121°52′1″	SW. corner of CA EEZ.
R	EEZ Western Edge		200nm buffer from the U.S. Pacific Coast Shoreline.
S	42°0′0″	129°0′0″	NW. border of OR EEZ.
A	42°0′0″	125°10′12′	Finish back at Point A.

(2) As soon as practicable following determination by the Regional Administrator that one serious injury to, or mortality of, a sperm whale has resulted from drift gillnet fishing during the period of this emergency rule, the Regional Administrator will contact the fleet via VMS communication and provide the effective date and time that all fishing by vessels registered for use under a drift gillnet permit are prohibited from swordfish fishing until August 5, 2014. Coincidental with the VMS communication, the Regional Administrator will also file a closure notice with the Office of the Federal Register for publication; notify all permit holders by postal mail, and a post a notice on the NMFS regional Web site.

(3) Drift gillnet vessel owners/operators are required to notify the NMFS-designated observer provider at least 48 hours prior to departing on all fishing trips. Vessel owners/operators must provide to the observer provider their name, contact information, vessel name, port of departure, and estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(4) Drift gillnet vessel owners/operators must provide NOAA OLE with a declaration report before the vessel leaves port on a trip in which the vessel will be used to fish swordfish with drift gillnet gear in U.S. ocean waters between 0 and 200 nm offshore of California.

(5) Drift gillnet vessel owners are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to swordfish fishing during the period of this emergency rule. Vessel owners/operators shall perform the same requirements consistent with 50 CFR 660.14.

[FR Doc. 2014–11658 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 99
Thursday, May 22, 2014

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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2012–BT–STD–0027]

RIN 1904–AC81

Energy Conservation Standards for Residential Dehumidifiers: Public Meeting and Availability of the Preliminary Technical Support Document

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

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the preliminary analysis it has conducted for purposes of establishing energy conservation standards for residential dehumidifiers. The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards for this product; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product; and any other issues relevant to the development of energy conservation standards for this product. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/47.*

DATES: DOE will hold a public meeting on Friday, June 13, 2014 from 1 p.m. to 4 p.m., in Washington, DC. Additionally, DOE plans to allow for participation in the public meeting via webinar. DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than July 21, 2014. See section IV, ''Public Participation,'' of this notice of public meeting (NOPM) for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121.

Interested persons may submit comments, identified by docket number EERE–2012–BT–STD–0027 and/or Regulation Identification Number (RIN) 1904–AC81, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: ResDehumidifier 2012STD0027@ee.doe.gov.* Include the docket number EERE–2012–BT–STD–0027 and/or RIN 1904–AC81 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

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

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/47.* This Web page contains a link to the docket for this notice on the regulation.gov site. The regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document. For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Email: *dehumidifiers@ee.doe.gov.* Or visit DOE's dehumidifier Web page at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/47* for information about any existing standards and test procedures, and the history and impacts of previous DOE regulatory actions, for this category of products.

In the Office of the General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov.*

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I. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2]

EPCA established energy conservation standards for dehumidifiers [3] manufactured as of October 1, 2007. 42 U.S.C. 6295(g). EPCA also required that DOE issue a final rule by October 1, 2009, to determine whether these standards should be amended. (*Id.*) Compliance with any amended standards would be required for dehumidifiers manufactured as of October 1, 2012. (*Id.*) In the event that DOE did not publish a final rule, EPCA specified a new set of amended standards with a compliance date of October 1, 2012. (*Id.*) Congress subsequently amended EPCA to prescribe new energy conservation standards for dehumidifiers manufactured on or after October 1, 2012. DOE codified these standards at 10 CFR 430.32(v)(2). 74 FR 12058 (Mar. 23, 2009).

EPCA also requires that, not later than 6 years after the issuance of a final rule establishing or amending a standard, DOE publish a notice of proposed rulemaking (NOPR) proposing new standards or a notice of determination that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1))

DOE is required to consider standards that: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified; and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) To determine whether a proposed standard is economically justified, DOE will, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens, considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the standard;
3. The total projected amount of energy savings likely to result directly from the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product. Today's notice announces the availability of the preliminary TSD, which details the preliminary analyses, discusses the comments DOE received from interested parties on the Framework Document, and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

II. History of the Current Energy Conservation Standards Rulemaking for Residential Dehumidifiers

In initiating this rulemaking, DOE prepared a Framework Document, ''Energy Conservation Standards Rulemaking Framework Document for Residential Dehumidifiers,'' which describes the procedural and analytical approaches DOE anticipates using to evaluate energy conservation standards for residential dehumidifiers. This document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/47.*

DOE held a public meeting on September 24, 2012, at which it described the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). Representatives for manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting.

Comments received since publication of the Framework Document have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the products covered in this rulemaking, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/47.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded upon for a notice of proposed rulemaking (NOPR) if DOE proposes that amended energy conservation standards are technologically feasible, economically justified, and would save a significant amount of energy. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and NIA. In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in any notice of proposed rulemaking (NOPR).

A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency levels of the product that DOE is evaluating as potential energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. The engineering analysis identifies representative baseline

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[3] Dehumidifiers are defined as self-contained, electrically operated, and mechanically encased assemblies consisting of: (1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere; (2) a refrigerating system, including an electric motor; (3) an air-circulating fan; and (4) a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34)).

products, which is the starting point for analyzing technologies that provide energy efficiency improvements. ''Baseline products'' refers to a model or models having features and technologies typically found in minimally-efficient products currently available on the market and, for products already subject to energy conservation standards, a model that just meets the current standard. After identifying the baseline models, DOE estimated manufacturer selling prices by using a consistent methodology and pricing scheme that includes material costs and manufacturer markups. Chapter 5 of the preliminary TSD discusses the engineering analysis.

B. Markups To Determine Prices

DOE derives customer prices based on manufacturer markups, retailer markups, distributor markups, contractor markups (where appropriate), and sales taxes. In deriving these markups, DOE determines the major distribution channels for product sales, the markup associated with each party in each distribution channel, and the existence and magnitude of differences between markups for baseline products (baseline markups) and higher-efficiency products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the markups at each step in each distribution channel. Chapter 6 of the preliminary TSD addresses the markups analysis.

C. Energy Use Analysis

The energy use analysis provides estimates of the annual energy consumption of residential dehumidifiers. The energy use analysis seeks to estimate the range of energy consumption of the products that meet each of the efficiency levels considered in a given rulemaking as they are used in the field. DOE uses these values in the LCC and PBP analyses and in the NIA. Chapter 7 of the preliminary TSD addresses the energy use analysis.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing and operating a considered product over the course of its lifetime. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCC of the product likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer selling price, distribution chain markups, sales taxes, and installation cost); (2) the operating cost of the product (energy cost, water and wastewater cost in some cases, and maintenance and repair cost); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of higher-efficiency products through savings in the operating cost of the product. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs. Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each candidate standard level for residential dehumidifiers as the difference between a base-case forecast (without amended standards) and the standards-case forecast (with standards). Cumulative energy savings are the sum of the annual NES determined for the lifetime of the products shipped from 2019 to 2048. The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates. Chapter 10 of the preliminary TSD addresses the NIA.

IV. Public Participation

DOE invites input from the public on all the topics described above. The preliminary analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule establishing any amended energy conservation standards will contain the final analytical results and will be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's Web site and to be prepared to discuss its contents. The preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/47.* However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD; DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this product or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by July 21, 2014 comments, data, and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of energy conservation standards for residential dehumidifiers.

The public meeting will be conducted in an informal conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Afterwards, the Department will publish either a determination that the standards for residential dehumidifiers need not be amended or a NOPR proposing to amend those standards. The NOPR will include proposed energy conservation standards for the products covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

A. Attendance at Public Meeting

The time and date of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please

inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Please report to the visitor's desk to have devices checked before proceeding through security.

The purpose of the meeting is to receive comments and to help DOE understand potential issues associated with this rulemaking. DOE must receive requests to speak at the meeting before May 30, 2014 at 4:00 p.m. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before May 30, 2014 at 4:00 p.m.

You can attend the public meeting via webinar, and registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/47.* Participants are responsible for ensuring their computer systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's notice or who is a representative of a group or class of persons that has an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than the date provided at the beginning of this notice. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–2012–BT–STD–0027 and/or RIN 1904–AC81 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this NOPM.

Issued in Washington, DC, on May 14, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–11763 Filed 5–21–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0326; Directorate Identifier 2013–CE–051–AD]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rockwell Collins TDR–94 and TDR–94D Mode select (S) transponders that are installed on airplanes. This proposed AD was prompted by instances where the TDR–94 and TDR–94D Mode S transponders did not properly respond to Mode S Only All-Call interrogations when the airplane transitioned from a ground to airborne state. This proposed AD would require inspecting the setting of the airplane type code category strapping and require either modifying the airplane type code category setting or installing the software upgrade to convert the affected transponders to the new part number. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 7, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Rockwell Collins, Inc., Collins Aviation Services, 350 Collins Road NE., M/S 153–250, Cedar Rapids, IA 52498–0001; telephone: 888–265–5467 (U.S.) or 319–265–5467; fax: 319–295–4941 (outside U.S.); email: *techmanuals@rockwellcollins.com;* Internet: *http://www.rockwellcollins.com/Services_and_Support/Publications.aspx.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2014–0326; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ben Tyson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: 316–946–4174; fax: 316–946–4107; email: *ben.tyson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0326; Directorate Identifier 2013–CE–051–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We were notified that Bombardier CL604 airplanes in Eurocontrol airspace were not transmitting the appropriate Mode S replies. In at least one case, the flight crews switched to the other installed transponder, resulting in normal operation. Rockwell Collins, Inc. confirmed that other types of airplane could exhibit this same unsafe condition. As a result of the issue in Eurocontrol airspace, EASA issued Airworthiness Directive 2010–0003R1, effective date January 11, 2010.

The TDR–94 and TDR–94D Mode S transponder internal software does not correctly implement the air/ground override function when the airplane type code strapping is set to any value other than (1) or (0) and the airplane rotation speed is greater than 100 knots. The error in the air/ground override function inhibits the Mode S Only All-Call replies. This condition, if not corrected, could result in increased pilot and air traffic controller workload as well as reduced separation of airplanes.

Relevant Service Information

We reviewed Rockwell Collins, Inc. Service Information Letter 07–2, Revision No. 1, 523–0810069–101000, dated September 2, 2008; Service Bulletin 505, 523–0816034–001000, dated September 2, 2008; Service Bulletin 507, 523–0816423–301000, dated Revision 3, dated December 5, 2011; Service Bulletin 508, 523–0817821–001000, dated September 16, 2009; and Service Bulletin 509, 523–0817822–001000, dated September 16, 2009. The service information describes procedures for verifying the airplane type category strapping is correctly set and installing the software upgrade to convert the affected transponders to the new part number.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require inspecting the setting of the airplane type code category strapping and require either modifying the airplane type code category setting or installing the software upgrade to convert the affected transponders to the new part number.

Costs of Compliance

We estimate that this proposed AD affects 8,000 products installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the setting of the airplane type category strapping.	1 work-hour × $85 per hour = $85.	Not applicable	$85	$680,000

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modify the airplane type code category strapping	1 work-hour × $85 per hour = $85.	Not applicable	$85.
Convert the part number of the equipment	2 work-hours × $85 per hour = $170.	See conversion parts cost table.	Varies depending on applicable part number or service bulletin.

CONVERSION PARTS COST TABLE—TDR–94 AND TDR–94D

Starting part number	Service Bulletin 505	Service Bulletin 507	Service Bulletin 508	Service Bulletin 509
–007	N/A	$5,886	$12,636	$18,465
–008	$2,323	5,886	3,414	9,429
–108	2,323	N/A	N/A	6,816
–207	N/A	5,886	9,234	15,057
–308	2,323	5,886	3,414	9,429
–309	N/A	5,886	3,414	9,429
–310	N/A	N/A	N/A	6,183
–408	2,323	N/A	N/A	3,414
–409	N/A	N/A	N/A	3,414

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rockwell Collins, Inc.: Docket No. FAA–2014–0326; Directorate Identifier 2013–CE–051–AD.

(a) Comments Due Date

We must receive comments by July 7, 2014.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to the following Rockwell Collins, Inc. part number (P/N) Mode S transponders that are known to be installed on but not limited to the airplanes listed in paragraphs (c)(2)(i) through (c)(2)(xiv) of this AD, except for those airplanes listed in paragraphs (c)(3)(i) through (c)(3)(vi) of this AD, that have been modified in-production or in-service:

(i) TDR–94: CPN 622–9352–008, 622–9352–108, 622–9352–308, 622–9352–408; and

(ii) TDR–94D: CPN 622–9210–008, 622–9210–108, 622–9210–308, 622–9210–408.

(2) The products listed in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD may be installed on but not limited to the following airplanes featuring weight-on wheels input to the transponder, certificated in any category:

(i) ATR42 and ATR72;

(ii) Bombardier (Canadair) CL–600–2B16 (604 Variant);

(iii) Bombardier CL–600–2B19 (RJ100 and RJ200);

(iv) Cessna 525, serial numbers (S/N) 525–0600 through 525–0684 (CJ1);

(v) Cessna 525A, S/N 525A–0300 through 525A–0438 (CJ2);

(vi) Cessna 525B, S/N 525B–0001 through 525B–0293 (CJ3);

(vii) Cessna 560, S/N 560–0751 through 560–0802 (Citation Encore);

(viii) Cessna 560XL, S/N 560–6001 and subsequent;

(ix) Dassault Aviation Mystere-Falcon 50;

(x) Dassault Aviation Mystere-Falcon 900;

(xi) Dassault Aviation Falcon 2000;

(xii) Dassault Aviation Falcon 2000EX;

(xiii) Piaggio Aero Industries P.180 (Avanti and Avanti II); and

(xiv) SAAB 2000.

(3) This AD action does not apply to the excepted airplane models, identified in paragraphs (c)(3)(i) through (c)(3)(vi) of this AD, that have been modified in-production or in-service. They do not have the unsafe condition described in this AD.

(i) Dassault airplanes that have been modified in-service or in-production following the applicable Dassault Aviation service information as listed in table 1 of paragraph (c)(3)(i) of this AD.

TABLE 1 OF PARAGRAPH (C)(3)(I) OF THIS AD: EXCEPTED DASSAULT AIRPLANES

Airplane models	Service Bulletin	Modification(s)
Mystere-Falcon 50	F50–457	M2966 and M2968.
Mystere-Falcon 900	F900–354	M3896.
Falcon 900EX	F900EX–239	M3896.
Falcon 2000	F2000–312	M2624 and M2632.
Falcon 2000EX	F2000EX–043	M2624.

(ii) Model ATR 42 airplanes or ATR 72 airplanes that had P/N 622–9210–108 transponders installed in production using ATR modification 05614 or installed in-service using ATR Service Bulletin ATR42–34–0167 or ATR Service Bulletin ATR72–34–1094, as applicable.

(iii) SAAB Model 2000 airplanes that had P/N 622–9210–008 transponders installed in production using SAAB modifications 6231, 6243, and 6249 or installed in-service using SAAB Service Bulletins 2000–34–066, 2000–34–072, and 2000–34–076.

(iv) Bombardier Aerospace (Canadair) airplanes Model CL–600–2B16 (604 Variant) that had P/N 622–9210–008 transponders installed and incorporated the corrective actions recommended in the Bombardier Advisory Wire AW 604–34–0078 using the instructions in Bombardier Aerospace Service Bulletin 604–34–054 (drawing 604–70482 Engineering Order, Revison D–1) or using a service request for product support. Bombardier Aerospace (Canadair) airplanes Model CL–600–2B19 (RJ100 and RJ200) that had P/N 622–9210–008 transponders installed in production using Bombardier Aerospace Modification TC601R16789 or in service using Bombardier Aerospace Service Bulletin 601R–34–142 (Modification TC601R16790).

(v) Cessna Aircraft Company Models 525, 525A, and 525B airplanes that had P/N 622–9352–008 transponders installed in production using Cessna Engineering Change Records (ECRs) 55298, 58654, and 59567; and Model 525B airplanes that had P/N 622–9352–008 transponders installed in service using Cessna Aircraft Company Service Bulletin SB525B–34–03 or SB525B–34–08. Cessna Aircraft Company Models 525, 525A, 525B, 560, and 560XL airplanes that had P/N 622–9210–008 transponders installed in production using Cessna ECRs 55298, 58654, 59567, 56135, and 58032; and Model 525B airplanes that had P/N 622–9210–008 transponders installed in service using Cessna Service Bulletin SB525B–34–03 or SB525B–34–08.

(vi) Piaggio Aero Industries Model P.180 (Avanti) airplanes that had P/N 622–9210–008 transponders installed in production using Piaggio modification 80–0773 or in service using Piaggio Service Bulletin SB–80–0227. Piaggio Aero Industries Model P.180 (Avanti II) airplanes that had P/N 622–9210–008 transponders installed in production using Piaggio modification 80–0588 and 80–0598.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by instances where the TDR–94 and TDR–94D Mode S transponders did not properly respond to Mode S Only All-Call interrogations when the airplane transitioned from a ground to airborne state. We are issuing this AD to detect and correct Mode S transponders that do not respond correctly to Mode S Only All-Call interrogations, which could result in increased pilot and air traffic controller workload as well as reduced separation of airplanes.

(f) Compliance

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

(g) Inspection

Within the next 2 years after the effective date of this AD, inspect the airplane type code category strapping setting for a value of zero (0) or one (1) following Rockwell Collins, Inc. Service Information Letter 07–2, 523–0810069–101000, Revision 1, dated September 2, 2008. If the airplane type code category strapping is set to a value of zero (0) or one (1), no further action is required by this AD.

(h) Modification

If the airplane type code category strapping is not set to a value of zero (0) or one (1), within two years after the effective date of this AD, do the actions required in either paragraph (h)(1) or (h)(2) of this AD.

(1) Modify the airplane type code category strapping setting to a value of zero (0) or one (1) following Rockwell Collins, Inc. Service Information Letter 07–2, 523–0810069–101000, Revision 1, dated September 2, 2008.

(2) Install a software upgrade to convert the part numbers of the transponders to the new part numbers using the following service information, as applicable:

Note 1 to paragraph (h)(2) of this AD: More than one of the bulletins may apply to your particular P/N transponder, but each bulletin brings different capabilities and associated costs. We recommend reviewing each bulletin to determine the optimal choice for your installation.

(i) Service Bulletin 505, 523–0816034–001000, dated September 2, 2008;

(ii) Service Bulletin 507, 523–0816423–301000, Revision 3, dated December 5, 2011;

(iii) Service Bulletin 508, 523–0817821–001000, dated September 16, 2009; or

(iv) Service Bulletin 509, 523–0817822–001000, dated September 16, 2009.

(i) Alternative Methods of Compliance (AMOCs)

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

(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.

(j) Related Information

(1) For more information about this AD, contact Ben Tyson, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road,

Room 100, Wichita, Kansas 67209; phone: 316–946–4174; fax: 316–946–4107; email: *ben.tyson@faa.gov.*

(2) For service information identified in this AD, contact Rockwell Collins, Inc., Collins Aviation Services, 350 Collins Road NE., M/S 153–250, Cedar Rapids, IA 52498–0001; telephone: 888–265–5467 (U.S.) or 319–265–5467; fax: 319–295–4941 (outside U.S.); email: *techmanuals@rockwellcollins.com;* Internet: *http://www.rockwellcollins.com/Services_and_Support/Publications.aspx.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 16, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–11846 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2014–N–0440]

Microbiology Devices; Reclassification of Influenza Virus Antigen Detection Test Systems Intended for Use Directly With Clinical Specimens

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify antigen based rapid influenza virus antigen detection test systems intended to detect influenza virus directly from clinical specimens that are currently regulated as influenza virus serological reagents from class I into class II with special controls and into a new device classification regulation.

DATES: Submit either electronic or written comments on the proposed order by August 20, 2014. See section XI for the proposed effective date of any final order that may publish based on this proposed order.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0440, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–N–0440 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section.

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

FOR FURTHER INFORMATION CONTACT: Stefanie Akselrod, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5517, Silver Spring, MD 20993–0002, 301–796–6188.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

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

Under the FD&C Act, FDA clears or approves the three classes of medical devices for commercial distribution in the United States through three regulatory processes: Premarket approval (PMA), product development protocol, and premarket notification (a premarket notification is generally referred to as a ''510(k)'' after the section of the FD&C Act where the requirement is found). The purpose of a premarket notification is to demonstrate that the new device is substantially equivalent to a legally marketed predicate device. Under section 513(i) of the FD&C Act, a device is substantially equivalent if it has the same intended use and technological characteristics as a predicate device, or has different technological characteristics but data demonstrate that the new device is as safe and effective as the predicate device and does not raise different issues of safety or effectiveness.

FDA determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807). Section 510(k) of the FD&C Act and the implementing regulations in part 807, subpart E, require a person who intends to market a medical device to submit a premarket notification submission to FDA before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use.

In accordance with section 513(f)(1) of the FD&C Act, devices that were not in commercial distribution before May 28, 1976, the date of enactment of the 1976 amendments, generally referred to as postamendment devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless FDA classifies the device into class I or class II by issuing an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval or the device is reclassified into class I or class II. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act and part 807 of FDA's regulations.

Section 513(f)(2) of the FD&C Act establishes procedures for ''de novo'' risk-based review and classification of postamendment devices automatically classified into class III by section

513(f)(1). Under these procedures, any person whose device is automatically classified into class III by section 513(f)(1) of the FD&C Act may seek reclassification into class I or II, either after receipt of an order finding the device to be not substantially equivalent, in accordance with section 513(i), to a predicate device that does not require premarket approval, or at any time after determining there is no legally marketed device upon which to base a determination of substantial equivalence. In addition, under section 513(f)(3) of the FD&C Act, FDA may initiate, or the manufacturer or importer of a device may petition for, the reclassification of a device classified into class III under section 513(f)(1).

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA (126 Stat. 1056) amended section 513(e) of the FD&C Act, changing the process for reclassifying a device from rulemaking to an administrative order. Section 608(b) of FDASIA (126 Stat. 1056) amended section 515(b) of the FD&C Act (21 U.S.C. 360e(b)), changing the process for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

Reclassification

FDA is publishing this document to propose the reclassification of antigen based rapid influenza detection test (RIDT) systems intended to detect influenza virus antigen directly from clinical specimens that are currently regulated as influenza virus serological reagents under § 866.3330 (21 CFR 866.3330) from class I into class II with special controls and into a new device classification regulation.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments device types and postamendments devices that have been classified into class I or II under section 513(f)(2) or (f)(3) of the FD&C Act. This section provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify an eligible device type. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science'' (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) of the FD&C Act must be ''valid scientific evidence,'' as defined in section 513(a)(3) and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Association* v. *FDA,* 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1986).)

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the ''valid scientific evidence'' upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This can include information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order for reclassifying a device. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to rapid influenza diagnostic tests, and therefore, has met this requirement under section 513(e).

FDAMA added section 510(m) to the FD&C Act. Section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device.

II. Regulatory Background of the Device

In the **Federal Register** of April 22, 1980 (45 FR 27204), FDA published proposed regulations containing general provisions applicable to the classification of immunology and microbiology devices and individual proposed regulations to classify 161 immunology and microbiology devices into one or more of three regulatory classes: Class I (general controls), class II (performance standards), and class III (premarket approval). These regulations included the April 22, 1980, proposed rule (45 FR 27204 at 27261) to classify influenza virus serological reagents into class I under § 866.3330 (21 CFR 866.3330) *Influenza virus serological reagents.* In a final rule, on November 9, 1982 (47 FR 50814 at 50823), under the authority of the Medical Device Amendments of 1976, FDA classified influenza virus serological reagents into class I under § 866.3330. At that time, influenza tests conceived to fall under this regulation were laboratory methods to detect antibodies that develop in response to influenza infection while the detection of the influenza virus itself was done primarily by viral culture. As enzyme immunoassay technology developed, tests capable of detecting viral proteins (antigens) directly in human respiratory samples began to come to FDA for clearance. Since then, numerous influenza detection tests based on antigen-antibody binding properties have been developed and cleared for the market. The first RIDT for use directly from clinical specimens was cleared in 1990 and followed by others in the late 1990s. To date, methods utilizing antigens and antibodies as components of an influenza detection device have been regulated under § 866.3330 as class I devices exempt from the premarket notification (510(k)) requirement subject to the limitations in § 866.9 (21 CFR 866.9). RIDTs found under § 866.3330 exceed the limitations to the exemption from premarket notification for influenza virus serological reagents under § 866.9(c)(6) and thus require a 510(k) submission.

There are approximately 12 RIDTs classified under § 866.3330 actively marketed today. Because these devices are easy to use and provide results within 15 to 30 minutes, they are widely used in point-of-care settings where rapid diagnosis of influenza is important for early case identification.

III. Identification

We are proposing that RIDTs classified under § 866.3330 be identified under the new name of influenza virus antigen detection test system. An influenza virus antigen detection test system is a device intended for the qualitative detection of influenza viral antigens directly from clinical specimens in patients with signs and symptoms of respiratory infection. The test aids in the diagnosis of influenza infection and provides epidemiological information on influenza. Due to the propensity of the virus to mutate, new strains emerge over time that may potentially affect the performance of these devices. Because influenza is highly contagious and may lead to an acute respiratory tract infection causing severe illness and even death, the accuracy of these devices has serious public health implications.

IV. Background for Proposed Reclassification Decision

On June 13, 2013, FDA convened a meeting of the Microbiology Advisory Panel to discuss the regulation of RIDTs that are currently regulated as class I devices. The primary reasons for convening the panel to discuss this topic were continued reports of poor real world RIDT performance by the RIDTs in the field compounded by the emergence of new influenza strains with a potential to create a public health emergency. The occurrence of the 2009 flu pandemic emphasized that these RIDTs, while widely used by clinicians in point of care settings, performed poorly resulting in misdiagnosed cases and, according to anecdotal reports, sometimes with serious or even fatal consequences.

The panel discussion included a discussion of the labeled performance of the currently available RIDTs and presentations by representatives from the Centers for Disease Control and Prevention (CDC) and the Association of Public Health Laboratories (APHL) citing the evidence of performance of these tests in real life settings. One of the important issues raised was that the performance of an influenza antigen detecting test is subject to the changes in the virus as it mutates over time. The panel members were asked to discuss whether there is sufficient evidence to suggest that general controls under class I regulation are or are not sufficient to provide a reasonable assurance that current and future RIDTs are safe and effective and whether the addition of special controls would provide reasonable assurance of the device's safety and effectiveness if the general controls alone do not. Panel members provided the opinion that sufficient data and information exist to indicate that special controls are needed to mitigate the risks of false positive and false negative results from RIDTs and provide a reasonable assurance of safety and effectiveness of the device and to identify the special controls needed. The panel members indicated that placing RIDTs into class II with special controls was appropriate.

V. Classification Recommendation

FDA is proposing that all RIDTs currently regulated under § 866.3330 be reclassified into class II with special controls under the new device name ''influenza virus antigen detection test system.'' FDA believes that special controls that: (1) Identify the minimum acceptable performance criteria; (2) identify the appropriate comparator for establishing performance of new assays; and (3) call for mandatory annual analytical reactivity testing of contemporary influenza strains, including testing of newly emerging strains that pose a danger of public health emergency, would provide reasonable assurance of safety and effectiveness of these devices.

Section 510(m) of the FD&C Act provides that a class II device may be exempt from the premarket notification requirements under section 510(k), if the Agency determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this device, FDA believes that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, does not intend to exempt the device from the premarket notification requirements.

VI. Risks to Health

Although an RIDT is intended for use as an aid in the diagnosis of influenza infection in conjunction with clinical symptoms and other laboratory findings, failure of the device to perform as indicated (producing erroneous or inaccurate results) could mislead the physician and cause inappropriate or delayed medical treatment of a patient. Failure of the test to produce accurate test results can also lead to inaccurate epidemiological information that may contribute to inappropriate public health responses and to facilitate spread of the infection in a community. After considering the information discussed by the Microbiology Devices Panel during the June 13, 2013, meeting in conjunction with the published literature on the subject and the FDA Medical Device Reporting system reports, FDA believes the following risks are associated with RIDTs:

- A false negative result may lead to failure to provide a correct diagnosis and the appropriate treatment of infection caused by influenza virus and may contribute to unnecessary treatment for another suspected condition.
- A false negative result will also provide incorrect epidemiological information leading to failure to initiate appropriate corrective measures to control and prevent additional infections.
- A false positive result on the other hand may lead to delayed treatment of a respiratory infection caused by another etiologic agent, which could potentially result in a more serious patient outcome.
- A false positive result will also provide incorrect epidemiological information on the presence of influenza in a community, which may result in unnecessary patient isolation or contact limitations and in unnecessary close contact investigations.
- A lack of result due to a device malfunction also may lead to a delayed diagnosis and an inadequate treatment regime and, again, lead to delayed epidemiological information on the presence of influenza in a community, contributing to the spread of the infection.

VII. Summary of the Reasons for Reclassification

Due to the mounting evidence and reports from the scientific community about the poor sensitivity of the RIDTs currently on the market and the corresponding risks to health associated with low sensitivity in combination with a rapidly evolving influenza genome with the potential for a public health emergency, FDA convened a meeting of the Microbiology Devices Panel of the Medical Devices Advisory Committee in order to discuss a proposal to reclassify RIDTs in § 866.3330 from class I to class II with special controls. Consistent with the opinions expressed by the experts on the panel, FDA believes that the establishment of special controls, in addition to general controls, is necessary to mitigate the risks to health not mitigated by the general controls and provide a reasonable assurance of safety and effectiveness for these devices. While we believe that general controls continue to adequately address the risk to health caused by a lack of result due to a device malfunction we believe special controls, in addition to general controls, are needed to control

the other risks of this device, which are: (1) A false negative result may lead to failure to provide a correct diagnosis and the appropriate treatment of infection caused by influenza virus and may contribute to unnecessary treatment for another suspected condition; (2) a false negative result will also provide incorrect epidemiological information leading to failure to initiate appropriate corrective measures to control and prevent additional infections; (3) a false positive result on the other hand may lead to delayed treatment of a respiratory infection caused by another etiologic agent, which could potentially result in a more serious patient outcome; and (4) a false positive result will also provide incorrect epidemiological information on the presence of influenza in a community, which may result in unnecessary patient isolation or contact limitations and in unnecessary close contact investigations.

VIII. Special Controls

FDA believes that the following special controls are necessary, in addition to general controls, to mitigate the risks to health described in section VI.

1. The device's sensitivity and specificity performance characteristics must meet one of the following two minimum clinical performance criteria in order to be cleared for marketing and to remain on the market:

- If the manufacturer chooses to compare the device to viral culture:
  - ○ The sensitivity estimate for the device when testing for Influenza A must be at least at the 90 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 80 percent. The sensitivity estimate for the device when testing for Influenza B must be at least at the 80 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 70 percent.
  - ○ The specificity estimate for the device when testing for Influenza A and Influenza B must be at least at the 95 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 90 percent.
- If the manufacturer chooses to compare the device to an appropriate molecular comparator method:
  - ○ The positive percent agreement for the device when testing for Influenza A and Influenza B must be at least at the 80 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 70 percent.
  - ○ The negative percent agreement for the device when testing for Influenza A and Influenza B must be at least at the 95 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 90 percent.

2. When performing testing to demonstrate the device meets the requirements in paragraph 1 of this section, a currently appropriate and FDA accepted comparator method must be used to establish assay performance in clinical studies.

3. Annual analytical reactivity testing of the device must be performed with contemporary influenza strains. This annual analytical reactivity testing must meet the following criteria:

- The appropriate strains to be tested will be identified by FDA in consultation with CDC and sourced from CDC or a CDC-designated source. If the annual strains are not available from CDC, FDA will identify an alternative source for obtaining the requisite strains.
  - ○ The testing must be conducted according to a standardized protocol considered and determined by FDA to be acceptable and appropriate.
  - ○ By July 31 of each calendar year, the results of the last 3 years of annual analytical reactivity testing must be included as part of the device's labeling. If a device has not been on the market long enough for 3 years of annual reactivity testing since the device was given marketing authorization, then the results of every designated annual reactivity testing since the device was given marketing authorization by FDA, including the results of annual analytical reactivity testing performed on the viral strains provided that calendar year, must be included. The results must be presented as part of the device's labeling in a tabular format, which includes the detailed information for each virus tested as described in the certificate of authentication, either by:
    - ○ Placing the results directly in the device's § 809.10(b) (21 CFR 809.10(b)) compliant labeling in a section of the labeling devoted to annual analytical reactivity testing; or
    - ○ Providing a hyperlink in a section of the device's labeling to the manufacturer's public Web site where the annual analytical reactivity testing data can be found. If this option is chosen, the manufacturer's home page must publicly provide a hyperlink, which can easily be found and executed, to the annual analytical reactivity testing results and the Web page containing those annual analytical reactivity testing results must allow unrestricted viewing access. This includes being easy to locate the results from the primary part of the manufacturer's Web site that discusses the device.

4. If an emergency, or a potential emergency, is declared by the Secretary of Health and Human Services (HHS) for an influenza viral strain:

- Within 30 days from the date that FDA notifies manufacturers that characterized viral samples are available for test evaluation, the manufacturer must have testing performed on the device with that viral strain in accordance with a standardized protocol considered and determined by FDA to be acceptable and appropriate. The procedure and location of testing may depend on the nature of the emerging virus.
- Within 60 days from the date that CDC first makes characterized viral samples available to manufacturers and continuing until the emergency, or potential emergency, is declared by the Secretary of HHS to be over, the results of the influenza emergency analytical reactivity testing, including the detailed information for the virus tested as described in the certificate of authentication, must be included as part of the device's labeling in a tabular format, either by:
  - ○ Placing the table directly in the device's § 809.10(b) compliant labeling in the section of the labeling devoted to annual analytical reactivity testing and influenza emergency analytical reactivity testing but separate from the annual analytical reactivity testing tables; or
  - ○ Providing a hyperlink in a section of the device's labeling devoted to annual analytical reactivity testing and influenza emergency analytical reactivity testing to a part of the manufacturer's public Web site where the annual and the emergency analytical reactivity testing data can be found. If this option is chosen, the manufacturer's home page must publicly provide a hyperlink, which can easily be found and executed, to the analytical reactivity and emergency testing results and the Web page containing those annual analytical reactivity testing results must allow unrestricted viewing access.

Table 1 shows the special controls set forth in this order that are needed to address the identified risks for this device not sufficiently addressed by the general controls to provide a reasonable assurance of safety and effectiveness of the device.

TABLE 1—IDENTIFIED RISKS TO HEALTH AND REQUIRED MITIGATION MEASURES

Identified risks to health	Required mitigation measures
1. A false negative result may lead to failure to provide a correct diagnosis and the appropriate treatment of infection caused by influenza virus and may contribute to unnecessary treatment for another suspected condition..	Special Controls 1–4.
2. A false negative result will also provide incorrect epidemiological information leading to failure to initiate appropriate corrective measures to control and prevent additional infections..	Special Controls 1–4.
3. A false positive result on the other hand may lead to delayed treatment of a respiratory infection caused by another etiologic agent, which could potentially result in a more serious patient outcome..	Special Controls 1–4.
4. A false positive result will also provide incorrect epidemiological information on the presence of influenza in a community, which may result in unnecessary patient isolation or contact limitations and in unnecessary close contact investigations..	Special Controls 1–4.

If this proposed order is finalized, RIDTs in § 866.3330 will be reclassified into class II with special controls in a new classification regulation at 21 CFR 866.3328. Adherence to the special controls, when finalized, in addition to the general controls, is necessary to provide a reasonable assurance of the safety and effectiveness of the device.

IX. Environmental Impact

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

X. Paperwork Reduction Act of 1995

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

XI. Proposed Effective Date

FDA proposes that any final order based on this proposed order become effective 1 year after its date of publication in the **Federal Register**.

XII. Comments

Interested persons may submit either electronic comments regarding this document or the associated Special Controls guideline 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.*

XIII. Reference

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

1. Transcript of FDA's Microbiology Devices Panel Meeting, June 13, 2013. (Available at: *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/MicrobiologyDevicesPanel/UCM359554.pdf.*)

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

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

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

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

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

■ 2. Add § 866.3328 to subpart D to read as follows:

§ 866.3328 Influenza virus antigen detection test system.

(a) *Identification.* An influenza virus antigen detection test system is a device intended for the qualitative detection of influenza viral antigens directly from clinical specimens in patients with signs and symptoms of respiratory infection. The test aids in the diagnosis of influenza infection and provides epidemiological information on influenza. Due to the propensity of the virus to mutate, new strains emerge over time which may potentially affect the performance of these devices. Because influenza is highly contagious and may lead to an acute respiratory tract infection causing severe illness and even death, the accuracy of these devices has serious public health implications.

(b) *Classification.* Class II. The special controls for this device are:

(1) The device's sensitivity and specificity performance characteristics must meet one of the following two minimum clinical performance criteria in order to be cleared for marketing and to remain on the market:

(i) If the manufacturer chooses to compare the device to viral culture:

(A) The sensitivity estimate for the device when testing for Influenza A must be at least at the 90 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 80 percent. The sensitivity estimate for the device when testing for Influenza B must be at least at the 80 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 70 percent.

(B) The specificity estimate for the device when testing for Influenza A and Influenza B must be at least at the 95 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 90 percent.

(ii) If the manufacturer chooses to compare the device to an appropriate molecular comparator method:

(A) The positive percent agreement for the device when testing for Influenza A and Influenza B must be at least at the 80 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 70 percent.

(B) The negative percent agreement estimate for the device when testing for Influenza A and Influenza B must be at least at the 95 percent point estimate with a lower bound of the 95 percent confidence interval that is greater than or equal to 90 percent.

(2) When performing testing to demonstrate the device meets the requirements in paragraph (b)(1) of this section, a currently appropriate and FDA accepted comparator method must be used to establish assay performance in clinical studies.

(3) Annual analytical reactivity testing of the device must be performed with contemporary influenza strains. This annual analytical reactivity testing must meet the following criteria:

(i) The appropriate strains to be tested will be identified by FDA in consultation with the Centers for Disease Control and Prevention (CDC) and sourced from CDC or a CDC-designated source. If the annual strains are not available from CDC, FDA will identify an alternative source for obtaining the requisite strains.

(ii) The testing must be conducted according to a standardized protocol considered and determined by FDA to be acceptable and appropriate.

(iii) By July 31 of each calendar year, the results of the last 3 years of annual analytical reactivity testing must be included as part of the device's labeling. If a device has not been on the market long enough for 3 years of annual reactivity testing since the device was given marketing authorization, then the results of every designated annual reactivity testing since the device was given marketing authorization by FDA, including the results of annual analytical reactivity testing performed on the viral strains provided that calendar year, must be included. The results must be presented as part of the device's labeling in a tabular format, which includes the detailed information for each virus tested as described in the certificate of authentication, either by:

(A) Placing the results directly in the device's § 809.10(b) of this chapter compliant labeling in a section of the labeling devoted to annual analytical reactivity testing; or

(B) Providing a hyperlink in a section of the device's labeling to the manufacturer's public Web site where the annual analytical reactivity testing data can be found. If this option is chosen, the manufacturer's home page must publicly provide a hyperlink, which can easily be found and executed, to the annual analytical reactivity testing results and the Web page containing those annual analytical reactivity testing results must allow unrestricted viewing access. This includes being easy to locate the results from the primary part of the manufacturer's Web site that discusses the device.

(4) If an emergency, or a potential emergency, is declared by the Secretary of Health and Human Services (HHS) for an influenza viral strain:

(i) Within 30 days from the date that FDA notifies manufacturers that characterized viral samples are available for test evaluation, the manufacturer must have testing performed on the device with that viral strain according to a standardized protocol considered and determined by FDA to be acceptable and appropriate. The procedure and location of testing may depend on the nature of the emerging virus.

(ii) Within 60 days from the date that CDC first makes characterized viral samples available to manufacturers and continuing until the emergency, or potential emergency, is declared by the Secretary of HHS to be over, the results of the influenza emergency analytical reactivity testing, including the detailed information for the virus tested as described in the certificate of authentication, must be included as part of the device's labeling in a tabular format, either by:

(A) Placing the table directly in the device's § 809.10(b) of this chapter compliant labeling in the section of the labeling devoted to annual analytical reactivity testing and influenza emergency analytical reactivity testing but separate from the annual analytical reactivity testing tables; or

(B) Providing a hyperlink in a section of the device's labeling devoted to annual analytical reactivity testing and influenza emergency analytical reactivity testing to a part of the manufacturer's public Web site where the annual and the emergency analytical reactivity testing data can be found. If this option is chosen, the manufacturer's home page must publicly provide a hyperlink, which can easily be found and executed, to the analytical reactivity and emergency testing results and the Web page containing those annual analytical reactivity testing results must allow unrestricted viewing access.

Dated: May 14, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–11635 Filed 5–21–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0324]

RIN 1625–AA08

Safety Zones; 9–11 Patriot Festival, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zone on the Charleston Harbor in Charleston, South Carolina during the International Outboard Grand Prix (IOGP) 9–11 Patriot Festival, a series of high-speed boat races. The event is scheduled to take place on Friday September 12 through Sunday September 14, 2014. Approximately 25 high-speed race boats are anticipated to participate in the races. This safety zone is necessary to provide for the safety of life and property on navigable waters of the United States during the event. This safety zone would temporarily restrict vessel traffic in a portion of Charleston Harbor. Persons and vessels that are not participating in the races would be prohibited from entering, transiting through, anchoring in, or remaining within the restricted area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 23, 2014. Requests for public meetings must be received by the Coast Guard on or before June 1, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Christopher Ruleman, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Christopher.L.Ruleman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2014–0324] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2014–0324) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before June 1, 2014 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person named in the **FOR FURTHER INFORMATION CONTACT** section, above.

B. Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish a safety zone: 33 U.S.C. 1231; 33 U.S.C. 1225; 33 CFR 1.05–1, 33 CFR 6.04–1, 33 CFR 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to protect the safety of spectator vessels and to ensure safety of life and property on the navigable waters of the United States during the IOGP 9–11 Patriot Festival boat races.

C. Discussion of Proposed Rule

On Friday September 12 through Sunday September 14, 2014 the International Outboard Grand Prix (IOGP) will host ''9–11 Patriot Festival'' a series of high-speed boat races. The event will be held on a portion of Charleston Harbor in Charleston, South Carolina. Approximately 25 high-speed race boats are anticipated to participate in the races.

The proposed rule would establish a safety zone that encompass certain waters of the Charleston Harbor in Charleston, South Carolina. The safety zone would be enforced daily from 2:30 p.m. through 5:30 p.m. on September 12, 10:30 a.m. through 6:30 p.m. on September 13, and 1:30 p.m. through 5:30 p.m. on September 14, 2014. The safety zone would consist of a regulated area around vessels participating in the event. The regulated area would be as follows: All waters of the Charleston Harbor encompassed within the following points; starting at point 1 in position 32°48′48″ N 079°54′30″ W; thence west to point 2 in position 32°48′48″ N 079°54′54″ W; thence south to point 3 in position 32°48′12″ N 079°55′05″ W; thence south to point 4 in position 32°47′20″ N 079°55′01″ W; thence east to point 5 in position 32°47′21″ N 079°54′31″ W; thence north along the bank back to origin. All coordinates are North American Datum 1983. Persons and vessels, except those participating in the race, would be prohibited from entering, transiting through, anchoring, or remaining within the safety zone unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Charleston by telephone at: (843) 740–7050, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization would be required to comply with the instructions of the Captain of the Port Charleston or

a designated representative. The Coast Guard would provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) Although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (2) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (3) the Coast Guard would provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities: This proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Charleston harbor encompassed within the safety zone from 2:30 p.m. through 5:30 p.m. on September 12; and from 10:30 a.m. through 6:30 p.m. on September 13; and from 1:30 p.m. through 5:30 p.m. on September 14, 2014. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone issued in conjunction with a regatta or marine parade, that will be enforced from 2:30 p.m. through 5:30 p.m. on September 12, and from 10:30 a.m. through 6:30 p.m. on September 13; and from 1:30 p.m. through 5:30 p.m. on September 14, 2014. This proposed rule involves establishing a safety zone as described in figure 2–1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 33 CFR 1.05–1, 6.04–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0324 to read as follows:

§ 165.T07–0324 Safety Zones; 9–11 Patriot Festival, Charleston Harbor, Charleston, SC.

(a) *Regulated area.* All waters of the Charleston Harbor encompassed within the following points; starting at point 1 in position 32°48′48″ N 079°54′30″ W; thence west to point 2 in position 32°48′48″ N 079°54′54″ W; thence south to point 3 in position 32°48′12″ N 079°55′05″ W; thence south to point 4 in position 32°47′20″ N 079°55′01″ W; thence east to point 5 in position 32°47′21″ N 079°54′31″ W; thence north along the bank back to origin. All coordinates are North American Datum 1983.

(b) *Enforcement Period.* The rule establishes a safety zone on certain waters of the Charleston harbor in Charleston, South Carolina. The safety zone will consist of a regulated area which will be enforced daily from 2:30 p.m. through 5:30 p.m. on September 12; and from 10:30 a.m. through 6:30 p.m. on September 13; and from 1:30 p.m. through 5:30 p.m. on September 14, 2014. The safety zone would consist of a regulated area around vessels participating in the event.

(c) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the safety zone.

(d) *Regulations.* (1) All persons and vessels, except those participating in the 9–11 Patriot Festival, or serving as safety vessels, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at: (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: May 1, 2014.

R.R. Rodriguez,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2014–11806 Filed 5–21–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0274; FRL–9910–91–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Revision to the Chicago 8-Hour Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Illinois's March 28, 2014, State Implementation Plan (SIP) revision to the Chicago area's 1997 8-hour ozone maintenance plan. This maintenance plan revision establishes new transportation conformity Motor Vehicle Emissions Budgets (MVEB) for the year 2025. EPA is approving the allocation of a portion of the safety margin for the volatile organic compounds and oxides of nitrogen to the area's 2025 MVEBs for transportation conformity purposes. This allocation will still maintain the total emissions for the area below the attainment level required by the transportation conformity regulations.

DATES: Comments must be received on or before June 23, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0274, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 2, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–11486 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 79, No. 99

Thursday, May 22, 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

PSICC; Colorado; Upper Monument Creek EIS

AGENCY: Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Pike and San Isabel National Forests Cimarron and Comanche National Grasslands (PSICC) propose to conduct forest restoration activities on 25,000 acres within the 67,000 acre Upper Monument Creek (UMC) analysis area. Treatment activities include mechanical thinning, mastication, hand thinning, and prescribed fire. The treatments will be used singularly or in combination to transition forested plant communities across the landscape towards desired future conditions that are more characteristic of a resilient forest. Resilient forests are better able to respond to large high intensity wildfires, insects and disease outbreaks, and extreme water flows that are known to occur in the project's location along Colorado's Front Range. By protecting against the aforementioned extreme events, resilient forests are better equipped to protect the following identified values at risk; adjoining private property, water quality and quantity, water conveyance facilities, transportation systems, wildlife habitats, heritage sites, municipal watersheds and timber resources, Resilient forests also help attenuate the impacts of increased noxious weeds, sedimentation, and other hydrologic disturbances

In order to successfully complete the amount and types of treatments necessary for the maximum amount of resilience, the PSICC might need to amend the PSICC Land and Resource Management Plan to adjust plan standards and guidelines. Plan standards and guideline amendments might include but are not limited to the following; forest regeneration, big game winter range, wildlife habitat, and allowable levels and types of fire and fuels treatments. Proposed Land and Resource Management Plan amendments will help the PSICC achieve resiliency, and protect the values at risk within in each Land and Resource Management Plan Management Area in the Upper Monument Creek Project Area.

DATES: Comments concerning the scope of the analysis must be received by July 7, 2014. The draft environmental impact statement is expected April 2015 and the final environmental impact statement is expected August 2015.

ADDRESSES: Send written comments to Pikes Peak Ranger District, Attn: UMC Project, 601 South Weber St., Colorado Springs, CO 80903. Comments may also be sent via email to *psicc_umc@fs.fed.us,* or via facsimile to 719–477–4233.

FOR FURTHER INFORMATION CONTACT: Allan Hahn, District Ranger, 719–636–1602, *ahahn@fs.fed.us;* or Mike Picard, Team Leader, 719–530–3959, *mpicard@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Public meeting notices will be published in the Colorado Springs Gazette, showing locations, dates and times for each public meeting. A Web site is available for current information about the project including maps and descriptions of the planned activities. *http://www.uppermonumentcreek.blogspot.com/.*

Purpose and Need for Action

The size, severity, and behavior of recent wildfires on the Pike National Forest and along the Front Range have highlighted the risks posed by current forest conditions. The human and environmental costs of wildfire suppression and rehabilitation have seen a significant increase across the region in recent decades. As a result of increasing risks for large fires and extreme water flows, there is a need to make strategic investments in vegetative treatments within the UMC landscape. Strategically placed vegetative treatments reduce the vulnerability of surrounding communities, municipal watersheds, and natural resource values at risk to severe fire and excessive water flows in the future.

Proposed Action

In response to the conditions described above, the proposed action is to effectively treat up to 25,000 acres within the 67,000 acre analysis area. Combinations of mechanical thinning with product removal, mastication, hand thinning, and prescribed fire will be used to shift forest conditions across the analysis area towards agreed upon desired conditions. Emphasis will be on retention of older trees in all forest types, opening up densely closed stands of mid to late seral classes, creating a more open forest environment and improving shrub and grass diversity. The forest ecosystems that will be the primary targets for treatments will be the ponderosa pine, dry mixed conifer, aspen, and mesic mixed conifer, with some treatments in lodgepole and oak/ponderosa types. Vegetative treatments will balance the need to protect important values at risk within and adjoing the project area. Values at risk include but are not limited to the following; private property, utility infrastructure, wildlife habitat and fully functioning rivers and streams.

The Proposed Action includes the use of adaptive management principals to enable land managers with public participation to identify management treatments that modify forest structure, pattern, and composition across the landscape to help improve forest resiliency and function in response to the potential for large, high intensity fires and excessive water flows within the Upper Monument Project Area. Adaptive management relies on monitoring change conditions and the result of actions to determine if management changes are needed, and if so, what changes and to what degree.

Possible Alternatives

In this EIS we will use the Iterative Alternative Process, to make changes to that action to keep it viable and responsive to our analysis, and to public comments. We will conclude the analysis with one alternative. The final alternative will reflect the USFS

accepted proposed changes from internal Forest Service specialist analysis and external public comments.

Responsible Official

The Responsible Official for this decision will be the PSICC Forest Supervisor.

Nature of Decision To Be Made

This decision will include the type of treatments expected to achieve our objectives, the locations of treatments, the monitoring methods to be used, and the adaptive management strategy that will provide direction for making future adjustments to this decision. This decision will only cover actions within the Upper Monument Creek analysis area.

Preliminary Issues

A primary concern for management of this area is the resiliency of the various forest types, and their resistance to large, high intensity wildfires, and extreme water flows. Maintaining vegetative cover across the landscape will help to minimize the risks to municipal and domestic water sources and other resource values within the project area.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. There will be public meetings held in several municipalities during this scoping period. Each of those meetings will be announced in the Colorado Springs Gazette with the location, date, and time included. Comments can also be made through email to the contacts listed above. A Web site is also available for conveying information and submitting comments. *http://www.uppermonumentcreek.blogspot.com/*

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: May 15, 2014.

Erin Connelly,

Forest and Grassland Supervisor.

[FR Doc. 2014–11847 Filed 5–21–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Process for Non-Land Grant College of Agriculture (NLGCA) Designation

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice.

SUMMARY: Section 7101 of the Agricultural Act of 2014 requires the National Institute of Food and Agriculture (NIFA) to establish a process through which institutions may apply for designation as a NLGCA. Designation as a NLGCA is one way an institution may qualify to receive an exemption from the new matching fund requirement described in Section 7128 of the Agricultural Act of 2014. NLGCA designation also satisfies the eligibility requirement for the Capacity Building Grants for Non-Land Grant Colleges of Agriculture program, which is authorized under 7 U.S.C. 3319i.

This notice outlines the criteria to qualify for NLGCA designation and the steps to obtain such designation. Additionally, McIntire-Stennis and Hispanic-serving Agricultural Colleges and Universities may opt out of their current designation and request NLGCA designation.

FOR FURTHER INFORMATION CONTACT: Matthew Lockhart (202) 559–5088, (FAX) (202) 401–7752, *mlockhart@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Criteria for NLGCA Designation

In order for an institution to qualify as a NLGCA, it must be a public college or university offering a baccalaureate or higher degree in the study of food and agricultural sciences, as defined in 7 U.S.C. 3103(9).

Opting Out of Current Designation

Section 7101 of the Agricultural Act of 2014 (Pub. L. 113–73), amended 7 U.S.C. 3103 to allow Hispanic-serving Agricultural Colleges and Universities (HSACUs) and State-certified non-land grant institutions eligible to receive funds under the McIntire-Stennis Cooperative Forestry Act of 1962 to opt out of their respective designation to qualify as Non-Land Grant Colleges of Agriculture. For these institutions to be considered for NLGCA designation, an Authorized Representative (AR) of one of these institutions must submit a declaration of the institution's intent not to be considered a HSACU or Cooperating Forestry School, as applicable, to *NLGCA.status@nifa.usda.gov* prior to submitting the request for NLGCA status.

For example, the email should read ''The [insert name of University and City/State] has decided to opt out of being classified as an HSACU/as an institution eligible to receive funds under the McIntire- Stennis Cooperative Forestry Act of 1962, in accordance with Section 7101 of the Agricultural Act of 2014. We plan on applying for designation as a Non-Land-Grant College of Agriculture.''

Requests to opt out of McIntire-Stennis status must be submitted by June 13th for fiscal year 2014, and for fiscal years 2015 through 2018, by December 30th. In accordance with Section 7101, this declaration by such institutions shall remain in effect until September 30, 2018, and will result in the institution not being eligible for funds available to it under its prior status for this period of time.

Requesting NLGCA Designation

To request that NIFA provide certification of NLGCA status, an AR must go to *http://www.nifa.usda.gov/form/form.html* and submit a web-based form indicating the institution meets the qualifications. By submitting this request electronically, the AR certifies that they have the authority to make this request on behalf of their institution.

Receipt of NLGCA Designation

Within 30 days of submission, NIFA will provide the administrative point of contact specified on the request, with a certification of NLGCA designation or a response indicating why the request for certification is being denied. Future Requests for Application issued by NIFA may require NLGCA certification. NIFA will include instructions for attaching the certification to the applications, as appropriate.

This process is in effect immediately upon publication in the **Federal Register**.

Done at Washington, DC, this 16th day of May, 2014.

Meryl Broussard,

Associate Director, Programs, National Institute of Food and Agriculture.

[FR Doc. 2014–11851 Filed 5–21–14; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Funding Availability and Grant Application Deadlines

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funds Availability.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the availability of $19,300,000 in grant funds and solicits applications for the Distance Learning and Telemedicine (DLT) Grant Program for the Fiscal Year (FY) 2014 competition.

DATES: You may submit completed applications for grants on paper or electronically by the following deadline:

- *Paper submissions:* Paper submissions must be postmarked and mailed, shipped, or sent overnight *no later* than July 7, 2014 to be eligible for FY 2014 grant funding. Late or incomplete applications will not be eligible for FY 2014 grant funding.
- *Electronic submissions:* Electronic submissions must be received by July 7, 2014 to be eligible for FY 2014 grant funding. Late or incomplete applications will not be eligible for FY 2014 grant funding.
- If the submission deadline falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day.

ADDRESSES: Copies of the FY 2014 Application Guide and materials for the DLT grant program may be obtained by the following:

(1) The DLT Web site: *http://www.rurdev.usda.gov/UTP_DLTResources.html* and

(2) Contacting the DLT Program at 202–720–0665.

Completed applications may be submitted in the following ways:

(1) *Paper:* Paper applications are to be submitted to the Rural Utilities Service, Telecommunications Program, 1400 Independence Ave. SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Acting Director, Advanced Services Division.''

(2) *Electronic:* Electronic applications must be submitted through Grants.gov. Information on how to submit applications electronically is available on the Grants.gov Web site (*http://www.grants.gov*). Applicants must successfully pre-register with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without preregistration.

FOR FURTHER INFORMATION CONTACT: Sam Morgan, Program Management Analyst, Advanced Services Division, Telecommunications Program, Rural Utilities Service, email: *sam.morgan@wdc.usda.gov,* telephone: (202) 690–4493, fax: (202) 720–1051. Additional point of contact: Norberto Esteves, Acting Director, Advanced Services Division at *norberto.esteves@wdc.usda.gov* or at same phone numbers previously listed.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Distance Learning and Telemedicine Grants.

Announcement Type: Initial announcement.

Funding Opportunity Number: RUS–14–01–DLT.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.855.

Dates: You may submit completed applications for grants on paper or electronically according to the deadlines indicated in paragraph IV.F.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the DLT program.

II. Minimum and Maximum Application Amounts: Projected Available Funding.

III. Eligibility Information: Who is eligible, and what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, and items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, and selection information.

VI. Award Administration Information: Award notice information, award recipient and reporting requirements.

VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

DLT grants are specifically designed to provide access to education, training and health care resources for rural Americans.

The DLT Program provides financial assistance to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies to be used by students, teachers, medical professionals, and rural residents.

The grants, which are awarded through a competitive process, may be used to fund telecommunications-enabled information, audio and video equipment, and related advanced technologies which extend educational and medical applications into rural areas. Grants are intended to benefit end users in rural areas, who are often not in the same location as the source of the educational or health care service.

As in years past, the FY 2014 DLT Grant Application Guide has been updated based on program experience. All applicants should carefully review and prepare their applications according to instructions in the FY 2014 Application Guide and sample materials when compiling a DLT grant application.

II. Maximum and Minimum Amount of Applications

Under 7 CFR 1703.124, the Administrator has determined the maximum amount of a grant to be made available to an applicant in FY 2014 is $500,000, and the minimum amount of a grant is $50,000, subject to availability of funding.

Award documents specify the term of each award. The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants. Prior DLT grants cannot be renewed; however, applications from existing DLT awardees for new projects are acceptable (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for a grant? (See 7 CFR 1703.103.)

1. Only entities legally organized as one of the following are eligible for DLT financial assistance:

a. An incorporated organization or partnership,

b. An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b,

c. A state or local unit of government,

d. A consortium, as defined in 7 CFR 1703.102,

e. A library, or

f. Other legal entity, including a private corporation organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for DLT program financial assistance directly.

3. Electric and telecommunications borrowers under the Rural Electrification Act of 1936 (7 U.S.C. 950aaa et seq.) are not eligible for grants.

4. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony)

within the past 24 months are not eligible. Any corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions for grants: See 7 CFR 1703.125(g) and the FY 2014 Application Guide for information on required matching contributions.

a. Grant applicants must demonstrate matching contributions, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions must be used for eligible purposes of DLT grant assistance (see 7 CFR 1703.121, paragraphs IV.H.1.b of this Notice and the FY 2014 Application Guide).

b. Greater amounts of eligible matching contributions may increase an applicant's score (see 7 CFR 1703.126(b)(4) and the FY 2014 Application Guide).

c. Applications that do not provide evidence of the required fifteen percent match will be declared ineligible. See paragraphs IV.H.1.c and V.A.1 of this Notice, and the FY 2014 Application Guide for more information on matching contributions.

d. Matching contributions which are not sufficiently documented, as described in the Application Guide, are subject to disallowance and may result in an ineligible application.

2. The DLT grant program is designed to bring the benefits of distance learning and telemedicine to residents of rural America. Therefore, to be eligible, applicants must deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas, at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

3. Rurality.

a. All projects proposed for DLT grant assistance must meet a minimum rurality threshold, to ensure that benefits from the projects flow to rural residents. The minimum eligibility score is 20 points.

b. Each application must apply the following criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores.

Criterion	Character	Population	DLT points
Exceptionally Rural Area	any area of the USA not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.	≤5000	45
Rural Area	any area of the USA included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.	>5000 and ≤10,000	30
Mid-Rural Area	any area of the USA included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 10,000 and not in excess of 20,000 inhabitants.	>10,000 and ≤20,000	15
Urban Area	any area of the USA included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.	>20,000	0

c. The rurality score is one of the competitive scoring criteria applied to grant applications.

4. Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.) are not eligible for financial assistance from the DLT Program. Please see 7 CFR 1703.123(a).

C. *Where to find full discussion of a Complete Application.* See Section IV of this Notice and the FY 2014 Application Guide for a discussion of the items that comprise a complete application. For requirements of completed applications you may also refer to 7 CFR 1703.125 for grant applications. The FY 2014 Application Guide provides specific, detailed instructions for each item that constitutes a complete application. The Agency strongly emphasizes the importance of including every required item (as explained in the FY 2014 Application Guide) and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the FY 2014 Application Guide. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Scoring and eligibility information not provided by the application deadline will not be solicited or considered by the Agency. Applications that do not include all items necessary for scoring, depending on the specific scoring criteria, may still be eligible applications, but may not receive full or any credit if the information cannot be verified. Please see the FY 2014 Application Guide for a full discussion of each required item and for samples and illustrations.

IV. Application and Submission Information

A. *Where to get application information.* FY 2014 Application Guides, copies of necessary forms and samples, and the DLT Program regulation are available from these sources:

1. The Internet: *http://www.rurdev.usda.gov/UTP_DLTResources.html.*

2. The DLT Program for paper copies of these materials: 202–720–0665.

B. Emphasis in FY 2014

1. Applicants are reminded that the DLT Grant Program is intended to meet the educational and health care needs of rural America. Hub sites may be located in rural or non-rural areas, but end-user sites need to be located in rural areas. Non-fixed sites serving a geographical service area may include non-rural areas. However, for determining rurality and NSLP scores every incorporated and non-incorporated city, village or borough must be listed and scored accordingly, including those jurisdictions which are more populated than those defined as rural. The necessary inclusion of non-rural jurisdictions in these types of projects could cause a lower rurality score by virtue of the project's geographic and demographic layout. Because of this, the

applicant should make an effort to reveal how their project will focus the delivery of service to the rural residents of their service territory. From a competitive standpoint, applicants could offset the loss of rurality points by attempting to score higher in the subjective areas of needs and benefits, innovativeness, and cost effectiveness with well-crafted narratives. The FY 2014 Application Guide contains language clarifying this provision of the regulation.

2. If a grant application includes a site that is included in any other DLT grant application for FY 2014, or a site that has been included in any DLT grant funded in FY 2013 or FY 2012, the application should contain a detailed explanation of the related applications or grants. The Agency must make a nonduplication finding for each grant approved; however, an apparent but unexplained duplication of funding for a site can prevent such a finding.

C. What constitutes a completed application for a DLT Grant?

1. Detailed information on each item included in the *Table of Required Elements of a Completed Grant Application* found in paragraph IV.C.8 of this Notice can be found in the sections of the DLT Program regulation listed in the table, and the DLT grant Application Guide. Applicants are strongly encouraged to read and apply both the regulation and the Applications Guide, which elaborates and explains the regulation.

a. When the table refers to a narrative, it means a written statement, description or other written material prepared by the applicant, for which no form exists. The Agency recognizes that each project is unique and requests narratives to allow applicants to explain their request for financial assistance.

b. When documentation is requested, it means letters, certifications, legal documents, or other third-party documentation that provide evidence that the applicant meets the listed requirement. For example, to confirm rurality scores, applicants can use printouts from the Web site *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.* Leveraging documentation generally will be letters of commitment from the funding sources. In-kind matches must be items purchased or donated after the application deadline date that are essential to the project and documentation from the vendor or donor must demonstrate the relationship of each item to the project's function. Evidence of legal existence is sometimes proven by submitting articles of incorporation. The examples here are not intended to limit the types of documentation that must be submitted to fulfill a requirement. DLT Program regulations and the Application Guide provide specific guidance on each of the items in the table.

2. The DLT Application Guide and ancillary materials provide all necessary sample forms and worksheets.

3. While the table in paragraph IV.C.8 of this Notice includes all items of a completed application, the Agency may ask for additional or clarifying information for applications submitted by the deadline which appear to demonstrate that they meet eligibility requirements, but which may require follow up for the Agency.

4. Given the high volume of program interest, to expedite processing applicants are asked to submit the required application items in the order depicted in the FY 2014 Application Guide. The FY 2014 Application Guide specifies the format and order of all required items. Applications that are not assembled and tabbed in the order specified prevent timely determination of eligibility. For applications with inconsistency among submitted copies, the Agency will base its evaluation on the original signed application received by the Agency.

5. DUNS Number. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

6. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)).

a. Applicants must register for the SAM at *https://www.sam.gov/portal/public/SAM/.*

b. SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal grant award or loan is active. To maintain SAM registration the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

7. Compliance with other federal statutes. The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

a. 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 7 CFR part 3015—Uniform Federal Assistance Regulations.

c. 2 CFR part 417—Governmentwide Debarment and Suspension (Non-procurement).

d. 7 CFR part 3018—New Restrictions on Lobbying.

e. 7 CFR part 3019—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Non-profit Organizations.

f. 2 CFR part 421—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

g. Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency. '' For information on limited English proficiency and agency-specific guidance, go to *http://www.LEP.gov.*

h. Federal Obligation Certification on Delinquent Debt.

8—TABLE OF REQUIRED ELEMENTS OF A COMPLETED GRANT APPLICATION

Application Item	Required Items, unless otherwise noted	
	Grants (7 CFR 1703.125 and 7 CFR 1703.126)	Comment
SF–424 (Application for Federal Assistance form)	Yes	*Completely* filled out.
Site Worksheet	Yes	Agency worksheet.
Survey on Ensuring Equal Opportunity for Applicants	Optional	OMB Form.

8—TABLE OF REQUIRED ELEMENTS OF A COMPLETED GRANT APPLICATION—Continued

Application Item	Required Items, unless otherwise noted	
	Grants (7 CFR 1703.125 and 7 CFR 1703.126)	Comment
Evidence of Legal Authority to Contract with the Government.	Yes	Documentation.
Evidence of Legal Existence	Yes	Documentation.
Executive Summary	Yes	Narrative.
Telecommunications System Plan and Scope of Work	Yes	Narrative & documentation such as maps and diagrams.
Budget	Yes	Agency Worksheets with documentation.
Financial Information/Sustainability	Yes	Narrative.
Statement of Experience	Yes	Narrative 3-page, single-spaced limit.
Rurality Worksheet	Yes	Agency worksheet with documentation.
National School Lunch Program (NSLP) Worksheet	Yes	Agency worksheet with documentation.
Leveraging Evidence and Funding Commitments from all Sources.	Yes	Agency worksheet and source documentation.
Empowerment Zone designation	Yes	Documentation.
Request for Additional NSLP	Optional	Agency Worksheet and narrative.
Need for and Benefits derived from Project	Yes	Narrative & documentation.
Innovativeness of the Project	Yes	Narrative & documentation.
Cost Effectiveness of Project	Yes	Narrative & documentation.
Consultation with the USDA State Director, Rural Development, and evidence that application conforms to State Strategic Plan, if any.	Yes	Documentation.
Certifications		
Equal Opportunity and Nondiscrimination	Yes	Form provided in FY 2014 Application Tool Kit.
Architectural Barriers	Yes	Form provided in FY 2014 Application Tool Kit.
Flood Hazard Area Precautions	Yes	Form provided in FY 2014 Application Tool Kit.
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Yes	Form provided in FY 2014 Application Tool Kit.
Drug-Free Workplace	Yes	Form provided in FY 2014 Application Tool Kit.
Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.	Yes	Form provided in FY 2014 Application Tool Kit.
Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.	Yes	Form provided in FY 2014 Application Tool Kit.
Non-Duplication of Services	Yes	Form provided in FY 2014 Application Tool Kit.
Environmental Impact/Historic Preservation Certification	Yes	Form provided in FY 2014 Application Tool Kit.
Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.	Yes	Form provided in the FY 2014 Application Tool Kit.

D. How many copies of an application are required?

1. Applications submitted on paper.

a. Submit the original application and two (2) copies to RUS; and

b. Submit one (1) additional copy to the state government single point of contact (if one has been designated) at the same time as you submit the application to the Agency for the State where the project is located. If the project is located in more than one State, submit a copy to each state government single point of contact. See *http://www.whitehouse.gov/omb/grants_spoc* for an updated listing of State government single points of contact.

2. Electronically submitted applications. Grant applications may be submitted electronically. Please carefully read the FY 2014 Application Guide for guidance on submitting an electronic application. In particular, we ask that you identify and number each page in the same way you would a paper application so that we can assemble them as you intended.

a. The additional paper copy is not necessary if you submit the application electronically through Grants.gov.

b. Submit one (1) copy to the state government single point of contact (if one has been designated) at the same time as you submit the application to the Agency. If the project is located in more than one State, submit a copy to each state government single point of contact. See *http://www.whitehouse.gov/omb/grants_spoc* for an updated listing of State government single points of contact.

E. *How and where to submit an application.* Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications to the Telecommunications Program, RUS, United States Department of Agriculture, 1400 Independence Ave. SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Acting Director, Advanced Services Division.''

b. Paper grant applications must show proof of mailing or shipping by the deadline consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via regular mail through the USPS are irradiated, which can damage the contents and delay delivery to the DLT Program. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. *Electronically submitted applications.*

a. Applications will not be accepted via fax or electronic mail.

b. Electronic applications for grants must be submitted through the Federal

government's Grants.gov initiative at *http://www.grants.gov/.*

c. How to use Grants.gov.

(i) Grants.gov contains full instructions on all required passwords, credentialing and software.

(ii) System for Award Management. Submitting an application through Grants.gov requires that your organization list in the System for Award Management (SAM) (formerly Central Contractor Registry, CCR). The Agency strongly recommends that you obtain your organization's DUNS number and SAM listing well in advance of the deadline specified in this notice.

(iii) Credentialing and authorization of applicants. Grants.gov will also require some credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action by applicants to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

(iv) Some or all of the SAM and Grants.gov registration, credentialing and authorizations require updates. If you have previously registered at Grants.gov to submit applications electronically, please ensure that your registration, credentialing and authorizations are up to date well in advance of the grant application deadline.

d. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadlines.

e. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

F. Deadlines

1. Paper grant applications must be postmarked and mailed, shipped, or sent overnight no later than July 7, 2014 to be eligible for FY 2014 grant funding. Late applications, applications which do not include proof of mailing or shipping as described in paragraph IV.E.1.b, and incomplete applications are not eligible for FY 2014 grant funding.

2. Electronic grant applications must be received by July 21, 2014 to be eligible for FY 2014 funding. Late or incomplete applications will not be eligible for FY 2014 grant funding.

3. If the submission deadline falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day.

G. *Intergovernmental Review.* The DLT grant program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' As stated in paragraph IV.D.1 of this Notice, a copy of a DLT grant application must be submitted to the state single point of contact if one has been designated. Please see *http://www.whitehouse.gov/omb/grants_spoc* to determine whether your state has a single point of contact.

H. Funding Restrictions

1. Ineligible purposes.

a. Hub sites that are not located in rural areas are not eligible for grant assistance unless they are necessary to provide DLT services to end-users in rural areas. Please see the Application Guide and 7 CFR 1703.101(h).

b. To fulfill the policy goals laid out for the DLT Program in 7 CFR 1703.101, the following table lists purposes for financial assistance and whether each purpose is generally considered to be eligible for the form of financial assistance. Please consult the FY 2014 Application Guide and the regulations (7 CFR 1703.102) for definitions, in combination with the portions of the regulation cited in the table) for detailed requirements for the items in the table. RUS strongly recommends that applicants exclude ineligible items from the grant and match portions of grant application budgets. However, some items ineligible for funding or matching contributions may be vital to the project. RUS encourages applicants to document those costs in the application's budget. Please see the FY 2014 Application Guide for a recommended budget format, and detailed budget compilation instructions.

	Grants
Lease or purchase of new eligible DLT equipment and facilities	Yes, equipment only.
Acquire new instructional programming that is a capital asset	Yes.
Technical assistance, develop instructional material for the operation of the equipment, and engineering or environmental studies in the implementation of the project.	Yes, up to 10% of the grant.
Telemedicine or distance learning equipment or facilities necessary to the project.	Yes.
Vehicles using distance learning or telemedicine technology to deliver services.	No.
Teacher-student links located at the same facility	No.
Links between medical professionals located at the same facility	No.
Site development or building alteration, except for equipment installation and associated inside wiring.	No.
Land or building purchase	No.
Building Construction	No.
Acquiring telecommunications transmission facilities	No (such facilities are only eligible for DLT loans).
Internet services, telecommunications services or other forms of connectivity.	No.
Salaries, wages, benefits for medical or educational personnel	No.
Salaries or administrative expenses of applicant or project	No.
Recurring project costs or operating expenses	No (equipment & facility leases are not recurring project costs).
Equipment to be owned by the LEC or other telecommunications service provider, if the provider is the applicant.	No.
Duplicative distance learning or telemedicine services	No.
Any project that for its success depends on additional DLT financial assistance or other financial assistance that is not assured.	No.
Application Preparation Costs	No.
Other project costs not in regulation	No.
Cost (amount) of facilities providing distance learning broadcasting	No.
Reimburse applicants or others for costs incurred prior to RUS receipt of completed application.	No.

c. Discounts. The DLT Program regulation provides that manufacturers' and service providers' discounts are not eligible matches. In the past, the Agency did not consider as eligible any proposed match from a vendor, manufacturer, or service provider whose products or services would also be purchased for the DLT project. However, the agency has now determined that if a vendor can demonstrate that the donated product is normally sold at the in-kind matching price, then it will accept such products for in-kind matches, and not a discount. Similarly, if a vendor, manufacturer, or other service provider proposes a cash match (or any in-kind match) when their products or services will be purchased with grant or match funds, such products must be shown to be normally offered at, or higher than, the contract price of the services to be provided on the project.

2. Eligible Equipment & Facilities. Please see the FY 2014 Application Guide for more information regarding eligible and ineligible items. In addition, see 7 CFR 1703.102 for definitions of eligible equipment, eligible facilities, and telecommunications transmission facilities as used in the table above.

3. Apportioning budget items. Many DLT applications propose to use items for a blend of specific DLT eligible project purposes and other purposes. RUS will consider funding such items in the overall context of the project, but such items will affect the competitive value of the project compared with other projects. The proposed project could receive a lower score in the subjective areas of the grant to the extent that its budget requests items that have limited or questionable value to the purposes of distance learning or telemedicine. See the FY 2014 Application Guide for detailed information on how to apportion use and apportioning illustrations.

V. Application Review Information

A. Special Considerations or Preferences

1. American Samoa, Guam, Virgin Islands, and Northern Mariana Islands applications are exempt from the matching requirement up to a match amount of $200,000 (see 48 U.S.C. 1469a; 91 Stat. 1164).

2. Special Consideration Areas. RUS will offer special consideration to applications that contain at least one end-user site within a trust area or a tribal jurisdictional area. Such applications will be awarded 15 points. The application will need to include a map showing the end-user site(s) located in the trust area or tribal jurisdictional area, as well as the geographical coordinate(s), and physical address(es) of the end-user site(s). The applicant will also need to submit evidence indicating that the area where the end-user site is located is a trust area or a tribal jurisdictional area.

RUS will use one or more of the following resources in determining whether a particular ends-user site is located in trust area or tribal jurisdictional area:

(a) Official maps of Federal Indian Reservations based on information compiled by the U.S. Department of the Interior, Bureau of Indian Affairs and made available to the public;

(b) Title Status Reports issued by the U.S. Department of the Interior, Bureau of Indian Affairs showing that title to such land is held in trust or is subject to restrictions imposed by the United States;

(c) Trust Asset and Accounting Management System data, maintained by the Department of the Interior, Bureau of Indian Affairs;

(d) Official maps of the Department of Hawaiian Homelands of the State of Hawaii identifying land that has been given the status of Hawaiian home lands under the provisions of section 204 of the Hawaiian Homes Commission Act, 1920;

(e) Official records of the U.S. Department of the Interior, the State of Alaska, or such other documentation of ownership as the RUS may determine to be satisfactory, showing that title is owned by a Regional Corporation or a Village Corporation as such terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq);

(f) Evidence that the land is located on Guam, American Samoa or the Commonwealth of the Northern Mariana Islands, and is eligible for use in the Veteran's Administration direct loan program for veterans purchasing or constructing homes on communally owned land; and

(g) Any other evidence submitted by the applicant that is satisfactory to RUS to establish that area where the end-user site is located is a trust area or a tribal jurisdictional area within the meaning of 38 U.S.C. 3765(1).

B. Criteria

1. Grant application scoring criteria (total possible points: 235). See 7 CFR 1703.125 for the items that will be reviewed during scoring, 7 CFR 1703.126 and section V.A.2 of this NOFA for scoring criteria.

2. Grant applications are scored competitively subject to the criteria listed below.

a. *Rurality* category—Rurality of the proposed service area (up to 45 points).

b. *NSLP* category—percentage of students eligible for the NSLP in the proposed service area (up to 35 points).

c. *Leveraging* category—matching funds above the required matching level (up to 35 points).

d. Need for services proposed in the application and the benefits that will be derived if the application receives a grant (up to 55 points).

(i) *Additional NSLP* category—up to 10 of the possible 55 possible points are to recognize economic need not reflected in the project's National School Lunch Program (NSLP) score, and can be earned only by applications whose overall NSLP eligibility is less than 50%. To be eligible to receive points under this, the application must include an affirmative request for consideration of the possible 10 points, and compelling documentation of reasons why the NSLP eligibility percentage does not represent the economic need of the proposed project beneficiaries.

(ii) *Needs and Benefits* category—up to 45 of the 55 possible points under this criterion are available to all applicants. Points are awarded based on the required narrative crafted by the applicant. RUS encourages applicants to carefully read the cited portions of the Program regulation and the FY 2014 Application Guide for full discussions of this criterion.

e. Innovativeness category—level of innovation demonstrated by the project (up to 15 points).

f. Cost Effectiveness category—system cost-effectiveness (up to 35 points).

g. Special Consideration Areas—Application must contain at least one end-user site within a trust area or a tribal jurisdictional area (15 points).

C. *Grant Review standards.*

1. In addition to the scoring criteria that rank applications against each other, the Agency evaluates grant applications for possible awards on the following items, according to 7 CFR 1703.127:

a. Financial feasibility.

b. Technical considerations. If the application contains flaws that would prevent the successful implementation, operation or sustainability of a project, the Agency will not award a grant.

c. Other aspects of proposals that contain inadequacies that would undermine the ability of the project to comply with the policies of the DLT Program.

2. The FY 2014 grant Application Guide specifies the format and order of all required items.

3. Most DLT grant projects contain numerous project sites. The Agency requires that site information be consistent throughout an application. Sites must be referred to by the same designation throughout all parts of an application. The Agency has provided a site worksheet that requests the necessary information, and can be used as a guide by applicants. RUS strongly recommends that applicants complete the site worksheet, listing all requested information for each site. Applications without consistent site information will be returned as ineligible.

4. As stated above, DLT grant applications which have non-fixed end-user sites, such as ambulance and home health care services, are scored according to the applicant's entire service area. See the FY 2014 Application Guide for specific guidance on preparing an application with non-fixed end users.

D. *Selection Process.* Grants applications are ranked by final score. RUS selects applications based on those rankings, subject to the availability of funds. In addition, the Agency has the authority to limit the number of applications selected in any one state, or for one project, during a fiscal year. See 7 CFR 1703.127.

VI. Award Administration Information

A. Award Notices

RUS generally notifies by mail applicants whose projects are selected for awards. The Agency follows the award letter with an agreement that contains all the terms and conditions for the grant. A copy of the standard agreement is posted on the RUS Web site at *http://www.rurdev.usda.gov/UTP_DLTResources.html.* An applicant must execute and return the agreement, accompanied by any additional items required by the agreement, within the number of days shown in the selection notice letter.

B. Administrative and National Policy Requirements

The items listed in Section V of this notice, the DLT Program regulation, FY 2014 Application Guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. Performance reporting. All recipients of DLT financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting DLT Program objectives. *See* 7 CFR 1703.107.

2. Financial reporting. All recipients of DLT financial assistance must provide an annual audit, beginning with the first year in which a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please *see* 7 CFR 1703.108.

3. Recipient and Subrecipient Reporting. The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight Federal procurement systems, including the Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As a result the FSRS will soon be consolidated into and accessed through *https://www.sam.gov/portal/public/SAM/.*

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov/portal/public/SAM/* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the subaward was made.

4. Record Keeping and Accounting.

The grant contract will contain provisions relating to record keeping and accounting requirements.

VII. Agency Contacts

A. *Web site: http://www.rurdev.usda.gov/UTP_DLT.html.* The DLT Web site maintains up-to-date resources and contact information for DLT programs.

B. *Telephone:* 202–720–0665.

C. *Fax:* 202–720–1051.

D. *Email: dltinfo@wdc.usda.gov.*

E. *Main point of contact:* Norberto Esteves, Acting Director, Advanced Services Division, Telecommunications Program, Rural Utilities Service.

Dated: April 29, 2014.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2014–11700 Filed 5–21–14; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funds Availability (NOFA).

SUMMARY: The United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) announces its Fiscal Year (FY) 2014 Community Connect Grant Program application window and notice of funds availability. The NOFA announces $13 million for grants from FY 2014 and prior year appropriations. In addition, RUS announces the minimum and maximum amounts for Community Connect grants applicable for the fiscal year. The Community Connect Grant Program regulations can be found at 7 CFR part 1739, subpart A.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping *no later* than July 7, 2014 to be eligible for FY 2014 grant funding. Late applications are not eligible for FY 2014 grant funding.
- Electronic copies must be received by July 7, 2014 to be eligible for FY 2014 grant funding. Late applications are not eligible for FY 2014 grant funding.

ADDRESSES: You may obtain application guides and materials for the Community Connect Grant Program via the Internet at the following Web site: *http://www.rurdev.usda.gov/utp_commconnect.html.* You may also request application guides and materials from RUS by contacting the appropriate individual listed in section VII of the **SUPPLEMENTARY INFORMATION** section of this notice.

Submit completed paper applications for grants to the Rural Utilities Service,

U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 2868,

STOP 1599, Washington, DC 20250–1599. Applications should be marked ''Attention: Director, Broadband Division, Rural Utilities Service.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 690–4673, fax: (202) 690–4389.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.863.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than July 7, 2014, to be eligible for FY 2014 grant funding. Late applications are not eligible for FY 2014 grant funding.
- Electronic copies must be received by July 7, 2014, to be eligible for FY 2014 grant funding. Late applications are not eligible for FY 2014 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the Community Connect Grant Program.

II. Award Information: Available funds and minimum and maximum amounts.

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.

VI. Award Administration Information: Award notice information, award recipient reporting requirements.

VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

The provision of broadband service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide currently unserved areas, on a ''community-oriented connectivity'' basis, with broadband service that fosters economic growth and delivers enhanced educational, health care, and public safety services. Rural Utilities Service will give priority to rural areas that have the greatest need for broadband services, based on the criteria contained herein.

Grant authority will be used for the deployment of broadband service to extremely rural, lower-income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept will stimulate practical, everyday uses and applications of broadband facilities by cultivating the deployment of new broadband services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals. Please see 7 CFR part 1739, subpart A for specifics.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003. This Notice does not change the Community Connect Grant Program regulation (7 CFR part 1739, subpart A).

The definitions applicable to this Notice are published at 7 CFR 1739.3.

The Agency will review, evaluate, and score applications received in response to this Notice based on the provisions found in 7 CFR part 1739, subpart A, and as indicated in this notice.

II. Award Information

A. Available Funds

1. General. The Administrator has determined that the following amounts are available for grants in FY 2014 under 7 CFR 1739.2(a)

2. Grants

a. $13 million is available for grants from FY 2014 and prior year appropriations. Under 7 CFR 1739.2, the Administrator has established a minimum grant amount of $100,000 and a maximum grant amount of $3,000,000 for FY 2014.

b. Assistance instrument: RUS will execute grant documents appropriate to the project prior to any advance of funds with successful applicants.

B. *Community Connect grants cannot be renewed.* Award documents specify the term of each award.

III. Eligibility Information

A. Who is eligible for grants? (See 7 CFR 1739.10.)

1. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

a. An incorporated organization,

b. An Indian tribe or tribal organization, as defined in *25 U.S.C. 450b(e),*

c. A state or local unit of government,

d. A cooperative, private corporation or limited liability company organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for Community Connect Grant Program financial assistance directly.

3. Applicants must have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

4. Applicants must have an active registration with current information in the System for Award Management (SAM) (previously the Central Contractor Registry (CCR)) at *https://www.sam.gov* and have a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

B. What are the basic eligibility requirements for a project?

1. General. The regulation for the Community Connect Grant Program requires that certain definitions affecting eligibility be revised and published from time-to-time by the Agency in the **Federal Register**. For the purpose of this regulation, the agency shall use the following definitions: ''Broadband service'' and ''Broadband Grant Speed.'' Until otherwise revised in the **Federal Register**, for applications in FY 2014, to qualify as Broadband Service, the minimum rate of data transmission shall be three megabits per second (download plus upload speeds) for both fixed and mobile service and the Broadband Grant Speed will be a minimum bandwidth of five megabits per second (download plus upload speeds) for both fixed and mobile service to the customer.

2. Required matching contributions. Please see 7 CFR 1739.14 for the requirement. Grant applicants must demonstrate a matching contribution, in cash, of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions must be used to support the broadband operations funded under the Community Connect Grant Program.

3. To be eligible for a grant, the Project must (see 7 CFR 1739.11):

a. Serve a Proposed Funded Service Area where Broadband Service does not currently exist, to be verified by RUS prior to the award of the grant;

b. Offer service at the Broadband Grant Speed, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

c. Offer service at the Broadband Grant Speed to all residential and business customers within the Proposed Funded Service Area; and

d. Provide a Community Center with at least two (2) Computer Access Points and wireless access at the Broadband Grant Speed available, free of charge, to all users for at least 2 years.

e. Not overlap with the Service area of current RUS borrowers and grantees.

4. Other requirements:

a. DUNS numbers and SAM registration: Applicants must have a Dun and Bradstreet DUNS number and be registered in System Awards Management (SAM) at *https://www.sam.gov* prior to submitting an electronic or paper application. The DUNS number and SAM requirements are contained in 2 CFR part 25. SAM is the repository for standard information about applicants and recipients.

b. DUNS Number: As required by the OMB, all applicants for grants must supply a Dun and Bradstreet DUNS number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see *http://www.grants.gov/applicants/org_step1.jsp* for more information on how to obtain a DUNS number or how to verify your organization's number.

c. System for Award Management (SAM): In accordance with 2 CFR part 25, applicants, whether applying electronically or by paper must be registered in SAM prior to submitting an application. Applicants may register for the SAM at *https://www.sam.gov.* The SAM registration must remain active, with current information, at all times during which an entity has an application under consideration by an agency or has an active Federal Award. To remain registered in the SAM database after the initial registration, the applicant is required to review and update on an annual basis from the date of initial registration or subsequent updates of its information in the SAM database to ensure it is current, accurate and complete.

C. Discussion of Completed Application Items

See paragraph IV. B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1739.15 for completed grant application items.

IV. Application and Submission Information

A. Where To Get Application Information

The application guide, copies of necessary forms and samples, and the Community Connect Grant Program regulation are available from these sources:

1. The Internet: *http://www.rurdev.usda.gov/utp_commconnect.html.*

2. The Rural Utilities Service Broadband Division, for paper copies of these materials: (202) 690–4673.

B. What constitutes a completed application?

1. Detailed information on each item required can be found in the Community Connect Grant Program regulation and the Community Connect Grant Program application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of Community Connect Grant Program financial assistance specified in the Community Connect Grant Program regulation. The Community Connect Grant Program regulation and the application guide provide specific guidance on each of the items listed and the Community Connect Grant Program application guide provides all necessary forms and sample worksheets.

2. Applications should be prepared in conformance with the provisions in 7 CFR 1739, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the RUS Application Guide for this program containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. *An Application for Federal Assistance.* A completed Standard Form (SF) 424.

b. *An executive summary of the Project.* The applicant must provide RUS with a general project overview.

c. *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed in 7 CFR 1739.17.

d. *System design.* The applicant must submit a system design, including, narrative specifics of the proposal, associated costs, maps, engineering design studies, technical specifications and system capabilities, etc.

e. *Service area demographics.* The applicant must provide a map of the Proposed Funded Service Area using the RUS Mapping Tool.

f. *Scope of work.* The scope of work must include specific activities and services to be performed under the proposal, who will carry out the activities and services, specific time-frames for completion, and a budget for all capital and administrative expenditures reflecting the line item costs for all grant purposes, the matching contribution, and other sources of funds necessary to complete the project.

g. *Community-Oriented Connectivity Plan.* The applicant must provide a detailed Community-Oriented Connectivity Plan.

h. *Financial information and sustainability.* The applicant must provide financial statements and information and a narrative description demonstrating the sustainability of the Project.

i. *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

j. *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and to perform the activities proposed under the grant application.

k. *Additional Funding.* If the Project requires additional funding from other sources in addition to the RUS grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

l. *Federal Compliance.* The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(i) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(ii) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(iii) 2 CFR part 417—Government-wide Debarment and Suspension (Non-procurement).

(iv) 7 CFR part 3018—New Restrictions on Lobbying.

(v) 2 CFR part 421—Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

(vi) Certification regarding Architectural Barriers.

(vii) Certification regarding Flood Hazard Precautions.

(viii) An environmental report/questionnaire, in accordance with 7 CFR 1794.

(ix) A certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Service.

(x) Federal Obligation Certification on Delinquent Debt.

(xi) Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.

C. How many copies of an application are required?

1. Applications submitted on paper: Submit the original paper application and a copy in electronic format to RUS.

2. Applications submitted through Grants.gov: The additional paper copies are not necessary if you submit the application electronically through Grants.gov.

D. How and where to submit an application

Grant applications may be submitted on paper or through Grants.gov.

1. Submitting applications on paper.

a. Address paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 2868, STOP 1599, Washington, DC 20250–1599. Applications should be marked ''Attention: Director, Broadband Division, Rural Utilities Service.''

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Applications submitted through Grants.gov.

(a) Applicant may file an electronic application at *http://www.grants.gov.* Applications will not be accepted via facsimile machine transmission or electronic mail. Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application. If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the Grants.gov Web site.

(b) First time Grants.gov users should go to the ''Get Started'' tab on the Grants.gov site and carefully read and follow the steps listed. These steps need to be initiated early in the application process to avoid delays in submitting your application online.

E. Deadlines

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than July 7, 2014 to be eligible for FY 2014 grant funding. Late applications are not eligible for FY 2014 grant funding.

2. Grant applications submitted through Grants.gov must be received by July 7, 2014 to be eligible for FY 2014 funding. Late applications are not eligible for FY 2014 grant funding.

F. Funding Purposes

1. Eligible grant purposes. Grant funds may be used to finance:

a. The construction, acquisition, or leasing of facilities, including spectrum, land or buildings to deploy service at the Broadband Grant Speed to all participating Critical Community Facilities and all required facilities needed to offer such service to all residential and business customers located within the Proposed Funded Service Area;

b. The improvement, expansion, construction, or acquisition of a Community Center that furnishes free internet access at the Broadband Grant Speed and provision of Computer Access Points. Grant funds provided for such costs shall not exceed the lesser of ten percent (10%) of the grant amount requested or $150,000; and

c. The cost of bandwidth to provide service free of charge at the Broadband Grant Speed to Critical Community Facilities for the first 2 years of operation.

2. Ineligible grant purposes.

a. Grant funds may not be used to finance the duplication of any existing Broadband Service provided by another entity.

b. Operating expenses other than the cost of bandwidth for 2 years to provide service at the Broadband Grant Speed to Critical Community Facilities.

3. Please see 7 CFR 1739.3 for definitions, 7 CFR 1739.12 for eligible grant purposes, and 7 CFR 1739.13 for ineligible grant purposes.

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 100). See 7 CFR 1739.17 for the items that will be reviewed during scoring and for scoring criteria.

a. An analysis of the challenges of the following criteria, laid out on a community-wide basis, and how the project proposes to address these issues (up to 50 points): 1. The economic characteristics; 2. Educational Challenges; 3. Health care needs; 4. Public safety issues; and 5. Small Area Income and Poverty Estimates (applications that according to the 2010 census show that at least 20 percent of the population of the counties included in core coverage areas is living in poverty) will receive the maximum score in this category. This emphasis will support Rural Development's goal of providing 20 percent of its funding by 2016 to these areas of need.

b. The extent of the Project's planning, development, and support by local residents, institutions, and Critical Community Facilities (up to 40 points);

c. The level of experience and past success of operating broadband systems for the management team (up to 10 points); and

d. In making a final selection among and between applications with comparable rankings and geographic distribution, the Administrator may take into consideration the characteristics of the Proposed Funded Service Area (PFSA)

B. Special Consideration Areas

RUS will offer special consideration to applications that propose to provide broadband service within a trust area or a tribal jurisdictional area. Such applications will be awarded 15 points. The applicant will need to submit evidence indicating that the proposed service area is located in a trust area or a tribal jurisdictional area.

RUS will use one or more of the following resources in determining whether a proposed service area is located in a trust area or tribal jurisdictional area:

(a) Official maps of Federal Indian Reservations based on information compiled by the U.S. Department of the Interior, Bureau of Indian Affairs and made available to the public;

(b) Title Status Reports issued by the U.S. Department of the Interior, Bureau of Indian Affairs showing that title to such land is held in trust or is subject

to restrictions imposed by the United States;

(c) Trust Asset and Accounting Management System data, maintained by the Department of the Interior, Bureau of Indian Affairs;

(d) Official maps of the Department of Hawaiian Homelands of the State of Hawaii identifying land that has been given the status of Hawaiian home lands under the provisions of section 204 of the Hawaiian Homes Commission Act, 1920;

(e) Official records of the U.S. Department of the Interior, the State of Alaska, or such other documentation of ownership as the RUS may determine to be satisfactory, showing that title is owned by a Regional Corporation or a Village Corporation as such terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1451 et seq.); and

(f) Any other evidence submitted by the applicant that is satisfactory to RUS to establish that area where the end-user site is located is a trust area or a tribal jurisdictional area within the meaning of 38 U.S.C. 3765(1).

C. Review Standards

1. All applications for grants must be delivered to Rural Utilities Service at the address and by the date specified in this notice or electronically submitted by the deadline (see also 7 CFR 1739.2) to be eligible for funding. Rural Utilities Service will review each application for conformance with the provisions of this part. Rural Utilities Service may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

3. Applications conforming with this part will then be evaluated competitively by a panel of Rural Utilities Service employees selected by the Administrator of Rural Utilities Service, and will be awarded points as described in the scoring criteria in 7 CFR 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

D. Selection Process

Grant applications are ranked by final score. Rural Utilities Service selects applications based on those rankings, subject to the availability of funds and consistent with 7 CFR 1739.17.

VI. Award Administration Information

A. Award Notices

Rural Utilities Service recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. Rural Utilities Service generally notifies applicants whose projects are selected for awards by emailing a scanned copy of an award letter. Rural Utilities Service follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements

The items listed in paragraph IV.B.2.l. of this notice, and the Community Connect Grant Program regulation, application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. Performance reporting. All recipients of Community Connect Grant Program financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project. See 7 CFR 1739.19.

2. Financial reporting. All recipients of Community Connect Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. See 7 CFR 1739.20.

3. Recipient and Subrecipient Reporting. The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more (unless they are exempt under 2 CFR Part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR Part 170) to *http://www.sam.gov* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR Part 170) to the Recipient by the end of the month following the month in which the subaward was made.

VII. Agency Contacts

A. Web site: *http://www.rurdev.usda.gov/utp_commconnect.html.* This Web site maintains up-to-date resources and contact information for the Community Connect Grant Program.

B. Phone: (202) 690–4673.

C. Fax: (202) 690–4389.

D. Main point of contact: Kenneth Kuchno, Director, Broadband Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: May 5, 2014.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2014–11704 Filed 5–21–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines; Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funds Availability.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces its Public Television Station Digital Transition Grant Program application window for fiscal year (FY) 2014. The FY 2014 funding for the Public Television Station Digital Transition Grant Program is $2,000,000.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than July 7, 2014 to be eligible for FY 2014 grant funding. Late applications are not eligible for FY 2014 grant funding.
- Electronic copies must be received by July 7, 2014 to be eligible for FY 2014

grant funding. Late applications are not eligible for FY 2014 grant funding.

ADDRESSES: You may obtain the application guide and materials for the Public Television Station Digital Transition Grant Program at the following sources:

- The Internet at *http://www.rurdev.usda.gov/UTP_DTV.html*.
- You may also request the application guide and materials from RUS by contacting the appropriate individual listed in Section VII of the **SUPPLEMENTARY INFORMATION** section of this notice.

Completed applications may be submitted the following ways:

- *Paper:* Submit completed paper applications for grants to the: Telecommunications Program, Rural Utilities Service, 1400 Independence Ave. SW., Room 2844, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division.''
- *Electronic:* Submit electronic grant applications to Grants.gov at the following Web address: *http://www.grants.gov/* (Grants.gov), and follow the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Petra Schultze, Financial Analyst, Advanced Services Division, Telecommunications Program, Rural Utilities Service, email: *petra.schultze@wdc.usda.gov,* telephone: (202) 690–4493, fax: (202) 720–1051. Additional point of contact: Norberto Esteves, Acting Director, Advanced Services Division at *norberto.esteves@wdc.usda.gov* or at same phone numbers listed previously.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Public Television Station Digital Transition Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.861.

Dates: Deadline for completed grant applications submitted electronically or on paper no later than July 7, 2014.

Items in Supplementary Information

I. *Funding Opportunity:* Brief introduction to the Public Television Station Digital Transition Grant Program.

II. *Award Information:* Maximum amounts.

III. *Eligibility Information:* Who is eligible, what kinds of projects are eligible, and what criteria determine basic eligibility.

IV. *Application and Submission Information:* Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, and items that are eligible.

V. *Application Review Information:* Considerations and preferences, scoring criteria, review standards, selection information.

VI. *Award Administration:* Award notice information, award recipient reporting requirements.

VII. *Agency Contacts:* Web, phone, fax, email, contact name.

I. Funding Opportunity

As part of the nation's transition to digital television, the Federal Communications Commission (FCC) required all television broadcasters to have converted their transmitters to broadcast digital signals by June 12, 2009. While stations must broadcast their main transmitter signal in digital, many rural stations have yet to complete a full digital transition of their stations across all equipment. Rural stations often have translators serving small or isolated areas and some of these have not completed the transition to digital.

The 2009 FCC deadline did not apply to translators, and in 2011 the FCC adopted a final deadline for analog-to-digital conversion of all translators by September 1, 2015. Because of this, translators have been allowed to continue broadcasting in analog, and stations are still in the process of converting some of their translators to digital. Some rural stations also have not fully converted their production and studio equipment to digital, which has impaired their ability to provide the same quality local programming that they provided in analog. The digital transition has also created some service gaps where households that received an analog signal are now unable to receive a digital signal. For rural households the digital transition has meant in some cases diminished over-the-air public television service. These rural households are the focus of the Agency's Public Television Station Digital Transition Grant Program.

Most applications to the Public Television Station Digital Transition Grant Program have sought assistance towards the goal of replicating analog coverage areas through transmitter and translator transitions. The first priority has been to initiate digital broadcasting from their main transmitters. As many stations have completed the digital transition of their transmitters, the focus has shifted to power upgrades and translators, as well as digital program production equipment and multicasting/data casting equipment. There are some rural stations that may need to install translators to provide fill-in service to areas that previously received analog but are now unable to receive digital. In FY 2013, 7 awards were made, including the following project purposes: Transmitter equipment, translators, studio and production equipment, master control equipment, and microwave equipment. When compared with the first few years of the program, as the digital transition progresses, more applications were received for translators and master control and production equipment, than for transmitters. However, some stations may remain that have not achieved full analog parity in program management and creation. Continuation of reliable public television service to all current patrons understandably is still the focus for many broadcasters.

It is important for public television stations to be able to tailor their programs and services (e.g., education services, public health, homeland security, and local culture) to the needs of their rural constituents. If public television programming is lost, many school systems may be left without educational programming they count on for curriculum compliance.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003, (68 FR 37370). This Notice does not change the Public Television Station Digital Transition Grant Program regulation (7 CFR part 1740).

II. Award Information

A. Available Funds for Grants

1. The amount available for grants for FY 2014 is $2,000,000. The maximum amount for grants under this program is $750,000 per public television station per year.

2. Assistance instrument: Grant documents appropriate to the project will be executed with successful applicants prior to any advance of funds.

B. Public Television Station Digital Transition Grants

Prior grants cannot be renewed nor extended; however, past grantees may submit new applications for projects not covered under the prior grant. Award documents specify the term length of each award.

III. Eligibility Information

A. Who is eligible for grants? (See 7 CFR 1740.3)

1. Public television stations which serve rural areas as defined in 7 CFR 1740.2 are eligible for Public Television Station Digital Transition Grants. A public television station is a noncommercial educational television broadcast station that is qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934.

2. Individuals are not eligible for Public Television Station Digital Transition Grant Program financial assistance directly.

3. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible.

B. What are the basic eligibility requirements for a project?

1. Grants shall be made to perform digital transition of television broadcasting stations serving rural areas. Grant funds may be used to acquire, lease, and/or install facilities and software necessary to the digital transition. Specific purposes include:

a. Digital transmitters, translators, and repeaters, including all facilities required to initiate digital television (DTV) broadcasting. All broadcast facilities acquired with grant funds shall be capable of delivering DTV programming and high definition television (HDTV) programming, at both the interim and final channel and power authorizations. There is no limit to the number of transmitters or translators that may be included in an application;

b. Power upgrades of existing DTV transmitter equipment, including replacement of existing low-power digital transmitters with digital transmitters capable of delivering the final authorized power level;

c. Studio-to-transmitter links;

d. Equipment to allow local control over digital content and programming, including master control equipment;

e. Digital program production equipment, including cameras, editing, mixing and storage equipment;

f. Multicasting and data casting equipment;

g. Cost of the lease of facilities, if any, for up to three years; and,

h. Associated engineering and environmental studies necessary to implementation.

2. Matching contributions: There is no requirement for matching funds in this program (see 7 CFR 1740.5).

3. The following are not eligible for grant funding (see 7 CFR 1740.7):

a. Funding for ongoing operations or for facilities that will not be owned by the applicant, except for leased facilities as provided above;

b. Costs of salaries, wages, and employee benefits of public television station personnel unless they are for construction or installation of eligible facilities;

c. Facilities for which other grant funding from any other source has been approved; and,

d. Expenditures made prior to the application deadline specified in this Notice of Funds Availability.

C. Summary Discussion of a Completed Application

See paragraph IV.B of this notice for a summary discussion of the items that make up a completed application. You will find more complete information in the FY 2014 Public Television Station Digital Transition Grant Program Application Guide. You may also refer to 7 CFR 1740.9 for completed grant application requirements.

IV. Application and Submission Information

A. Where To Get Application Information

The application guide, copies of necessary forms and samples, and the Public Television Station Digital Transition Grant Program regulation are available from these sources:

1. The Internet: *http://www.rurdev.usda.gov/UTP_DTV.html,* or *http://www.grants.gov*.

2. The RUS Advanced Services Division, for paper copies of these materials call (202) 690–4493.

B. What constitutes a completed application?

1. Detailed information on each item required can be found in the Public Television Station Digital Transition Grant Program regulation and application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application specified in the program regulation. The program regulation and application guide provide specific guidance on each of the items listed and the application guide provides all necessary forms and sample worksheets.

2. A completed application must include the following documentation, studies, reports and information, in a form satisfactory to RUS. Applications should be prepared in conformance with the provisions in 2 CFR part 180, and 2 CFR part 182, 7 CFR part 1740, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the application guide for this program, which contains instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. An application for Federal assistance, Standard Form 424.

b. An executive summary, not to exceed two pages, describing the public television station, its service area and offerings, its current digital transition status, and the proposed project.

c. Evidence of the applicant's eligibility to apply under this Notice, demonstrating that the applicant is a Public Television Station as defined in this Notice, and that it is required by the FCC to perform the digital transition.

d. A spreadsheet showing the total project cost, with a breakdown of items sufficient to enable RUS to determine individual item eligibility.

e. A coverage contour map showing the digital television coverage area of the application project. This map must show the counties (or county) comprising the Core Coverage Area by shading and by name. Partial counties included in the applicant's Core Coverage Area must be identified as partial and must contain an attachment with the applicant's estimate of the percentage that its coverage contour comprises of the total area of the county. If the application is for a translator, the coverage area may be estimated by the applicant through computer modeling or some other reasonable method, and this estimate is subject to acceptance by RUS. (In the Application Guide, see Section C.3, Project Core Coverage Area Map(s).)

f. The applicant's own calculation of its Rurality score, supported by a worksheet showing the population of its Core Coverage Area, and the urban and rural populations within the Core Coverage Area. The data source for the urban and rural components of that population must be identified. If the application includes computations made by a consultant or other organization outside the public

television station, the application shall state the details of that collaboration. (In the Application Guide, see Section D. Scoring Documentation.)

g. The applicant's own calculation of its Economic Need score, supported by a worksheet showing the National School Lunch Program (NSLP) eligibility levels for all school districts within the Core Coverage Area and averaging these eligibility percentages. The application must include a statement from the state or local organization that administers the NSLP program certifying that the school district scores used in the computations are accurate. Applicants are to use the most recent data available. Some official NSLP data is posted on state and/or local government Web sites, in which case a printout of the data may be provided as long as it documents the Web site source. (In the Application Guide, see Section D. Scoring Documentation.)

h. If applicable, a presentation not to exceed five pages demonstrating the Critical Need for the project.

i. Evidence that the FCC has authorized the initiation of digital broadcasting at the project sites. In the event that an FCC construction permit has not been issued for one or more sites, RUS may include those sites in the grant, and make advance of funds for that site conditional upon the submission of a construction permit.

j. Compliance with other Federal statutes. The applicant must provide evidence or certification that it is in compliance with all applicable Federal statutes and regulations, including, but not limited to the following (sample certifications are provided in the application guide):

(i) Equal Opportunity and Nondiscrimination;

(ii) Architectural barriers;

(iii) Flood hazard area precautions;

(iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(v) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(vi) Debarment, Suspension; and Other Responsibility Matters—Primary Covered Transactions;

(vii) Lobbying for Contracts, Grants, Loans, and Cooperative Agreements Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

(viii) Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants.

k. Environmental impact and historic preservation. The applicant must provide details of the digital transition's impact on the environment and historic preservation, and comply with 7 CFR part 1794, which contains the Agency's policies and procedures for implementing a variety of federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. This must be contained in a separate section entitled ''Environmental Impact of the Digital Transition,'' and must include the Environmental Questionnaire/Certification, available from RUS, describing the impact of its digital transition. Submission of the Environmental Questionnaire/Certification alone does not constitute compliance with 7 CFR part 1794.

3. DUNS Number. As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

4. In accordance with 2 CFR part 25, all applicants, whether applying electronically or by paper, must be registered in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)), prior to submitting an application.

a. Applicants may register for the SAM at *https://www.sam.gov/*.

b. The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

C. How many copies of an application are required?

1. Applications submitted on paper: Submit the original application and two (2) copies to RUS.

2. Electronically submitted applications: The additional paper copies for RUS are not necessary if you submit the application electronically through *http://www.grants.gov.*

D. How and where to submit an application?

Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Telecommunications Program, RUS, 1400 Independence Ave. SW., Room 2844, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division.''

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated postmark applied by the U.S. Postal Service;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Non-USPS-applied postage dating, i.e. dated postage meter stamps, do not constitute proof of the date of mailing.

d. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically Submitted Applications.

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov:

(i) Navigate your Web browser to *http://www.grants.gov.*

(ii) Follow the instructions on that Web site to find grant information.

(iii) Download a copy of the application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

d. Grants.gov contains full instructions on all required passwords, credentialing and software.

e. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline. Difficulties encountered by applicants filing through Grants.gov will not justify filing deadline extensions.

f. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

E. Deadlines

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than July 7, 2014 to be eligible for FY 2014 grant funding. Late applications are not eligible for FY 2014 grant funding.

2. Electronic grant applications must be received by July 7, 2014 to be eligible for FY 2014 funding. Late applications are not eligible for FY 2014 grant funding.

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria are detailed in 7 CFR 1740.8. There are 100 points available, broken down as follows:

a. The Rurality of the Project (up to 50 points);

b. The Economic Need of the Project's Service Area (up to 25 points), and;

c. The Critical Need for the project, and of the applicant, including the benefits derived from the proposed service (up to 25 points).

B. Review Standards

1. All applications for grants must be delivered to RUS at the address and by the date specified in this notice to be eligible for funding. RUS will review each application for conformance with the provisions of this part. RUS may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned and will not be considered for FY 2014 funding.

3. Applications conforming with this part will be evaluated competitively by a panel of RUS employees selected by the Administrator of RUS, and will be awarded points as described in the scoring criteria in 7 CFR 1740.8. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

4. Regardless of the score an application receives, if the RUS determines that the Project is technically or financially infeasible, the Agency will notify the applicant, in writing, and the application will be returned and will not be considered for FY 2014 funding.

C. Scoring Guidelines

1. The applicant's calculated scores in Rurality and Economic Need will be checked and, if necessary, corrected by RUS.

2. The Critical Need score will be determined by RUS based on information presented in the application. The Critical Need score is based on the reviewer's assessment of the supporting arguments made in the application. The score aims to assess how the specific digital transition purpose fits with the unique need of the television station as it moves all of its equipment through the digital transition. This score is intended to capture, from the rural public's standpoint, the necessity and usefulness of the proposed project. This scoring category will also recognize that at a specific time, some transition purposes are perceived to be more essential than others and that, over time, this perception changes. For example, during the transition from analog to digital transmitters, which concluded on June 12, 2009, a first time transition of a primary transmitter was the most essential project that could be undertaken for most stations and would have been scored accordingly. Now that all transmitters have completed the transition to digital, the focus may shift to some of the other eligible purposes such as translators, studio and production equipment, and master control equipment. But what equipment specifically is most essential may vary from station to station. For example, local production equipment can be a high priority especially if it produces an area's only local news or if the station has been historically active in producing local programming. Repositioning a digital transmitter on a tower can also be a high priority in cases where the original analog coverage area was not adequately replicated after the transition. The Critical Need score is also relative since each application is scored in comparison to other applications in the competition. These various factors explain why a similar application may receive a different Critical Need score in different years of this program.

VI. Award Administration Information

A. Award Notices

The Agency generally notifies applicants whose projects are selected for awards by faxing an award letter or emailing a PDF facsimile of the award letter. The Agency follows the award letter with a grant agreement that contains the terms and conditions for the grant. A copy of the standard agreement is posted on the RUS Web site at *http://www.rurdev.usda.gov/UTP_DTVResources.html.*

An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements. The items listed in the program regulation at 7 CFR 1740.9(j) implement the appropriate administrative and national policy requirements.

C. Reporting

1. All recipients of Public Television Station Digital Transition Grant Program financial assistance must provide semiannual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last semiannual report. The final report must include an evaluation of the success of the project.

2. Recipient and Subrecipient Reporting.

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As a result the FSRS will soon be consolidated into and accessed through SAM at *https://www.sam.gov/portal/public/SAM/.*

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *www.sam.gov* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the sub-award was made.

3. Systems Necessary to Meet Reporting Requirements.

The applicant must have the necessary processes and systems in

place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparence Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b).

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/.* The Web site maintains up-to-date resources and contact information for the Public Television Station Digital Transition Grant Program.

B. Phone: (202) 690–4493.

C. Fax: (202) 720–1051.

D. Main points of contact: Petra Schultze, Financial Analyst, Advanced Services Division, Telecommunications Program, RUS, telephone: (202) 690–4493, fax: (202) 720–1051, or email: *petra.schultze@wdc.usda.gov.* Additional point of contact at the same telephone number, or email: *norberto.esteves@wdc.usda.gov:* Norberto Esteves, Acting Director, Advanced Services Division.

Dated: May 1, 2014.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2014–11703 Filed 5–21–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2014]

Foreign-Trade Zone 207—Richmond, Virginia; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Capital Region Airport Commission, grantee of FTZ 207, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 16, 2014.

FTZ 207 was approved by the Board on March 31, 1995 (Board Order 733, 60 FR 18394–18395, 4/11/95) and expanded on September 9, 2005 (Board Order 1413, 70 FR 55107, 9/20/05). The current zone includes the following sites: *Site 1* (2,044 acres)—Richmond International Airport Complex, 1 Richard E. Byrd Terminal Drive, Richmond, Henrico County; *Site 2* (211 acres)—Southpoint Business Park, 8100 Quality Dr., Prince George, Prince George County; and, *Site 3* (11 acres)—Lewiston Industrial Park, 11293 Central Drive, Ashland, Hanover County.

The grantee's proposed service area under the ASF would be the Counties of Amelia, Appomattox, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Greensville, Goochland, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond and Westmoreland and the Cities of Colonial Heights, Emporia, Hopewell, Petersburg and Richmond, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Richmond Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include all of the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 207's previously authorized subzones.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 21, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 5, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: May 16, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–11889 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1936]

Reorganization/Expansion of Foreign-Trade Zone 235 Under Alternative Site Framework, Lakewood, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Township of Lakewood, grantee of Foreign-Trade Zone 235, submitted an application to the Board (FTZ Docket B–96–2013, docketed November 7, 2013) for authority to reorganize and expand under the ASF with a service area of the Counties of Ocean, Middlesex, Monmouth, Union and Burlington, within and adjacent to the Philadelphia Customs and Border Protection port of entry, FTZ 235's existing Sites 1 and 2 would be categorized as magnet sites, and the grantee proposes two initial usage-driven sites (Sites 7 and 8);

Whereas, notice inviting public comment was given in the **Federal Register** (78 FR 66813–68814, 11–15–2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 235 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated by May 31, 2019, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 7 and 8 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by May 31, 2017.

Signed at Washington, DC, this 9th day of May 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Attest:_____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–11891 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Rated Orders under the Defense Priorities and Allocations System (DPAS)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 21, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lawrence Hall, BIS Office of Administration, 14th and Pennsylvania Ave. NW., HCHB 6622, Washington, DC 20230; 703–675–9944; *lohall.work@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection involves the exchange of rated order information between customers and suppliers. Recordkeeping is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person (supplier) who receives a priority rated order under DPAS regulation (15 CFR 700) must notify the customer of acceptance or rejection of that order within a specified period of time. Also, if shipment against a priority rated order will be delayed, the supplier must immediately notify the customer.

II. Method of Collection

Rated order information may be transmitted or stored electronically or on paper.

III. Data

OMB Control Number: 0694–0092.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,434,650.

Estimated Time Per Response: 1 to 15 minutes.

Estimated Total Annual Burden Hours: 45,290.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–11833 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Competitive Enhancement Needs Assessment Survey Program

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 21, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lawrence Hall, BIS Office of Administration, 14th and Pennsylvania Ave. NW., HCHB 6622, Washington, DC 20230, 703–675–9944, *lohall.work@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense. They also develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small- and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country

adversely affected by cutbacks in defense spending and military base closures.

II. Method of Collection

Collected electronically or on paper.

III. Data

OMB Control Number: 0694–0083.
Form Number(s): None.
Type of Review: Regular submission (extension of a current information collection).
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 2,400.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 2,400.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–11834 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 22, 2014.

SUMMARY: On February 25, 2014, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC'') covering the period May 1, 2012 through April 30, 2013.[1] This review covers one PRC company, Tianjin Magnesium International, Co., Ltd. (''TMI'') and Tianjin Magnesium Metal Co., Ltd. (''TMM'') (collectively ''TMI/TMM'').[2] The Department gave interested parties an opportunity to comment on the *Preliminary Results,* but we received no comments. Hence, these final results are unchanged from the *Preliminary Results* and we continue to find that TMI/TMM did not have reviewable entries during the period of review (''POR'').

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2014, the Department published the *Preliminary Results* of the instant review.[3] TMI and TMM each submitted timely-filed certifications indicating that it had no shipments of subject merchandise to the United States during the POR.[4] In addition, in response to the Department's query, U.S. Customs and Border Protection (''CBP'') did not provide any evidence that contradicted TMI or TMM's claim of no shipments.[5] The Department received no comments from interested parties concerning the results of the CBP query. Therefore, based on TMI and TMM's certification and our analysis of CBP information, we preliminarily determined that the single TMI/TMM entity did not have any reviewable entries during the POR.[6] We invited interested parties to comment on the *Preliminary Results.*[7] We received no comments from interested parties.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off–specification pure'' magnesium).

''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum,

[1] *See Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 10473 (February 25, 2014) (''*Preliminary Results*'').

[2] The Department initiated the instant review on both TMM and TMI. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 38924 (June 28, 2013) (''*Initiation Notice*''). In the interim, for the prior 2011–2012 review of the order, the Department determined TMM and TMI to be collapsed and treated as a single entity for purposes of the proceeding. *See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 94 (January 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5. As this collapsing determination remains unchallenged in this review, the instant review covers the single TMM/TMI entity.

[3] *See Preliminary Results.*

[4] *See* letter from TMM, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium Metal, Co., Ltd.,'' dated August 26, 2013, at 1; *see also* letter from TMI, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,'' dated August 27, 2013, at 1.

[5] *Preliminary Results,* 79 FR 10474.

[6] *Id.*

[7] *Id.*

manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Final Determination of No Shipments

As explained above, in the *Preliminary Results,* the Department found that TMI/TMM did not have reviewable entries during the POR.[8] Also in the *Preliminary Results,* the Department stated that that consistent with its recently announced refinement to its assessment practice in non-market economy (''NME'') cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to TMI/TMM and to issue appropriate instructions to CBP based on the final results of the review.[9]

After issuing the *Preliminary Results,* the Department received no comments from interested parties, nor has it received any information that would cause it to revisit its preliminary determination. Therefore, for these final results, the Department continues to find that TMI/TMM did not have any reviewable entries during the POR.

Assessment Rates

The Department determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[10] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Additionally, consistent with the Department's refinement to its assessment practice in NME cases, because the Department determined that TMI/TMM had no shipments of subject merchandise during the POR, any suspended entries that entered under TMI/TMM's antidumping duty case numbers (*i.e.,* at those exporters' rates) will be liquidated at the PRC-wide rate.[11]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent;[12] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–11894 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–DS–P

[8] *Preliminary Results,* 79 FR 10474.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement''*) and the ''Assessment Rates'' section, below.

[10] *See* 19 CFR 351.212(b).

[11] *See Assessment Practice Refinement,* 76 FR 65694.

[12] *See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on solid fertilizer grade ammonium nitrate (ammonium nitrate) from the Russian Federation. The review covers two groups of producers/exporters of the subject merchandise, JSC Acron and its affiliate JSC Dorogobuzh (collectively, Acron) and MCC EuroChem and its affiliates OJSC NAK Azot and OJSC Nevinnomyssky Azot (collectively, EuroChem). The period of review (POR) is April 1, 2012, through March 31, 2013. We preliminarily determine that sales of subject merchandise to the United States have not been made at prices below normal value (NV). We invite all interested parties to comment on these preliminary results.

DATES: *Effective Date:* May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874, or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order is solid, fertilizer grade ammonium nitrate products. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3102.30.00.00 and 3102.290000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope is dispositive.[1]

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and it is available to all paries in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer/exporter	Weighted-average dumping margin (percent)
JSC Acron/JSC Dorogobuzh	0.00
MCC EuroChem/OJSC NAK Azot/OJSC Nevinnomyssky Azot	0.00

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[2] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, may be filed within five days from the deadline date for the submission of case briefs.[3] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[4] Executive summaries should be limited to five pages total, including footnotes. Interested parties who wish to comment on the preliminary results must file briefs electronically using IA ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. on the date the document is due.

In accordance with section 774 of the Act, the Department will hold a hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.[5] Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS, as noted above. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.[6] If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[7] Parties should confirm by telephone the date, time, and location of the hearing.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8] If Acron's or EuroChem's weighted-average dumping margins are not zero or *de minimis* (*i.e.,* less than 0.50 percent), we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either of the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

[1] For a complete description of the scope of the order, see the memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled, ''Decision Memorandum for the Preliminary Results of the 2012–2013 Administrative Review of the Antidumping Duty Order on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation,'' (Preliminary Decision Memorandum), dated concurrently with and hereby adopted by this notice.

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(d)(1) and 19 CFR 351.309(d)(2).

[4] *See* 19 CFR 351.309(c)(2).

[5] *See* 19 CFR 351.310.

[6] *Id.*

[7] *Id.*

[8] *See* 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[9] This clarification will apply to entries of subject merchandise during the POR produced by Acron or EuroChem for which these companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Acron and EuroChem will be equal to the weighted-average dumping margins established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 253.98 percent, the all-others rate established in the order.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 16, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
   a. Normal Value Comparisons
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   c. Results of the Differential Pricing Analysis
   d. Product Comparisons
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   g. Normal Value
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[FR Doc. 2014–11886 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') for the period of review (''POR'') April 1, 2012, through March 31, 2013. The Department preliminarily determines that sales have been made below normal value (''NV''). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Frances Veith, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068, or (202) 482–4295, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain activated carbon. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00.[1] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''). Constructed export prices and export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (''NME'') within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *https://iaaccess.trade.gov/login.aspx* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

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[9] For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See Termination of the Suspension Agreement on Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation and Notice of Antidumping Duty Order,* 76 FR 23569, 23570 (April 27, 2011).

[1] *See* ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Activated Carbon from the People's Republic of China,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, issued concurrently with, and hereby adopted by, this notice, for a complete description of the Scope of the Order.

Preliminary Results of the Review

The Department determines that the following preliminary dumping margins exist:

Exporter	Margin (dollars per kilogram)[2]
Jacobi Carbons AB[3]	3.77
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd[4]	2.05
Calgon Carbon (Tianjin) Co., Ltd	3.13
Datong Juqiang Activated Carbon Co., Ltd	3.13
Datong Municipal Yunguang Activated Carbon Co., Ltd	3.13
Jilin Bright Future Chemicals Company, Ltd	3.13
Ningxia Huahui Activated Carbon Co., Ltd	3.13
Ningxia Mineral and Chemical Limited	3.13
Shanxi Sincere Industrial Co., Ltd	3.13
Tianjin Channel Filters Co., Ltd	3.13
PRC-Wide Rate[5]	2.42

[2] In the second administrative review of the *Order,* the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70211 (November 17, 2010).

[3] In the third administrative review, the Department found Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there were no changes to the facts which supported that decision, we continued to find these companies part of a single entity in the fourth and fifth administrative reviews. Because there have been no changes to the facts which supported that decision in the present review, we are continuing to treat the companies as a single entity in this review. *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review,* 76 FR 67142 (October 31, 2011); *Certain Activated Carbon From the People's Republic of China; 2010–2011; Final Results of Antidumping Duty Administrative Review,* 77 FR 67337 (November 9, 2012); *Certain Activated Carbon From the People's Republic of China; 2011–2012; Final Results of Antidumping Duty Administrative Review,* 78 FR 70533, 70535 (November 26, 2013).

[4] In the first administrative review, the Department found Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and Ningxia Guanghua Activated Carbon Co., Ltd. are a single entity and, because there were no changes to the facts which supported that decision, we continued to find these companies to be part of a single entity in subsequent reviews. Because there have been no changes to the facts which supported that decision in the present review, we are continuing to treat the companies as a single entity in this review. *See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results,* 74 FR 21317 (May 7, 2009), unchanged in *First Administrative Review of Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 57995 (November 10, 2009); and *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2011–2012,* 78 FR 70533 (November 26, 2013) at footnote 33.

[5] The PRC-Wide entity includes the Shanxi DMD Corporation and Tangshan Solid Carbon Co., Ltd.

Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit written comments in the form of case briefs within 30 days of publication of the preliminary results and rebuttal comments in the form of rebuttal briefs within five days after the time limit for filing case briefs.[6] Rebuttal briefs must be limited to issues raised in the case briefs.[7] Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) The number of participants; and (3) A list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[9]

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[10] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.,* is 0.50 percent or more) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1).[11] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[12] The Department recently announced a refinement to its assessment practice in NME cases.[13] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.[14] Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[15]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For each specific company listed above, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then

[6] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); *see also* 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.309(d)(2).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.212(b)(1).

[11] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[12] *See* 19 CFR 351.106(c)(2).

[13] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[14] *Id.*

[15] *Id.*

zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 16, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Respondent Selection
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Non-Market Economy Country
6. Separate Rates
7. Separate Rate Calculation
8. Vietnam-Wide Entity
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10. Surrogate Country
11. Economic Comparability
12. Significant Producers of Comparable Merchandise
13. Data Availability
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16. U.S. Price
17. Factor Valuations
18. Currency Conversion

[FR Doc. 2014–11892 Filed 5–21–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–996]

Non-Oriented Electrical Steel From the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that non-oriented electrical steel (NOES) from the People's Republic of China (the PRC) is being, or is likely to be, sold to the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2013, through June 30, 2013. The dumping margin is shown in the ''Preliminary Determination and Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Sandra Dreisonstok or Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0768 and (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (*i.e.,* fully annealed to develop final magnetic properties) or semi-processed (*i.e.,* finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of this investigation are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part (*i.e.,* lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Scope Comments

For a complete discussion of scope comments received from interested parties and changes the Department made to the scope of the investigation, *see* Preliminary Decision Memorandum.[1] The ''Scope of the

[1] *See* Memorandum from Senior Advisor Gary Taverman to Acting Assistant Secretary Ronald K. Lorentzen entitled ''Decision Memorandum for the Preliminary Determination in the Less Than Fair Value Investigation of Non-Oriented Electrical Steel from the People's Republic of China'' dated concurrently with this notice and hereby adopted by this notice (Preliminary Decision Memorandum).

Investigation'' section above reflects all changes.

Postponement of the Preliminary Determination

On February 28, 2014, AK Steel Corporation (the petitioner) made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent NOES LTFV investigations, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e).[2] On March 5, 2014, we published our notice of postponement of the preliminary determinations by 50 days in accordance with sections 733(c)(1)(A) and (2) of the Act and 19 CFR 351.205(f).[3] As a result of the postponement, the revised deadline for the preliminary determination of this investigation is now May 15, 2014.

Methodology

The Department conducted this LTFV investigation in accordance with section 731 of the Act. Because none of the potential respondents in this investigation submitted separate rate applications, they are considered to be part of the PRC-wide entity. Because the PRC-wide entity did not provide necessary quantity-and-value data the Department requested, the PRC-wide entity failed to cooperate by not acting to the best of its ability. Therefore, the Department is assigning to the PRC-wide entity a rate based on facts available with an adverse inference.[4] For further information, *see* the ''Application of Adverse Facts Available'' section in the Preliminary Decision Memorandum.[5] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Critical Circumstances

On March 6, 2014, the petitioner alleged that critical circumstances exist with respect to imports of NOES from the PRC. In accordance with 19 CFR 351.206(c)(2)(i), because the critical circumstances allegation was submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.[6]

In accordance with section 733(e)(1) of the Act, we preliminarily find critical circumstances exist with respect to the PRC-wide entity in this investigation. For a full discussion of our preliminary critical circumstances determination, *see* the ''Critical Circumstances'' section of the Preliminary Decision Memorandum.

Preliminary Determination and Suspension of Liquidation

The Department preliminarily assigns the PRC-wide entity a rate of 407.52 percent as an adverse facts available rate. As described above, the Department found that critical circumstances exist with respect to the PRC-wide entity. Furthermore, consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct U.S. Customs and Border Protection (CBP) to require a cash deposit equal to the amount by which the normal value exceeds the export price or constructed export price, less the amount of the countervailing duty determined to constitute an export subsidy. In this LTFV investigation, with regard to PRC-wide entity, export subsidies constitute 1.57 percent[7] of the preliminarily calculated countervailing duty rate in the concurrent countervailing duty investigation, and, thus, we will offset the PRC-wide rate of 407.52 percent by the countervailing duty rate attributable to export subsidies (*i.e.,* 1.57 percent) to calculate the cash deposit rate for this LTFV investigation. In accordance with sections 733(e)(2)(A) of the Act, we will direct CBP to suspend liquidation of all entries of NOES from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**, and to require a cash deposit for such entries.

Disclosure and Public Comment

Because the Department has reached its conclusions on the basis of adverse facts available, the calculations performed in connection with this preliminary determination are not proprietary in nature, and are described in the Preliminary Decision Memorandum. Case briefs may be submitted to IA ACCESS no later than 30 days after the publication of this preliminary determination in the **Federal Register**, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8] Rebuttal briefs may respond only to arguments raised in case briefs and should identify the arguments to which it is responding.[9] For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for all of the concurrent LTFV and countervailing duty investigations. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request using IA ACCESS within 30 days after the publication of this preliminary determination in the **Federal Register**.[11] An electronically filed hearing request must be received successfully in its entirety by IA ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[12] Hearing requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a hearing

[2] *See* letter from the petitioner to the Secretary of Commerce, ''Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Request for Postponement of the Preliminary Determinations,'' dated February 28, 2014.

[3] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 79 FR 13987 (March 12, 2014).

[4] *See* sections 776(a) and (b) of the Act.

[5] *See* Preliminary Decision Memorandum.

[6] *See, e.g., Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364 (October 15, 1998).

[7] The following subsidy programs in the preliminary determination of the concurrent countervailing duty investigation are export subsidies: Preferential Export Financing from the Export-Import Bank of China (1.06 percent) and Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises (0.51 percent). *See Non-Oriented Electrical Steel From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 79 FR 16293 (March 25, 2014), and the accompanying Preliminary Decision Memorandum at 12–13.

[8] *See* 19 CFR 351.309.

[9] *See* 19 CFR 351.309(c)(2).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *Id.*

request is submitted, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined. Parties will be notified of the date and time of any hearing.

U.S. International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of NOES from the PRC before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 15, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Scope Comments
5. Scope of the Investigation
6. PRC-Wide Entity
7. Application of Adverse Facts Available
8. Rate for the PRC-Wide Entity
9. Corroboration
10. Critical Circumstances
11. Recommendation

[FR Doc. 2014–11900 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–843, A–588–872, A–401–809]

Non-Oriented Electrical Steel From Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the ''Department'') preliminarily determines that non-oriented electrical steel (''NOES'') from Germany, Japan, and Sweden is being sold, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The period of investigation (''POI'') is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins are listed in the ''Preliminary Determinations'' section of this notice. Interested parties are invited to comment on these preliminary determinations.

DATES: Effective May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor at (202) 482–0989 (Germany); Thomas Martin at (202) 482–3936 (Japan); or Drew Jackson at (202) 482–4406 (Sweden); AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of these investigations on November 18, 2013.[1] Pursuant to a timely request from AK Steel Corporation (''Petitioner'') and section 773(c)(1)(A) of the Act, the Department postponed these preliminary LTFV determinations 50 days.[2]

Scope of the Investigations

The merchandise subject to these investigations consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to these investigations whether it is fully processed (*i.e.,* fully annealed to develop final magnetic properties) or semi-processed (*i.e.,* finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of these investigations is not limited to merchandise meeting the ASTM, JIS and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of these investigations are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part *(i.e.,* lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Methodology

The Department conducted these investigations in accordance with section 731 of the Act. As noted above, the mandatory respondents did not respond to the Department's requests for information. Pursuant to section 776(a) of the Act, the Department preliminarily relied upon facts otherwise available to assign estimated weighted-average dumping margins to the mandatory

[1] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations,* 78 FR 69041 (November 18, 2013).

[2] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 79 FR 13987 (March 12, 2014).

respondents. Furthermore, in accordance with section 776(b) of the Act, the Department applied an inference adverse to the interests of the mandatory respondents in selecting from the facts otherwise available. For a full description of the analysis underlying our preliminary determinations, see the Preliminary Decision Memoranda for Germany, Japan, and Sweden, which are hereby adopted by this notice.[3] These Preliminary Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *https://iaaccess.trade.gov,* and it is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of these Preliminary Decision Memoranda can be found on the Internet at *http://enforcement.trade.gov/frn.* The signed Preliminary Decision Memoranda and the electronic versions of the Preliminary Decision Memoranda are identical in content.

Scope Comments

For a complete discussion of scope comments received from interested parties and changes the Department made to the scope of the investigations, *see* Preliminary Decision Memoranda.[4] The ''Scope of the Investigations'' section above reflects all changes.

Postponement of the Preliminary Determinations

On February 28, 2014, AK Steel Corporation (the petitioner) made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent NOES LTFV investigations, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e).[5] On March 12, 2014, we published our notice postponing the preliminary determinations by 50 days in accordance with sections 733(c)(1)(A) and (2) of the Act and 19 CFR 351.205(f).[6] As a result of the postponement, the revised deadline for the preliminary determinations for these investigations is now May 15, 2014.

Preliminary Affirmative Determinations of Critical Circumstances, in Part

On March 6, 2014, Petitioner filed timely critical circumstances allegations, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration from Germany, Japan, and Sweden.[7] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department will issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. Based on our analyses, in accordance with section 733(e) of the Act and 19 CFR 351.206, we preliminarily find that critical circumstances exist for each of the mandatory respondents in the investigations concerning NOES from Germany, Japan and Sweden, and for all other producers and exporters subject to the investigations concerning NOES from Japan and Sweden. That is, with respect to these companies, we preliminarily determine that (1) importers of merchandise knew or should have known that the exporter was selling the merchandise under consideration at LTFV and that there was likely to be material injury in accordance with section 733(e)(1)(A) of the Act; and (2) imports of subject merchandise have been massive over a relatively short period in accordance with section 733(e)(1)(B) of the Act. With respect to all other producers and exporters subject to the investigation concerning NOES from Germany, including ThyssenKrupp Steel Europe AG, we preliminarily do not find that critical circumstances exist.[8]

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or, *de minimis* margins or any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. We have determined the dumping margin for each of the mandatory respondents in the Germany, Japan, and Sweden investigations entirely under section 776 of the Act. Therefore, the only available dumping margins for these preliminary determinations are found in the petition. Pursuant to section 735(c)(5)(B) of the Act, and the Department's practice under these circumstances we calculated the all others rate as a simple average of the margins from the petition.[9] For a full description of the methodology underlying our preliminary determinations, see the Preliminary Decision Memoranda.[10]

[3] *See* ''Decision Memorandum for Preliminary Determination of the Antidumping Duty Investigation: Non-Oriented Electrical Steel from Germany'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance; ''Decision Memorandum for Preliminary Determination of the Antidumping Duty Investigation: Non-Oriented Electrical Steel from the Japan'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance; and, ''Decision Memorandum for Preliminary Determination of the Antidumping Duty Investigation: Non-Oriented Electrical Steel from Sweden'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, each dated concurrently with these preliminary determinations (collectively, ''Preliminary Decision Memoranda'').

[4] *Id.*

[5] *See* Letter from Petitioner to the Secretary of Commerce, ''Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Request for Postponement of the Preliminary Determinations,'' dated February 28, 2014.

[6] See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 79 FR 13987 (March 12, 2014).

[7] *See* Petitioner's Critical Circumstances Allegations regarding Germany, Japan, and Sweden, dated March 6, 2014.

[8] For a full description of the methodology and results of our critical circumstances analysis, *see* the Preliminary Decision Memoranda.

[9] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2*; see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[10] *See* ''Non-Oriented Electrical Steel from the Federal Republic of Germany: Calculation of All

Preliminary Determinations

The Department preliminarily determines that the following estimated weighted-average dumping margins exist for the producers or exporters during the period July 1, 2012, through June 30, 2013 at the following rates:

Germany

Producer or exporter	Rate (percent)
CD Walzholz	98.84
Thyssenkrupp Electrical Steel EBG GMBH	98.84
All Others	86.29

Japan

Producer or exporter	Rate (percent)
JFE Steel Corporation	204.79
Sumitomo Corporation	204.79
All Others	135.59

Sweden

Producer or exporter	Rate (percent)
Surahammars Bruks AB	126.72
All Others	98.46

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Because none of the mandatory respondents in these investigations provided information requested by the Department and the Department preliminarily determines each of the mandatory respondents to have been uncooperative, verification will not be conducted.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct Customs and Border Protection (''CBP'') to suspend liquidation of all entries of NOES from Germany from companies receiving the ''all others'' rate that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, because we have preliminarily found that critical circumstances exist in the Japan and Sweden investigations with regard to the mandatory respondents and companies receiving the ''all others'' rate as well as for the mandatory respondents in the Germany investigation, we will instruct CBP to suspend liquidation of relevant entries from Germany, Japan, and Sweden entered, or withdrawn from warehouse, for consumption up to 90 days prior to the date of publication of this notice in the **Federal Register**, pursuant to section 733(e)(2) of the Act.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit as follows: (1) The cash deposit rates for mandatory respondents will be equal to the rates that we have determined in these preliminary determinations for these respondents; (2) if the exporter is not a mandatory respondent identified in one of these investigations but the producer is, the cash deposit rate will be the specific rate established for the producer of the subject merchandise in these preliminary determinations; and (3) the cash deposit rate for all other producers or exporters will be equal to the country-specific ''all others'' rate determined in these preliminary determinations. These suspension of liquidation instructions will remain in effect until further notice.[11]

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our preliminary affirmative determinations. In accordance with section 735(b)(2) of the Act, if the Department's final determinations are affirmative, then the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether imports of NOES from Germany, Japan, and Sweden are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on these preliminary determinations. Interested parties may submit case briefs to the Department no later than thirty days after the publication of these preliminary determinations. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days of the deadline date for the submission of case briefs.[12] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[13] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs must be submitted to the Department electronically using IA ACCESS.[14] An electronically-filed document must be received successfully in its entirety by IA ACCESS by 5 p.m. on the date the document is due.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party by electronically filing the request via IA ACCESS.[15] Any interested party may request a hearing within 30 days of publication of this notice.[16] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a timely request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[17] Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date. Oral presentations will be limited to issues raised in the briefs.

Others Rate'' from Patrick O'Connor, International Trade Compliance Analyst, Office IV, to The File; ''Non-Oriented Electrical Steel from Japan: Calculation of All Others Rate'' from Thomas Martin, International Trade Compliance Analyst, Office IV, to The File; and ''Non-Oriented Electrical Steel from Sweden: Calculation of All Others Rate'' from Drew Jackson, International Trade Compliance Analyst, Office IV, to The File, each dated concurrently with these preliminary determinations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan,* 73 FR 39673, 39674 (July 10, 2008) (where the Department determined the all others rate using a simple average of the alleged dumping margins from the petition).

[11] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[12] *See* section 351.309(d) of the Department's regulations.

[13] *See* section 351.309(c)(2) of the Department's regulations.

[14] Electronic filing requirements via IA ACCESS can be found at section 351.303 of the Department's regulations; *see also* Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011).

[15] *Id.*

[16] *See* section 351.310(c) of the Department's regulations.

[17] *See* section 351.310(d) of the Department's regulations.

Notification to Interested Parties

These preliminary determinations are issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: May 15, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

List of Topics Discussed in the Preliminary Decision Memoranda

1. Summary
2. Background
3. Period of Investigation
4. Scope Comments
5. Scope of the Investigation
6. Comments on Physical Characteristics and Model Matching Hierarchy
7. Application of Facts Available and Use of Adverse Inference
8. All Others Rate
9. Critical Circumstances
10. Conclusion

[FR Doc. 2014–11906 Filed 5–21–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–872]

Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that non-oriented electrical steel (NOES) from the Republic of Korea (Korea) is being sold, or is likely to be sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins are listed in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (*i.e.,* fully annealed to develop final magnetic properties) or semi-processed (*i.e.,* finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS, and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of this investigation are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part *(i.e.,* lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Scope Comments

For a complete discussion of scope comments received from interested parties and changes the Department made to the scope of the investigation, *see* Preliminary Decision Memorandum.[1] The ''Scope of Investigation'' section above reflects all changes.

Postponement of the Preliminary Determination

On February 28, 2014, AK Steel Corporation (the petitioner) made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent NOES LTFV investigations, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e).[2] On March 5, 2014, we published our notice of postponement of the preliminary determination by 50 days in accordance with sections 733(c)(1)(A) and (2) of the Act and 19 CFR 351.205(f).[3] As a result of the postponement and aforementioned tolling, the revised deadline for the preliminary determination of this investigation is now May 15, 2014.

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of

[1] *See* the ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Non-Oriented Electrical Steel from the Republic of Korea,'' from Gary Taverman, Senior Advisor, Enforcement and Compliance, to Ronald K. Lorentzen Acting Assistant Secretary for Enforcement and Compliance, dated concurrently with this determination and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* letter from the petitioner to the Secretary of Commerce, ''Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Request for Postponement of the Preliminary Determinations,'' dated February 28, 2014.

[3] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 79 FR 13987 (March 12, 2014).

the methodology underlying our determination, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached in an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *https://iaaccess.trade.gov,* and it is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

As explained in the Preliminary Decision Memorandum, we determined that the mandatory respondents selected for individual examination in this investigation, POSCO and Daewoo International Corporation, constitute a single entity.

Preliminary Negative Determination of Critical Circumstances

On March 6, 2014, the petitioner filed a timely critical circumstances allegation, pursuant to section 733(e)(1) of the Act and19 CFR 351.206(c)(1). We preliminarily determine that critical circumstances do not exist for imports of NOES from Korea. For a full description of the methodology and results of our analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

The Department preliminarily determines that estimated weighted-average dumping margins exist at the following rates:

Producer or exporter	Weighted-average dumping margin (percent)
POSCO/Daewoo International Corporation	6.91%
All Others	6.91%

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis* or determined entirely under section 776 of the Act. The ''All Others'' rate is based on the estimated weighted-average dumping margin calculated for POSCO/Daewoo International Corporation, the only entity for which the Department calculated a rate.[4]

Disclosure and Public Comment

We will disclose the calculations performed to parties in this proceeding within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[5] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs may respond only to arguments raised in case briefs and should identify the arguments to which it is responding. Interested parties who wish to comment on the preliminary determination must file briefs electronically using IA ACCESS.[6] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. on the date the document is due.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request using IA ACCESS within 30 days after publication of this preliminary determination in the **Federal Register**.[7] An electronically filed hearing request must be received successfully in its entirety by IA ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[8] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a hearing request is submitted, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties will be notified of the date, time, and location of any hearing.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of NOES from Korea as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds export price, as indicated in the chart above, as follows:[9] (1) The rate for the mandatory respondent listed above will be equal to the estimated weighted-average dumping margin that we determine in this preliminary determination; (2) if the exporter is not a mandatory respondent identified above in this investigation, but the producer is, the rate will be equal to the specific estimated weighted-average dumping margin established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all others rate established in this preliminary determination. The

[4] *See* section 735(c)(5)(A) of the Act.

[5] *See* 19 CFR 351.309.

[6] *See* 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.310(c)

[8] *Id.*

[9] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

suspension of liquidation instructions will remain in effect until further notice.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to a request from POSCO/Daewoo International Corporation and in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e), in this investigation, we are postponing the final determination.[10] Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(b)(2). Further, POSCO/Daewoo International Corporation requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months. The suspension of liquidation described above will be extended accordingly.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we notified the International Trade Commission (ITC) of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of NOES from Korea before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

[10] *See* letter from POSCO to the Secretary of Commerce, ''Non-Oriented Electrical Steel from Korea: Request to Postpone the Final Determination'' dated January 28, 2014.

Dated: May 15, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Scope of the Investigation
7. Selection of Respondents
8. Critical Circumstances
9. Affiliation and Single Entity
10. Methodology
   a. Fair Value Comparisons
   b. Determination of Comparison Method
   c. Results of the Differential Pricing Analysis
   d. Product Comparisons
   e. Date of Sale
   f. U.S. Price
   g. Duty Drawback
   h. Normal Value
   i. Overrun Sales—Sales Outside the Ordinary Course of Trade
   ii. Home Market Viability
   iii. Level of Trade
   iv. Calculation of Normal Value Based on Home Market Prices
   i. Transactions Between Affiliated Parties
   j. Cost of Production
   i. Calculation of Cost of Production
   ii. Test of Home Market Sale Prices
   iii. Results of the Sales-Below-Cost Test
11. Currency Conversion
12. Verification
13. Recommendation

[FR Doc. 2014–11902 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–851]

Non-Oriented Electrical Steel From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that non-oriented electrical steel (''NOES'') from Taiwan is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins are listed in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Karine Gziryan, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on November 18, 2013.[1] Pursuant to a timely request from AK Steel Corporation,[2] and section 773(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by a period of 50 days.[3]

Scope of the Investigation

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (*i.e.,* fully annealed to develop final magnetic properties) or semi-processed (*i.e.,*

[1] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations,* 78 FR 69041 (November 18, 2013).

[2] AK Steel Corporation is Petitioner in this investigation.

[3] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 79 FR 13987 (March 12, 2014).

finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of this investigation are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part (*i.e.,* lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Because the mandatory respondent Leicong Industrial Company, Ltd. (''Leicong'') failed to respond to the Department's questionnaire, we preliminarily determined to apply facts otherwise available with an adverse inference to this respondent pursuant to sections 776(a) and (b) of the Act. In applying adverse facts available, we are assigning Leicong a rate of 52.23 percent. For CSC, export prices have been calculated in accordance with section 772 of the Act. Normal value (''NV'') has been calculated in accordance with section 773 of the Act.

For a full description of the analysis underlying our preliminary determination, *see* ''Decision Memorandum for Preliminary Determination of Sales at Less Than Fair Value: Non-Oriented Electrical Steel from Taiwan,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated concurrently with this determination and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at https://iaaccess.trade.gov, and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found on the Internet at http://enforcement.trade.gov/frn. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding all zero or de minimis rates, and all rates determined entirely under section 776 of the Act. CSC is the only respondent in this investigation for which the Department calculated a company-specific rate which is not zero, de minimis or based entirely on facts available. Therefore, for purposes of determining the ''all others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for CSC, as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.

Preliminary Determination

The Department preliminarily determined that the following estimated weighted-average dumping margins exist for the producers or exporters during the period July 1, 2012, through June 30, 2013 at the following rates:

Producer or exporter	Weighted-average dumping margin (percent)
China Steel Corporation	28.14
Leicong Industrial Company, Ltd.	52.23
All Others	28.14

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[4] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[5] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of NOES from Taiwan as described in the

[4] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[5] *See* 19 CFR 351.310(c).

scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), we will instruct CBP to require a cash deposit[6] equal to the weighted-average amount by which the NV exceeds Export Price, as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to a request from CSC, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[7]

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of NOES from Taiwan before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

[6] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[7] *See also* 19 CFR 351.210(e); *see also* Letter from CSC to the Department, regarding ''Non-Oriented Electrical Steel (NOES) from Taiwan,'' dated May 2, 2014.

Dated: May 15, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Scope of the Investigation
7. Selection of Respondents
8. Discussion of Methodology
   a. Fair Value Comparisons
   b. Product Comparisons
   c. Date of Sale
   d. U.S. Price
   e. Normal Value
   i. Home Market Viability
   ii. Overruns
   iii. Level of Trade
   iv. Calculation of Normal Value Based on Home Market Prices
   f. Cost of Production
   i. Calculation of COP
   ii. Test of Comparison Market Sales Prices
   iii. Results of COP Test
9. Currency Conversion
10. Verification

[FR Doc. 2014–11905 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Office of Education Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 21, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Seaberry Nachbar, 831–647–4204 or *fosterscholars@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) collects, evaluates and assesses student data and information for the purpose of selecting successful scholarship candidates, generating internal NOAA reports and articles to demonstrate the success of its program. The Dr. Nancy Foster Scholarship Program is available to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography and maritime archaeology. The ONMS requires applicants to the Dr. Nancy Foster Scholarship Program to complete an application and to supply references (e.g., from academic professors and advisors) in support of the scholarship application. Scholarship recipients are required to conduct a pre- and post-evaluation of their studies through the scholarship program to gather information about the level of knowledge, skills and behavioral changes that take place with the students before and after their program participation. The evaluation results support ONMS performance measures. Scholarship recipients are also required to submit an annual progress report, a biographical sketch, and a photograph.

II. Method of Collection

All forms are electronic, and the primary methods of submittal are email and Internet transmission. Approximately 1% of the application and reference forms may be mailed.

III. Data

OMB Control Number: 0648–0432.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Number of Annual Responses: 621.

Estimated Time per Response: Dr. Nancy Foster application form: 8 hours; Letter of Recommendation: 45 minutes; Bio/Photograph Submission: 1 hour; Annual Report: 1 hour, 30 minutes; and Evaluation: 15 minutes.

Estimated Total Annual Burden Hours: 1,919.

Estimated Total Annual Cost to Public: $4,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–11832 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD304

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, June 9, 2014 at 9 a.m.

ADDRESSES: The meeting will be held at the Hampton Inn & Suites, 2100 Post Road, Warwick, RI 02886; telephone: (401) 739–8888; fax: (401) 739–1550.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council's Groundfish Oversight Committee will meet primarily to discuss alternatives under development in Amendment 18 (A18) and Framework Adjustment 52 (FW 52). Specifically, the Committee will discuss draft alternatives for consideration in A18, review work from the Groundfish Plan Development Team (PDT) related to A18, and develop recommendations to the Council on the A18 alternatives to include in the DEIS for analysis. The Committee will also discuss draft alternatives for consideration in FW 52, review work from the PDT related to FW 52, and possibly make recommendations to the Council on preferred FW 52 alternatives. The Committee will also discuss possible items for inclusion in Framework Adjustment 53, which will be initiated at the June Council meeting. In addition, the Committee may discuss other business as necessary.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 19, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–11849 Filed 5–21–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reestablishment of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Reestablishment of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is reestablishing the charter for the Chief of Engineers Environmental Advisory Board (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being reestablished under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (''the Sunshine Act''), and 41 CFR 102–3.50(d).

The Board is a discretionary Federal advisory committee and shall provide the Secretary of Defense, through the Secretary of the Army, the Assistant Secretary of the Army (Civil Works), and the Chief of Engineers (U.S. Army Corps of Engineers), independent advice and recommendations on matters relating to the two distinct component programs of the U.S. Army Corps of Engineers—the Military Program, which supports Army war fighters, and the Civil Works Program, which manages many of the water resources of the Nation.

The Department of Defense (DoD), through the Department of the Army, shall provide support as deemed necessary for the Board's performance, and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) (''the Sunshine Act''), governing Federal statutes and regulations, and governing DoD policies and procedures.

The Board shall be comprised of no more than 10 members, who are eminent authorities in the fields of natural sciences (e.g., biology, ecology), social sciences (e.g., anthropology, community planning), and related sciences. To the extent practical the Board membership will include at least two members whose expertise is focused in the natural sciences, two members whose expertise is focused in the social sciences and two members whose expertise is focused in other related sciences. Board members shall

be appointed by the Secretary of Defense, with annual renewals.

Board members appointed by the Secretary of Defense or the Deputy Secretary of Defense, who are not full-time or permanent part-time federal employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 to serve as special government employee (SGE) members. Board members appointed by the Secretary of Defense, who are full-time or permanent part-time Federal employees, shall serve as regular government employee (RGE) members. Board members shall serve a term of one-to-four years on the Board. No member may serve more than two consecutive terms of service without the Secretary or Deputy Secretary of Defense approval. This same term of service limitation also applies to any DoD authorized subcommittees.

With the exception of reimbursement for official Board-related travel and per diem, Board members shall serve without compensation.

DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of the Army, as the DoD Sponsor.

Such subcommittees shall not work independently of the Board and shall report all of their recommendations and advice solely to the Board for full and open deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Board, directly to the DoD or any Federal officer or employee.

The Secretary of Defense or the Deputy Secretary of Defense will appoint subcommittee members to a term of service of one-to-four years, even if the member in question is already a member of the Board. Subcommittee members shall not serve more than two consecutive terms of service unless authorized by the Secretary of Defense or the Deputy Secretary of Defense.

Subcommittee members, if not full-time or permanent part-time Federal employees, will be appointed as experts and consultants, under the authority of 5 U.S.C. 3109, to serve as SGE members, whose appointments must be renewed on an annual basis. Subcommittee members appointed by the Secretary of Defense, who are full-time or permanent part-time Federal employees, shall serve as RGE members. With the exception of reimbursement of official travel and per diem related to the Board or its subcommittees, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Board's Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD employee and shall be appointed in accordance with established DoD policies and procedures.

The Board's Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

The Board's DFO is required to be in attendance at all meetings of the Board and any subcommittees for the entire duration of each and every meeting; however, in the absence of the DFO, a properly approved Alternate DFO shall attend the entire duration of all of the meetings of the Board and its subcommittees.

The DFO, or the Alternate DFO, shall call all meetings of the Board and its subcommittees; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Chief of Engineers Environmental Advisory Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Chief of Engineers Environmental Advisory Board.

All written statements shall be submitted to the DFO for the Chief of Engineers Environmental Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Chief of Engineers Environmental Advisory Board DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Chief of Engineers Environmental Advisory Board. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 16, 2014.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2014–11797 Filed 5–21–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place. This meeting is open to the public.

DATES: Thursday, June 12, 2014, from 8:30 a.m. to 3:00 p.m.; Friday, June 13, 2014, from 8:30 a.m. to 11:30 a.m.

ADDRESSES: Sheraton National Hotel-Pentagon City, 900 South Orme St, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowling or DACOWITS Staff at 4000 Defense Pentagon, Room 5A734, Washington, DC 20301–4000. *Robert.d.bowling1.civ@mail.mil.* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS).

The purpose of the meeting is for the Committee to induct new members, receive briefings and updates relating to their current work. The Committee will induct new members. The Committee will receive a briefing from the Sexual Assault and Prevention Response Office (SAPRO). The Joint Advertising, Market Research and Studies (JAMRS) will provide a briefing on the accession of women. Insight Policy Research will provide a summary briefing of the Committee's installation visits. The

Committee will also receive briefings from the Services and the Joint Staff on career progression with joint assignments. The Committee will also receive a briefing on the recruitment of women. The meeting will conclude with a public comment period and wrap-up.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the point of contact listed at the address in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., Tuesday, June 10, 2014. If a written statement is not received by Tuesday, June 10, 2014, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chair and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chair and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Pursuant to 41 CFR 102–3.140(d), determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Friday June 13, 2014 from 10:45 a.m. to 11:15 a.m. in front of the full Committee. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

Meeting agenda:

Thursday, June 12, 2014, from 8:30 a.m. to 3:00 p.m.

—Welcome, Introductions, Announcements

—Briefing—Request for Information Update

— Briefing— SAPRO Briefing

—Briefing— JAMRS Briefing on Accession of Women

—Briefing— Installation Visit Summary

Friday, June 13, 2014, from 8:30 a.m. to 11:30 a.m.

—Welcome and Announcements

—Briefing— Services and Joint Staff Briefing on Career Progression with Joint Assignments

—Briefing— Briefing on the Recruitment of Women

—Public Comment Period

Dated: May 19, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–11845 Filed 5–21–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Certification That Transformation of the Army to a Brigade-Oriented Structure Is Completed and Statutory Requirement To Submit an Annual Report Under Subsection c, Section 595 of the Ronald W. Reagan National Defense Authorization Act of 2005 Has Terminated

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with subsection c, Section 595 of the Ronald W. Reagan National Defense Authorization Act of 2005, the Secretary of the Army has certified that the internal transformation of the Army from a division-oriented force to a brigade-oriented force has been completed. Further, in accordance with subsection c, Section 595 of the Ronald W. Reagan National Defense Authorization Act of 2005, the statutory requirement to submit an annual report is therefore terminated.

DATES: Certification and termination of statutory requirement for an annual report effective date is March 31, 2014.

FOR FURTHER INFORMATION CONTACT: HQDA, G–3/5/7, DAMO–ZT, Mr. John S. Chappell, (703) 614–8283.

SUPPLEMENTARY INFORMATION: None.

Gary H. Cheek,

Major General, U.S. Army, Assistant Deputy Chief of Staff, G–3/5/7.

[FR Doc. 2014–11853 Filed 5–21–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7320–042]

Erie Boulevard Hydropower, L.P.; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License

b. *Project No.:* 7320–042

c. *Date Filed:* July 1, 2013

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Chasm Hydroelectric Project

f. *Location:* On the Salmon River in Franklin County, New York. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)-825(r)

h. *Applicant Contact:* Steven Murphy, Licensing Manager, Erie Boulevard Hydropower, L.P., 33 West 1st Street South, Fulton, New York, 13069, (315) 598–6130 or email at *steven.murphy@brookfieldpower.com.*

i. *FERC Contact:* John Mudre at (202) 502–8902 or email at *john.mudre@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–7320–042.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of

that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *Project Description:* The existing Chasm Project consists of: (1) a 201-foot-long, 32-foot-high maximum height concrete gravity-type dam having a spillway section with crest elevation 1,283.8 feet mean sea level (msl) about 100 feet long, surmounted by 2-foot-high flashboards and having an intake section with steel trash racks and headgates; (2) a reservoir having a surface area of about 22 acres and a gross storage capacity of 74 acre-feet at normal pool elevation of 1,285.8 feet msl; (3) a 7-foot-diameter welded steel pipeline approximately 3,355 feet in length connecting to a 6-foot-diameter steel manifold pipeline just upstream of the powerhouse; (4) a powerhouse containing three Francis-type generating units having a total rated capacity of 3,350 kilowatts operated under a 268-foot head and at a flow of 195 cubic feet per second (cfs); (5) a 20-foot-wide, 850-foot-long tailrace; (6) three 2.2-kilovolt generator leads extending from the powerhouse about 74 feet to an adjacent swithchyard; (7) a 4.2-megavolt-ampere step-up transformer located within the switchyard, connecting to a transmission line owned and operated by the National Grid Corporation; and (8) appurtenant facilities.

Erie proposes a minimum flow of 15 cfs into the bypassed reach at all times and would forego its existing ability to lower the minimum bypass flow to 10 cfs when inflow is less than 85 cfs. In addition, Erie proposes to maintain the impoundment elevation within 0.1 foot of the spillway crest (or flashboards, when installed) when inflow is less than 85 cfs and 0.25 foot when inflow is greater than 85 cfs.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural Schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of comments, recommendations, terms and conditions, and prescriptions.	July 2014
Reply Comments Due	August 2014
Commission Issues Single EA.	December 2014
Comments on Single EA due	January 2014

Dated: May 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11864 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14538–001]

Go with the Flow Hydro Power, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing

b. *Project No.:* P–14538

c. *Date filed:* May 5, 2014

d. *Applicant:* Go with the Flow Hydro Power, LLC

e. *Name of Project:* Go with the Flow Hydroelectric Project

f. *Location:* The proposed project is located on the Umatilla River, approximately 1.3 miles southwest of the city of Hermiston, Umatilla County, Oregon. The proposed project would not occupy any federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mark Sigl, Go with the Flow Hydro Power, LLC, 8021 Firestone Way, Antelope, California 95843

i. *FERC Contact:* Sean O'Neill at (202) 502–6462; or email at *sean.oneill@ferc.gov*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: July 7, 2014

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14538–001.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would use the following existing facilities from an abandoned hydroelectric project: (1) a 3.5-foot-high, 120-foot-long concrete diversion weir, (2) a concrete intake structure with trashrack, (3) a 5,350-foot-long earthen power canal, (4) a concrete penstock headworks structure, (5) four 5-foot-diameter, 280-foot-long welded steel penstocks, (6) a 60-foot by 35-foot powerhouse, (7) a 20-foot by 12-foot metal controlhouse, (8) four 300-kilowatt vertical propeller turbine-generators, (9) a substation interconnecting to the transmissions lines operated by Pacific Power and Light Company, (10) a 60-foot-wide, 25-foot-long screened earthen tailrace discharging into the Umatilla River, and (11) appurtenant facilities. The applicant is proposing a new fish bypass at the diversion weir, and refurbishing and replacing the fish screens at the intake structure. The estimated annual project generation is 3,000 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate (e.g., if there are no deficiencies and/or scoping is waived, the schedule would be shortened).

Issue Deficiency Letter	May 2014
Issue Notice of Acceptance ..	July 2014
Issue Scoping Document August 2014.	
Issue Notice ready for environmental analysis.	October 2014
Issue Notice of the availability of the EA.	March 2015

Dated: May 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11865 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–113–000]

Dominion Cove Point LNG, LP; Notice of Availability of the Environmental Assessment and Draft General Conformity Determination for the Proposed Cove Point Liquefaction Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Cove Point Liquefaction Project (Project) proposed by Dominion Cove Point LNG, LP (DCP) in the above-referenced docket. DCP requests authorization to construct and operate facilities to process and export domestically sourced liquefied natural gas (LNG) at the existing Cove Point LNG Terminal (LNG Terminal) in Calvert County, Maryland. The Project would enable DCP to export approximately 5.75 million metric tons per annum of LNG via LNG marine carriers that would dock at the existing offshore pier. A draft General Conformity Determination has also been prepared by the FERC to assess the potential air quality impacts associated with construction and operation of the proposed Project and is included as appendix B of the EA.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The draft General Conformity Determination was prepared to implement the conformity provision of the Clean Air Act. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Department of Energy, U.S. Department of Transportation, U.S. Army Corps of Engineers, U.S. Coast Guard, and Maryland Department of Natural Resources participated as cooperating agencies in the preparation of the EA and draft General Conformity Determination. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the EA, the agencies will present their own conclusions and recommendations in their respective Records of Decision or determinations for the Project.

The proposed facilities associated with the LNG Terminal include the following:

- One LNG liquefaction train consisting of gas treatment equipment, natural gas-fired turbine-driven refrigerant compressors, waste heat recovery systems, fire and gas detection and safety systems, and control systems;
- additional power generation including waste heat-driven steam turbine generators and other electrical accessories to supplement the existing on-site power generation;
- minor modifications to the existing pier; and
- the use of two off-site areas to support construction.

The Project would also include the addition of up to 62,500 horsepower of electric-driven compression at DCP's existing Pleasant Valley Compressor Station in Fairfax County, Virginia, and modifications to an existing metering and regulating facility at DCP's Loudoun Compressor Station in Loudoun County, Virginia.

The FERC staff mailed copies of the EA and draft General Conformity Determination to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; libraries in the Project area; and parties to this proceeding. In addition, the EA, including the draft General Conformity Determination, has been placed in the public files of the FERC and is available

for public viewing on the FERC's Web site at *www.ferc.gov* using the eLibrary link. A limited number of copies of the EA and draft General Conformity Determination are also available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before June 16, 2014.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP13–113–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend a public comment meeting that its staff will conduct in the Project area to receive comments on the EA and draft General Conformity Determination. We encourage interested groups and individuals to attend and present oral comments on the EA and draft General Conformity Determination. A transcript of the meeting will be available for review in eLibrary under the Project docket number. The meeting is scheduled as follows:

Date and time	Location
Saturday, May 31, 2014, 1:00–6:00 p.m..	Patuxent High School, 12485 Southern Connector Boulevard, Lusby, MD 20657.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–113). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

[1] See the previous discussion on the methods for filing comments.

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11862 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–52–000; Docket Nos. CP07–53–000; CP07–53–001]

Downeast LNG, Inc., Downeast Pipeline, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Downeast LNG Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Downeast LNG Project, proposed by Downeast LNG, Inc. and Downeast Pipeline, LLC (collectively Downeast) in the above-referenced dockets. Downeast requests authorization to construct and operate a proposed liquefied natural gas (LNG) import terminal, natural gas sendout pipeline, and associated facilities in Washington County, Maine. The Downeast LNG Project would provide about 500 million cubic feet per day of imported natural gas to the New England region.

The final EIS assesses the potential environmental effects of the construction and operation of the Downeast LNG Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EIS, would ensure that most impacts in the project area would be avoided or reduced to less than significant levels. Construction and operation of the project would primarily result in temporary and short-term environmental impacts; however, some long-term and permanent environmental impacts would occur.

The U.S. Coast Guard; U.S. Army Corps of Engineers; National Oceanic and Atmospheric Administration, National Marine Fisheries Service; U.S. Environmental Protection Agency; U.S. Department of Transportation; and the Maine Department of Environmental Protection participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating

agencies provided input to the conclusions and recommendations presented in the EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision or other determinations for the project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- A new marine terminal that would include a 3,862-foot-long pier with a single berth and vessel mooring system, intended to handle LNG vessels ranging from 70,000 to 165,000 cubic meters in capacity, with future expansion capabilities to handle vessels with 220,000 cubic meters of cargo capacity;
- two full-containment LNG storage tanks, each with a nominal usable storage capacity of 160,000 cubic meters;
- LNG vaporization and processing equipment;
- piping, ancillary buildings, safety systems, and other support facilities;
- three vapor fences around the LNG terminal;
- a 29.8-mile-long, 30-inch-diameter underground natural gas pipeline;
- natural gas metering facilities located at the LNG terminal site; and
- various ancillary facilities including pigging [1] facilities and three mainline block valves.

The FERC staff mailed copies of the EIS to Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Everyone on our environmental mailing list will receive a CD version of the final EIS. Paper copy versions of the EIS were mailed to those specifically requesting them. Only volume 1 of the final EIS, containing text of the analysis, was printed in hard copy. Volume 2, containing additional appendices, was produced as .pdf files on a CD. Responses to comments received on the draft EIS and Supplemental draft EIS are included in Appendix S and T, respectively. In addition, the EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP07–52 or CP07–53). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11861 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

[1] A ''pig'' is a tool for cleaning and inspecting the inside of a pipeline.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3525–002]

Bolthouse Properties, LLC, Desert Power Company; Notice of Transfer of Exemption

1. By letter filed November 27, 2013, Bolthouse Properties, LLC informed the Commission that the exemption from licensing for the Cottonwood Canyon Ranch Hydroelectric Project, FERC No. 3525, originally issued March 5, 1982,[1] has been transferred to Desert Power Company. The project is located on the existing Cottonwood Canyon and Lone Tree Canyon aqueducts in Mono County, California. The transfer of an exemption does not require Commission approval.

2. Desert Power Company is now the exemptee of the Cottonwood Canyon Ranch Hydroelectric Project, FERC No. 3525. All correspondence should be forwarded to: Mr. Steve West, Desert Power Company, P.O. Box 609, Rock Springs, WY 82902.

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11872 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 FERC ¶ 62,392, Order Granting Exemption from Licensing for a Conduit Hydroelectric Project (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM13–5–000]

Version 5 Critical Infrastructure Protection Reliability Standards; Notice of Filing

Take notice that on May15, 2014, the North American Electric Reliability Corporation (NERC) filed proposed revisions to certain Violation Risk Factors and Violations Severity Levels assigned to certain Critical Infrastructure Protection Reliability Standards for Federal Energy Regulatory Commission approval, pursuant to Order No. 791.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the

[1] *Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 145 FERC ¶ 61,160 (2013).

Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 5, 2014.

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11867 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–30–000]

White Cliffs Pipeline, L.L.C.; Notice of Petiton for Declaratory Order

Take notice that on May 9, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2013), White Cliffs Pipeline, L.L.C. (White Cliffs) filed a petition requesting a declaratory order approving the overall tariff, rate and priority service structure for a proposed expansion of White Cliffs' existing crude oil pipeline as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 2, 2014.

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11871 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos., 14590–000; 14611–000]

Pike Island Energy, LLC,

Bedford Energy Associates, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 24, 2014, Pike Island Energy, LLC and on March 26, 2014, Bedford Energy Associates, LLC filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Pike Island Hydroelectric Project (Pike Island Project or project) to be located at the U.S. Army Corps of Engineers' (Corps) Pike Island Lock and Dam on the Ohio River, near Wheeling, West Virginia, and Yorkville, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Pike Island Energy, LLC's proposed project would be located at existing overflow weir and west abutment of the existing Pike Island Lock and Dam and consist of the following: (1) A new 225-foot-wide by 50-foot-long concrete intake containing trash racks, sluice gates, and intake gates; (2) a new160-foot-wide by 140-foot-long concrete powerhouse containing two Kaplan pit turbines rated at 15 megawatts (MW) each and one Kaplan pit turbine rated at 10 MW for a total 40 MW capacity; (3) a 200-foot-wide by 500-foot-long tailrace channel; (4) a new substation to be located near the west abutment; (5) a 7,800-foot-long, 138-kilovolt three phase overhead transmission line connecting the project's substation with an existing substation in Tiltonsville, OH; and (6) appurtenant facilities. The estimated annual generation of Pike Island Energy, LLC's project would be 200 gigawatt-hours.

Applicant Contact: A. W. Skelly, Managing Member; Pike Island Energy, LLC; 1 Longwood Blvd., Mt. Orab, OH 45154–8731; email: *pikeislandenergy@gmail.com*; phone: (513) 375–9242.

Bedford Energy Associates, LLC's proposed project would be located at existing overflow weir and west abutment of the existing Pike Island Lock and Dam and consist of the following: (1) A new 265-foot-wide by 50-foot-long concrete intake containing trash racks, sluice gates, and intake gates; (2) a new 265-foot-wide by 128-foot-long concrete powerhouse containing eight Kaplan pit turbines rated at 6 megawatts (MW) each for a total of 48 MW capacity; (3) a 300-foot-long tailrace channel; (4) a new substation to be located at the west abutment; (5) a 7,800-foot-long, 138-kilovolt three phase overhead transmission line connecting the project's substation with an existing substation in Tiltonsville, Ohio; and (6) appurtenant facilities. The estimated annual generation of Bedford Energy Associates, LLC's project would be 250 gigawatt-hours.

Applicant Contact: Eugene J. Garceau; 214 North Amherst Road; Bedford, New Hampshire 03110; phone: (603) 474–5731.

FERC Contact: Sergiu Serban; *sergiu.serban@ferc.gov*; phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior

registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14590–000, or P–15611–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14590–000, or P–15611–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11866 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14602–000]

Montana Department of Natural Resources and Conservation; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 13, 2014, the Montana Department of Natural Resources and Conservation, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Tongue River Power Project (Tongue River Project or project) to be located on the Tongue River near Decker in Big Horn County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 93-feet-high, 1,824-feet-long earth-fill dam with a spillway impounding a reservoir having a total storage capacity of 79,071 acres at a normal operating elevation of 3,428.4 feet mean sea level; (2) a steel-lined, 8-feet-diameter primary outlet conduit; (3) an 8-feet diameter, 700-feet-long penstock; (4) a 30-feet by 45-feet powerhouse containing twin vertical Francis turbines/generator units rated for a total of 2.16 megawatts; (5) outflow channels from the powerhouse returning water to the Tongue River; (6) a substation consisting of a concrete slab and a transformer; (7) a 1-mile-long, 25-kilovolt transmission line; (8) a switchyard facility located at the interconnection point with the grid; (9) a project access road; and (10) appurtenant facilities. The estimated annual generation of the Tongue River project would be 7.34 gigawatt-hours.

Applicant Contact: Kevin Smith, Montana Department of Natural Resources and Conservation, State Water Projects Bureau, 1424 9th Ave, P.O. Box 201601, Helena, MT 59620–1601, phone 406–444–2932, email *ksmith@mt.gov.*

FERC Contact: Ryan Hansen, phone: (202) 502–8074, or email *ryan.hansen@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14602–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14602) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11873 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–480–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

Take notice that on May 7, 2014, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed a prior notice application pursuant to section 7(b) of the Natural Gas Act and sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, for authorization to abandon certain inactive supply laterals located in offshore federal waters in the Gulf of Mexico near Louisiana. Specifically, Texas Eastern proposes to abandon in place approximately 6.98 miles of 16-inch diameter pipeline (Line 40–B–3) and approximately 5.2 miles of 12-inch diameter pipeline (Line 40–B–3–B), all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Lisa A. Connolly, General Manager, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, or phone (713) 627–4102 or fax (713) 627–5947 or by email *laconnolly@spectraenergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed

activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11868 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–485–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

Take notice that on May 9, 2014, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642, filed in Docket No. CP14–485–000, a prior notice request pursuant to sections 157.205and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, seeking authorization to abandon, in-place an approximately 1.04 mile segment of Texas Eastern's 30-inch diameter auxiliary pipeline Line 10 between mile post (MP) 278.68 and MP 279.72 at the Percy Priest Reservoir crossing, and to remove related ancillary facilities, as necessary, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to: Lisa A. Connolly, General Manager, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, Phone: (713) 627–4102, Fax: (713) 627–5947, Email: *laconnolly@spectraenergy.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and ill not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: July 15, 2014.

Dated: May 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11869 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–478–000]

Columbia Gulf Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on May 7, 2014, Columbia Gulf Transmission, LLC (Columbia Gulf), having its principal office at 5151 San Felipe, Suite 2500, Houston, TX 77056, filed in Docket No. CP14–478–000, a prior notice request pursuant to sections 157.205, 157.209 and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA). Columbia Gulf seeks authorization to (1) convert a temporary compressor unit located at the site of the Hartsville Compressor Station, located in Macon County, Tennessee, to permanent standby service, (2) remove temporary facilities no longer required for service, and (3) abandon/reduce the certificated horsepower (hp) of the Hartsville Compressor Station by 6,000 hp, to a total of 45,400 hp. Columbia Gulf proposes to perform these activities under its blanket certificate issued in Docket No. CP83–496–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Fredric J. George, Senior Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273 or by calling (304) 357–2359 or fax (304)357–3206.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11863 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–483–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on May 9, 2014, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP14–483–000, a prior notice request pursuant to sections 157.205 and 157.211of the Commission's regulations under the Natural Gas Act (NGA) as amended, requesting authorization to construct and operate a new delivery point to serve the Hanscom Air Force Base in Middlesex County, Massachusetts. Tennessee proposes to install a three-inch diameter hot tap assembly and appurtenances located on its Line No. 200–1. Tennessee avers that proposed facilities will have the capability of delivering up to 5.76 million cubic feet per day of natural gas. Tennessee estimates the costs of the project to be $561,400, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3299, or by email *tom_joyce@kindermorgan.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the

time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–11870 Filed 5–21–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0721; FRL–9908–95]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports (Chemical Data Reporting)'' and identified by EPA ICR No. 1884.08 and OMB Control No. 2070–0162, represents the renewal of an existing ICR that is scheduled to expire on January 31, 2105. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before July 21, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0721, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2013–0721. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2013- 0721. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine

and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Karen Hoffman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8158; fax number: (202) 564–4775; email address: *hoffman.karen@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports (Chemical Data Reporting).

ICR number: 1884.08.

OMB control number: 2070–0162.

ICR status: This ICR is currently scheduled to expire on January 31, 2015. 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 OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Toxic Substances Control Act (TSCA) requires EPA to compile and keep current a complete list of chemical substances manufactured or processed in the United States. EPA updates this inventory of chemicals every four years by requiring manufacturers, processors and importers to provide production volume, plant site information and site-limited status information. This information allows EPA to identify what chemicals are or are not currently in commerce and to take appropriate regulatory action as necessary. EPA also uses the information for screening chemicals for risks to human health or the environment, for priority-setting efforts, and for exposure estimates. This ICR addresses the collection of inventory-related information.

Responses to the collection of information are mandatory (see 40 CFR part 710). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 158 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are companies that manufacture, process or import chemical substances, mixtures or categories.

Estimated total number of potential respondents: 4,991.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 7.88.

Estimated total annual burden hours: 789,203 hours.

Estimated total annual costs: $23,638. This includes an estimated burden cost of $23,638 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is an increase of 315,080 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects a number of factors, which are detailed in the supporting statement. This change involves both program changes and adjustments.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 12, 2014,

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2014–11908 Filed 5–21–14; 8:45 am]

BILLING CODE 6560–50–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.: 011733–033.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM; Hamburg-Süd; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; and United Arab Shipping Company (S.A.G.) as shareholder parties, and American President Lines, Ltd., APL Co., Pte Ltd.; Alianca Navegacao e Logistica Ltda.; China Shipping Container Lines Company Limited; Compania Chilena de Navegacion Interoceanica S.A.; Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; COSCO Container Lines Co., Ltd.; Emirates Shipping Lines; Evergreen Line Joint Service Agreement; Gold Star Line, Ltd.; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd; Industrial Maritime Carriers, LLC; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Safmarine MPV N.V.; Tasman Orient Line C.V.; U.S. Ocean, LLC; Yang Ming Marine Transport Corporation and Zim Integrated Shipping Services, Ltd. as non-shareholder parties.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes Intermarine LLC as a party to the agreement and adds Industrial Maritime Carriers, LLC and U.S. Ocean, LLC as non-shareholder parties.

Agreement No.: 012155–002.

Title: MSC/Zim South America East Coast Vessel Sharing Agreement.

Parties: Mediterranean Shipping Co. S.A. and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would delete Mexico from the geographic scope of the agreement, revise the number of service strings, revise the number and size of vessels deployed, and adjust space allocations under the agreement. The amendment would also extend the minimum duration of the agreement and restate the agreement.

Agreement No.: 012279.

Title: Hyundai Glovis/Inarme Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd. and Industria Armamento Meridionale S.P.A. (Inarme).

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Hyundai Glovis to charter space to Inarme in the trade from North Europe, on the one hand, to the port of San Diego, CA, on the other hand.

By Order of the Federal Maritime Commission.

Dated: May 16, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–11809 Filed 5–21–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2014–11065) published on page 27611 of the issue for Wednesday, May 14, 2014.

Under the Federal Reserve Bank of Minneapolis heading, the entry for *Ericka Lynn Kotab and David William Kotab,* both of Wagner, South Dakota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Jacqueline K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Ericka Lynn Kotab and David William Kotab,* both of Wagner, South Dakota, as members of the Frei Family Shareholder Group; to acquire voting shares of Commercial Holding Company, and thereby indirectly acquire voting shares of Commercial State Bank of Wagner, both in Wagner, South Dakota.

Comments on this application must be received by May 29, 2014.

Board of Governors of the Federal Reserve System, May 19, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–11875 Filed 5–21–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 6, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Janice H. Crowe, individually, and acting in concert with Ray D. Hurlbutt,* both of Conrad, Iowa; to retain voting shares of Beaman Bancshares, Inc., and thereby indirectly retain voting shares of Farmers Savings Bank, both in Marshalltown, Iowa.

Board of Governors of the Federal Reserve System, May 19, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–11874 Filed 5–21–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–0990–0313–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for reinstatement of a previously-approved information collection assigned OMB control number 0990–0313 which expired on October 31, 2013. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before June 23, 2013.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff,

Information.CollectionClearance@hhs.gov or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0313 and document identifier HHS–OS–0990–0313–30D for reference.

Information Collection Request Title: National Blood Collection and Utilization Survey OMB No.: 0990–0313.

Abstract: The National Blood Collection & Utilization Survey (NBCUS) is a biennial survey of the blood collection and utilization community (industry) to produce reliable and accurate estimates of national and regional collections, utilization, safety, and availability of all blood products, some cellular therapeutic products, as well as information on bacterial testing and human tissue transplantation that are of interest to the transfusion medicine community. The 2013 NBCUS shall be funded by the U.S. Department of Health and Human Services (DHHS) and performed by (contactor, to be determined). In previous years, the NBCUS program was performed under the auspices of the National Blood Data Resource Center (NBDRC), a private subsidiary of AABB (formerly known as the American Association of Blood Banks), with private funding.

The survey includes a core of standard questions on blood collection, processing, and utilization practices to allow for comparison with data from previous surveys; additionally, questions to specifically address emerging and developing issues and technologies in blood collection and utilization are included. Biovigilance remains a key theme for the 2013 survey, as continued from the 2007, 2009, and 2011 iterations. To that end, questions on transfusion transmitted infections, transfusion associated circulatory overload, acute hemolysis, delayed hemolysis, and severe allergic reactions are included in the survey.

Need and Proposed Use of the Information: Under the authority of Section 301 of the Public Health Service Act (42 U.S.C. 241), as identified in the 1997 HHS Blood Action Plan, and twice in the Advisory Committee on Blood & Tissue Safety & Availability's (ACBTSA) recommendations to the Secretary, there is a need to provide national policy makers with current supply and demand data.

Likely Respondents: Respondents will include approximately 3,000 institutions that include U.S. blood collection and processing facilities, hospital-based transfusion blood banks, and cord blood banks. Participating institutions will be selected from the American Hospital Association (AHA) annual survey database and AABB member list of blood collection facilities.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
National Blood Collection and Utilization Survey	3,000	1	1	3,000
Total	3,000	1	1	3,000

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2014–11835 Filed 5–21–14; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–0990–New–30D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before June 23, 2014.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

Information Collection Request Title: Title X Family Planning Outreach and Enrollment Data Collection Form.

Abstract: The Office of Population Affairs within the Office of the Assistant Secretary for Health seeks to collect data from the Title X service delivery grantees on efforts related to outreach and enrollment to assist individuals in obtaining health insurance available as a result of the Affordable Care Act (ACA). Grantees will be asked to collect and report information on the numbers of individuals who are; (1) assisted by a trained health center worker; (2) number of individuals who receive an eligibility determination for the marketplace, Medicaid or CHIP with the assistance of a trained worker; and (3) number of individuals who enroll in an insurance program with the assistance of a trained worker. For each of the data points above, respondents will have the option to break out the data for partial Medicaid (i.e. waiver programs), full Medicaid, and private marketplace plans. The detailed data will be optional for those who are able to provide it. The

information will be reported for all sites in their grantee network.

Need and Proposed Use of the Information: The Title X Family Planning Program (''Title X program'' or ''program'') is the only Federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services (e.g., screening for breast and cervical cancer, sexually transmitted diseases (STDs), and human immunodeficiency virus [HIV]). By law, priority is given to persons from low-income families (Section 1006[c] of Title X of the Public Health Service Act, 42 USC 300). The Office of Population Affairs (OPA) within the Office of the Assistant Secretary for Health administers the Title X program.

In fiscal year 2013, Congress appropriated approximately $296.8 million for Title X family planning activities. In accordance with the statute and regulations (42 Code of Federal Regulations [CFR] part 59), at least 90% of the appropriation is used for clinical family planning services. In 2012, 98 Title X grantees provided family planning services to five million women and men through a network of 4,400 community-based clinics that include state and local health departments, tribal organizations, and other public and private nonprofit agencies. There is at least one clinic that receives Title X funds and provides services as required under the Title X statute in 73% of U.S. counties.

Sixty percent of the clients seen at Title X funded service sites self-identify as being uninsured. Seventy percent of the total clients are under the age 30. Thus Title X service sites see a large proportion of young and uninsured individuals. Over the past years, OPA has encouraged grantees to develop enrollment programs to ensure that clients who are currently uninsured understand new health insurance options that are available as a result of the ACA. Some sites already assist individuals with enrolling in Medicaid and other public insurance programs. With the availability of the health insurance marketplace, many more service delivery sites are assisting clients enroll in health insurance programs.

OPA does not have any data on how many sites are assisting and enrolling clients into health insurance programs. Thus we seek to collect this data in order to understand the impact of Title X funded service sites on assisting and enrolling clients into insurance programs. We will utilize this information to guide strategic planning around how Title X service sites and prepare for, and assist with, the full implementation of the ACA. Through a separate data collection process called the Family Planning Annual Report (FPAR) (OMB No. 0990–0221, expiration January 31, 2016), OPA collects information on the insurance status of the clients served. With the implementation of the ACA, many of the traditional clients served by Title X service sites will qualify for health insurance.

Likely Respondents: This annual reporting requirement is for family planning services delivery projects authorized and funded by the Title X Family Planning Program.

Burden Statement: Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Outreach and Enrollment Activities	4200 service sites	1	0.20	840

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2014–11836 Filed 5–21–14; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2014–0002]

Proposed Substances to be Evaluated for Set 28 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Request for comments on the proposed substances to be evaluated for Set 28 toxicological profiles.

SUMMARY: ATSDR is initiating the development of its 28th set of toxicological profiles (CERCLA Set 28). This notice announces the list of proposed substances that will be evaluated for CERCLA Set 28 toxicological profile development. ATSDR's Division of Toxicology and Human Health Sciences is soliciting public nominations from the list of proposed substances to be evaluated for toxicological profile development. ATSDR also will consider the nomination of any additional, non-CERCLA substances that may have public health implications, on the basis of ATSDR's authority to prepare toxicological profiles for substances not found at sites on the National Priorities List. The agency will do so in order to ''. . . establish and maintain inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and to support the site-specific response actions conducted by ATSDR, as otherwise necessary.

DATES: Nominations from the Substance Priority List and/or additional substances must be submitted no later than June 20, 2014.

ADDRESSES: You may submit nominations, identified by Docket No. ATSDR–2014–0002, by any of the following methods:

**Internet:* Access the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

**Mail:* Division of Toxicology and Human Health Sciences, 1600 Clifton Rd. NE., MS F–57, Atlanta, Ga. 30333

Instructions: All submissions must include the agency name and docket number for this notice. All relevant comments will be posted without change. This means that no confidential business information or other confidential information should be submitted in response to this notice. Refer to the section *Submission of Nominations* (below) for the specific information required.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Commander Jessilynn B. Taylor, Division of Toxicology and Human Health Sciences, 1600 Clifton Rd. NE., MS F–57, Atlanta, Ga. 30333, Email: *tpcandidatecomments@cdc.gov*; phone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] establishes certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances. This list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most significant current potential threat to human health. The revised list of the 275 priority substances is available at *www.atsdr.cdc.gov/SPL.* For prior versions of the list of substances, see *www.atsdr.cdc.gov/SPL/resources.*

Substances to be Evaluated for Set 28 Toxicological Profiles

Each year, ATSDR develops a list of substances to be considered for toxicological profile development. The Set 28 nomination process includes consideration of all substances on ATSDR's Priority List of Hazardous Substances, also known as the Substance Priority List (SPL), as well as other substances nominated by the public. The 275 substances on the SPL will be considered for Set 28 Toxicological Profile development. This list may be found at the following Web site: *www.atsdr.cdc.gov/SPL* and in the docket at *www.regulations.gov.* Existing Toxicological Profiles may be found at the following Web site: *http://www.atsdr.cdc.gov/toxprofiles/index.asp.*

Submission of Nominations for the Evaluation of Set 28 Proposed Substances: Today's notice invites voluntary public nominations for substances included on the SPL and for substances not listed on the SPL. All nominations should include the full name of the nominator, affiliation, email address. When nominating a non-SPL substance, please include the rationale for the nomination. Please note that email addresses will not be posted on regulations.gov.

ATSDR will evaluate all data and information associated with nominated substances and will determine the final list of substances to be chosen for toxicological profile development. Substances will be chosen according to ATSDR's specific guidelines for selection. These guidelines can be found in the *Selection Criteria* announced in the **Federal Register** on May 7, 1993 (58FR27286–27287). A hard copy of the selection criteria is available upon request or may be accessed at the following Web site: *http://www.atsdr.cdc.gov/toxprofiles/guidance/criteria_for_selecting_tp_support.pdf.*

Please ensure that your comments are submitted within the specified nomination period. Nominations received after the closing date will be marked as late and may be considered only if time and resources permit.

Sascha Chaney,

Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic, Substances and Disease Registry.

[FR Doc. 2014–11848 Filed 5–21–14; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: June 16, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Primate Skeletal Database.

Date: June 19, 2014.

Time: 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 16, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–11807 Filed 5–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Cancer Institute Special Emphasis Panel; Utilizing the PLCO Biospecimens Resource to Bridge Gaps in Cancer Etiology and Early Detection Research.

Date: June 5, 2014.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892–8328, 240–276–6385, *lovingeg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Development Cancer Therapeutics.

Date: June 11, 2014.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Joyce C. Pegues, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892–9750, 240–276–6375, *peguesj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Special Emphasis Panel; Particle Beam Research.

Date: June 17, 2014.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Thomas Vollberg, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Bethesda, MD 20892–8328, 240–276–6341, *vollbert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants Program for Epidemiology.

Date: June 18, 2014.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2E904, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892–8328, 240–276–6385, *lovingeg@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus SEP–8.

Date: June 19, 2014.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Joyce C. Pegues, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892–9750, 240–276–6375, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Substance Abuse and Social Media.

Date: June 24, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ellen K Schwartz, EDD, Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–6384, *schwarel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Omnibus SEP–12.

Date: June 26–27, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850, 240–276–6386, *twinters@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Omnibus SEP–14.

Date: July 1–2, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhiqiang Zou, Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20850, 240–276–6372, *twinters@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Training and Career Development Application Review.

Date: July 16, 2014.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Robert Bird, Ph.D., Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892–9750, 240–276–6344, *birdr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel U01 Review.

Date: July 17, 2014.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Bethesda, MD 20892–9750, 240–276–6458, *lopacw@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where a roster and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 16, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–11808 Filed 5–21–14; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Change of Address and Phone Numbers of the Advisory Council on Historic Preservation

AGENCY: Advisory Council on Historic Preservation.

ACTION: The Advisory Council on Historic Preservation will move to a new location, resulting in a change of physical address and phone numbers.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) will be moving from its current location on May 28, 2014. As of Monday, June 2, 2014, the new address and main phone numbers for the ACHP will be: 401 F Street NW., Suite 308, Washington, DC 20001–2637; (202) 517–0200; (202) 517–6381 (fax). All email addresses will remain the same. The ACHP Web site address, at *www.achp.gov,* will also remain the same.

DATES: The ACHP will move from its current location on May 28, 2014. It will arrive at its new location on June 2, 2014.

ADDRESSES: Starting on June 2, 2104, the ACHP's new address will be 401 F Street NW., Suite 308, Washington, DC 20001–2637. The new main office number will be (202) 517–0200. The new fax number will be (202) 517–6381. The new, individual staff phone numbers will be posted on the ACHP Web site (*www.achp.gov*). The ACHP electronic mail addresses and Web site address will remain the same.

FOR FURTHER INFORMATION CONTACT: Cindy Bienvenue, at *cbienvenue@achp.gov* or (202) 606–8521.

Authority: 16 U.S.C. 470j.

Dated: May 16, 2014.

Javier E. Marques,

Associate General Counsel.

[FR Doc. 2014–11826 Filed 5–21–14; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3370–EM; Docket ID FEMA–2014–0003]

Washington; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Washington (FEMA–3370–EM), dated March 24, 2014, and related determinations.

DATES: *Effective Date:* April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective April 28, 2014.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11820 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1404]

Proposed Flood Hazard Determinations

Correction

In notice document 2014–09450 beginning on page 23005 in the issue of Friday, April 25, 2014 make the following correction:

On page 23007, in the table, under the heading Davidson County, Tennessee, and Incorporated Areas, in the Community Map Repository Address column, the second entry should read ''City Hall, 698 Thompson Lane, Berry Hill, TN 37204''.

[FR Doc. C1–2014–09450 Filed 5–21–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4177–DR; Docket ID FEMA–2014–0003]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4177–DR), dated May 6, 2014, and related determinations.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 6, 2014.

Okaloosa and Walton Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11817 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4174–DR; Docket ID FEMA–2014–0003]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–4174–DR), dated April 29, 2014, and related determinations.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 29, 2014.

Faulkner County for Public Assistance [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Clay, Cleburne, Fulton, Independence, Izard, Jackson, Lawrence, and Sharp Counties for Public Assistance (Categories A–G).

Randolph and White Counties for Public Assistance [Categories A–G] (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11822 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4168–DR; Docket ID FEMA–2014–0003]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4168–DR), dated April 2, 2014, and related determinations.

DATES: *Effective Date:* April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 28, 2014.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11819 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4176–DR; Docket ID FEMA–2014–0003]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–4176–DR), dated May 2, 2014, and related determinations.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 2, 2014.

Baldwin, Jefferson, Lee, Limestone, and Mobile Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public assistance program).

Blount, DeKalb, Etowah, and Tuscaloosa Counties for Public Assistance [Categories A–G] (already designated for Individual Assistance).

Butler, Covington, Crenshaw, Dale, Franklin, Geneva, Lamar, Perry, and Pickens Counties for Public Assistance (Categories A–G).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11823 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4172–DR; Docket ID FEMA–2014–0003]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–4172–DR), dated April 17, 2014, and related determinations.

DATES: *Effective Date:* April 17, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 17, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Montana resulting from ice jams and flooding during the period of March 1–16, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Broadwater, Dawson, Golden Valley, Jefferson, Lake, Musselshell, Park, Pondera, Prairie, Ravalli, Richland, Rosebud, Sanders, Stillwater, and Wheatland Counties for Public Assistance.

All counties within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11821 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4177–DR; Docket ID FEMA–2014–0003]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4177–DR), dated May 6, 2014, and related determinations.

DATES: *Effective Date:* May 6, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of April 28 to May 6, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Escambia and Santa Rosa Counties for Individual Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11818 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4177–DR; Docket ID FEMA–2013–0001]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4177–DR), dated May 6, 2014, and related determinations.

DATES: *Effective Date:* May 14, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 6, 2014.

Escambia, Okaloosa, Santa Rosa, and Walton Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11825 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4175–DR; Docket ID FEMA–2014–0003]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4175–DR), dated April 30, 2014, and related determinations.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 30, 2014.

Itawamba, Lee, Lowndes, Rankin, Wayne, and Winston Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Jones and Leake Counties for Public Assistance [Categories A–G] (already designated for Individual Assistance).

Newton County for Public Assistance (Categories A–G).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–11824 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0025]

Agency Information Collection Activities: Report of Diversion

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Report of Diversion (CBP Form 26). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 21, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Report of Diversion.

OMB Number: 1651–0025.

Form Number: CBP Form 26.

Abstract: CBP Form 26, *Report of Diversion,* is used to track vessels

traveling coastwise from U.S. ports to other U.S. ports when a change occurs in scheduled itineraries. This form is initiated by the vessel owner or agent to notify and request approval by CBP for a vessel to divert while traveling coastwise from a U.S. port to another U.S. port, or a vessel traveling to a foreign port having to divert to a U.S. port when a change occurs in the vessel itinerary. CBP Form 26 collects information such as the name and nationality of the vessel, the expected port and date of arrival, and information about any related penalty cases, if applicable. This information collection is authorized by the Jones Act (46 U.S.C. App. 883) and is provided for 19 CFR 4.91. CBP Form 26 is accessible at *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%2026_0.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 26.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,400.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 2,800.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 233.

Dated: May 19, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–11888 Filed 5–21–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–CALO–15249; PPSESEROC3, PPMPSAS1Y.YP0000]

Draft Environmental Impact Statement Off-Road Vehicle Management Plan for Cape Lookout National Seashore, North Carolina

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Section 102 (2)(C) the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Draft Environmental Impact Statement (DEIS) for the Off-Road Vehicle Management Plan (Plan), Cape Lookout National Seashore (Seashore), North Carolina.

DATES: The NPS will accept comments on the DEIS/Plan from the public for a period of 60 days following publication by the Environmental Protection Agency (EPA) of the Notice of Availability of the Draft Environmental Impact Statement in the **Federal Register**. We will announce the dates, times and location for public meetings to solicit comments on the DEIS/Plan through the NPS Planning, Environment, and Public Comment (PEPC) Web site for the project at *http://parkplanning.nps.gov/calo* and media outlets.

ADDRESSES: Copies of the DEIS/Plan will be available for public review at *http://parkplanning.nps.gov/calo.* A limited number of hard copies will be available at Park Headquarters, 131 Charles St., Harkers Island, North Carolina 28531.

FOR FURTHER INFORMATION CONTACT: Superintendent, Cape Lookout National Seashore, 131 Charles St., Harkers Island, North Carolina 28531; phone 252–728–2250 extension 3014.

SUPPLEMENTARY INFORMATION: The DEIS/Plan evaluates whether to allow ORV use at the Seashore. If ORV use is permitted, the DEIS/Plan will address how to manage that use in compliance with the Seashore's enabling legislation, executive orders, NPS management policies, and other laws and regulations to ensure protection of the natural, cultural, and recreational values of the Seashore's dynamic coastal barrier island environment for present and future generations.

The DEIS/Plan evaluates the impacts of four alternatives for designation of off-road vehicle routes and resource management, as well as one alternative that would prohibit off-road vehicle use, and are described as follows:

Alternative A

- the no action alternative
- continues current levels of ORV use
- continues species management measures from the Seashore's Interim Species Management Plan/EA

Alternative B

- designates specific ORV routes and areas similar to alternative A
- establishes vehicle permits with no numerical limit
- continues species management measures from the Seashore's Interim Species Management Plan/EA
- establishes seasonal night driving restrictions
- phases out high-performance sport model and two stroke ATVs and UTVs
- creates an adaptive management strategy

Alternative C

- the NPS preferred alternative
- designates specific ORV routes and areas
- creates additional pedestrian only areas
- establishes a vehicle permit program that would maintain ORV use at historical levels
- phases out high-performance sport model and two stroke ATVs and UTVs with seasonal use restrictions
- continues species management measures from the Seashore's Interim Species Management Plan/EA
- establishes seasonal night driving restrictions
- creates an adaptive management strategy

Alternative D

- designates specific ORV routes and areas
- creates additional pedestrian only areas compared to alternative C
- establishes a vehicle permit program that would maintain ORV use at historical levels minus 8%
- phases out all ATVs while allowing non-sport UTVs with seasonal use restrictions
- continues species management measures from the Seashore's Interim Species Management Plan/EA while increasing some resource buffers
- establishes seasonal night driving restrictions
- creates an adaptive management strategy

Alternative E

- prohibits private, recreational ORV use
- continuation of species protection measures as appropriate

Executive Order 11644, issued in 1972 and amended by Executive Order 11989 in 1977, states that Federal agencies allowing ORV use must designate the specific areas and trails on public lands on which the use of ORVs may be permitted, and areas in which the use of ORVs may not be permitted. National Park Service policy requires that areas and trails that are designated for ORV use must be established based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. 36 CFR 4.10 requires that ''Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations.'' In addition, such routes and areas may only be designated in

national recreation areas, national seashores, national lakeshores and national preserves.

If you wish to comment electronically, you may submit your comments online at the PEPC Web site by visiting *http://parkplanning.nps.gov/calo.* The NPS encourages commenting electronically through PEPC. The deadline for submitting comments online is midnight, Eastern Time, on the last day of the public comment period, which will be 60 days after the EPA's Notice of Availability for this Plan/DEIS is published in the **Federal Register**. You may also submit written comments by mail to: Patrick M. Kenney, Superintendent, Cape Lookout National Seashore, 131 Charles St., Harkers Island, North Carolina 28531. Comments may also be hand-delivered to park headquarters. Comments will also be accepted during the three open house public meetings. Comments will not be accepted by fax, email, or in any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The responsible official for this DEIS is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: April 30, 2014.

Sarah Craighead,

Acting Regional Director, Southeast Region.

[FR Doc. 2014–11893 Filed 5–21–14; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–BOHA- 15706; PPMPSPD1Z.YM0000] [PPNEBOHAS1]

Notice of Meeting of the Boston Harbor Islands National Recreation Area Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Boston Harbor Islands National Recreation Area Advisory Council. The agenda includes a report from the nominating and bylaws committee, 2016 anniversaries, and park updates.

DATES: The Council will meet on Wednesday, June 11, 2014, from 4:00 p.m. to 6:00 p.m. (EASTERN).

ADDRESSES: Boston Harbor Islands Partnership Office, 15 State Street, 8th floor Conference Room, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Giles Parker, Superintendent and Designated Federal Officer, Boston Harbor Islands Partnership, 15 State Street, Suite 1100, Boston, MA 02109, by telephone (617) 223–8669, or email *giles_parker@nps.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Those wishing to submit written comments may contact the Designated Federal Officer for the Council, Giles Parker, by mail at National Park Service, Boston Harbor Islands Partnership, 15 State Street, Suite 1100, Boston, MA 02109. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Council was appointed by the Director of the National Park Service pursuant to Public Law 104–333. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the implementation of a management plan and park operations. Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

Dated: May 19, 2014.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2014–11899 Filed 5–21–14; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Second Review)]

Barium Carbonate from China, Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) to determine whether revocation of the antidumping duty order on barium carbonate from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 9, 2014.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On May 9, 2014, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Act. The Commission found that the domestic interested party group response to its notice of institution (79 FR 6219, February 3, 2014) was adequate and that the respondent interested party group response was inadequate, but the Commission found that other circumstances warranted conducting a full review.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

[1] Chairman Irving A. Williamson and Commissioner Dean A. Pinkert dissenting.

Issued: May 16, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–11830 Filed 5–21–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the Quarterly Census of Employment and Wages Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before July 21, 2014.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Workforce Agencies (SWAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The QCEW data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employers covered by the Unemployment Compensation for Federal Employees program also are included. These data are submitted to the BLS by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas (MSAs), the States, and the nation. The QCEW program provides a virtual census of nonagricultural employees and their wages, with about 55 percent of the workers in agriculture covered as well.

The QCEW program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the six-digit North American Industry Classification System (NAICS) level, and at the national, State, MSA, and county levels. The QCEW series has broad economic significance in measuring labor trends and major industry developments, in time series analyses and industry comparisons, and in special studies such as analyses of establishments, employment, and wages by size of establishment.

II. Current Action

Office of Management and Budget clearance is being sought for the Quarterly Census of Employment and Wages (QCEW) program.

The QCEW program is the only Federal statistical program that provides information on establishments, wages, tax contributions and the number of employees subject to State UI laws and the Unemployment Compensation for the Federal Employees program. The consequences of not collecting QCEW data would be grave to the Federal statistical community. The BLS would not have a sampling frame for its establishment surveys; it would not be able to publish as accurate current estimates of employment for the U.S., States, and metropolitan areas; and it would not be able to publish quarterly census totals of local establishment counts, employment, and wages. The Bureau of Economic Analysis would not be able to publish as accurate personal income data in a timely manner for the U.S., States, and local areas. Finally, the Department of Labor's Employment Training Administration would not have the information it needs to administer the Unemployment Insurance Program.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Quarterly Census of Employment and Wages (QCEW) Program.

OMB Number: 1220–0012.

Affected Public: State Governments.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 4,680 hours.

Estimated Total Burden Hours: 992,160 hours in FY 2013.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 19th day of May 2014.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2014–11852 Filed 5–21–14; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0027]

Addendum to the Memorandum of Understanding With the Department of Energy (August 28, 1992); Oak Ridge, Tennessee Properties

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This is a notice of an addendum to the interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor and the U.S. Department of Energy (DOE). The MOU establishes specific interagency procedures for the transfer of occupational safety and health coverage for privatized facilities, properties, and operations from DOE to OSHA and state agencies acting under state plans approved by OSHA.

DATES: *Effective Date:* The effective date of the Addendum to the Memorandum of Understanding is May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. David W. Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3655, 200 Constitution Avenue NW., Washington, DC 20210; phone: (202) 693–2110; email: *johnson.david.w@dol.gov*.

Copies of this **Federal Register** *notice*. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

DOE and OSHA of the U.S. Department of Labor entered into a MOU on August 10, 1992, delineating regulatory authority over the occupational safety and health of contractor employees at DOE government-owned or leased, contractor-operated (GOCO) facilities. In general, the MOU recognizes that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2201(f)), relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the OSH Act of 1970, 29 U.S.C. 653(b)(1), exempts from OSHA authority working conditions with respect to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. The 1992 MOU acknowledges DOE's extensive program for the regulation of contractor health and safety, which requires contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the OSH Act will not apply to GOCO sites for which DOE has exercised its authority to regulate occupational safety and health under the Atomic Energy Act.

In light of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second MOU on July 25, 2000, that establishes interagency procedures to address regulatory authority for occupational safety and health at specified privatized facilities and operations on sites formerly controlled by DOE. The 2000 MOU covers facilities and operations on lands no longer controlled by DOE, which are not conducting activities for or on behalf of DOE and where there is no likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

II. Notice of Transfer

In a letter dated October 18, 2013, DOE requested that OSHA or, as appropriate, the Tennessee Occupational Safety and Health Administration (TOSHA) accept occupational safety and health regulatory authority over employees at the East Tennessee Technology Park in Oak Ridge, Tennessee at two parcels of land pursuant to the MOU on Safety and Health Enforcement at Privatized Facilities and Operations dated July 25, 2000. Other facilities and properties at the East Tennessee Technology Park were transferred to TOSHA jurisdiction under this MOU by **Federal Register** notices (74 FR 120 (January 2, 2009), 74 FR 39977 (August 10, 2009), and 76 FR 80408 (December 23, 2011)).

The parcels of land located at the East Tennessee Technology Park within the city of Oak Ridge, Tennessee transferred to the Community Reuse Organization of East Tennessee (CROET) are described as follows:

- *Land Parcel ED–9* (approximately 13 acres) consisting of two tracts of land, ED–9A (7.06 acres) and ED–9B (5.02 acres), separated by a roadway, and a third tract, ED–9C (0.98 acre), consisting of approximately 900 linear feet of paved road and adjacent right of way; and
- *Land Parcel ED–10* (also approximately 13 acres) consists of grassy fields and infrastructure. No buildings are included in this transfer.

OSHA's Regional Office in Atlanta, Georgia, working with the OSHA Nashville Area Office and TOSHA, determined that TOSHA is willing to accept authority over the occupational safety and health of public-sector and private-sector employees at the two parcels of land at the East Tennessee Technology Park in Oak Ridge, Tennessee that were transferred by deed to CROET. In a letter from OSHA to DOE dated March 24, 2014, OSHA stated that TOSHA is satisfied with DOE assurances that (1) there is no likelihood that any employee at facilities in the vicinity of these land parcels will be exposed to radiation levels that will be 25 millirems per year (mrem/yr) or more, and; (2) transfer of authority to TOSHA is free from regulatory gaps and does not diminish the safety and health protection of the employees.

Accordingly, TOSHA accepts and maintains health and safety regulatory authority over employees in the vicinity of Land Parcels ED–9 and ED–10.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. This **Federal Register** notice provides public notice and serves as an addendum to the 1992 OSHA/DOE MOU. Accordingly, the Agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Health and Safety Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on May 16, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–11837 FILED 5–21–14; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; OMB Circular A–133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2014 OMB Circular A–133 Compliance Supplement.

SUMMARY: This notice announces the availability of the 2014 OMB Circular A–133 Compliance Supplement (Supplement). The notice also offers interested parties an opportunity to comment on the 2014 Supplement. The 2014 Supplement adds five new programs, which are added to existing clusters. It deletes 17 programs and has also been updated for program changes and technical corrections.

The five added programs are:

- CFDA 20.527—Public Transportation Emergency Relief Program
- CFDA 66.482—Disaster Relief Appropriations Act (DRAA) Hurricane Sandy Capitalization Grants for Clean Water State Revolving Funds (as part of a new cluster)
- CFDA 66.483—Disaster Relief Appropriations Act (DRAA) Hurricane Sandy Capitalization Grants for Drinking Water State Revolving Funds (as part of new cluster)
- CFDA 93.095—HHS Programs For Disaster Relief Appropriations Act–Non-Construction, and 93.096—HHS Programs for Disaster Relief Appropriations Act—Construction as a new cluster
- CFDA 93.525—State Planning and Establishment Grants for the Affordable Care Act (ACA)'s Exchanges

The 17 deleted programs are:

- CFDA 11.555—Public Safety Interoperable Communications Grant Program
- CFDA 84.186—Safe and Drug-Free Schools and Communities—State Grants
- CFDA 84.298—State Grants for Innovative Programs
- CFDA 84.318—Education Technology State Grants
- CFDA 97.024—Emergency Food and Shelter National Board Program
- CFDA 14.318—Assisted Housing Stability and Energy and Green Retrofit Investments Program (Recovery Act Funded)
- CFDA 14.882—Native American Housing Block Grants (Formula) Recovery Act Funded
- CFDA 14.883—Native Hawaiian Housing Block Grants (Recovery Act Funded)
- CFDA 14.886—Indian Community Development Block Grant Program (Recovery Act Funded)
- CFDA 14.887—Native American Housing Block Grants (Competitive) Recovery Act Funded
- CFDA 84.386—Education Technology State Grants, Recovery Act
- CFDA 84.389—Title I Grants to Local Educational Agencies, Recovery Act
- CFDA 84.401—Impact Aid—School Construction, Recovery Act
- CFDA 84.404—Impact Aid—School Construction Formula Grant, Recovery Act
- CFDA 84.410—Education Jobs Fund
- CFDA 93.716—ARRA—Temporary Assistance for Needy Families Supplemental Grants
- CFDA 93.720—ARRA—Survey and Certification Ambulatory Surgical Center Healthcare Associated Infection (ASC–HAI) Prevention Initiative

A list of changes to the 2014 Supplement can be found at Appendix V. Appendix VII provides an audit alert concerning deletion of American Recovery and Reinvestment Act programs from clusters (which accounts for many of the deleted programs) and a preview of types of revisions to the FY 2015 Compliance Supplement based on the OMB guidance issued December 26, 2013.

Due to its length, the 2014 Supplement is not included in this Notice. See **ADDRESSES** for information about how to obtain a copy either on line or through the Government Printing Office.

DATES: The 2014 Supplement supersedes the 2013 Supplement and will apply to audits of fiscal years beginning after June 30, 2013. All comments on the 2014 Supplement must be in writing and received by October 31, 2014. Late comments will be considered to the extent practicable. We received no comments on the 2013 Supplement.

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *Hai_M._Tran@omb.eop.gov*. Please include ''A–133 Compliance Supplement—2014'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message. Comments may also be submitted via facsimile at 202–395–3952.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street NW., Room 6025, New Executive Office Building, Washington, DC 20503.

Comments may also be sent through *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''A–133 Compliance Supplement—2014'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received through the Web site by the date specified above will be included as part of the official record.

ADDRESSES: The 2014 Supplement is available online on the OMB home page at *http://www.whitehouse.gov/omb/financial_fin_single_audit*.

FOR FURTHER INFORMATION CONTACT: Recipients and auditors should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. The Federal agency contacts are listed in Appendix III of the Supplement. Subrecipients should contact their pass-through entity. Federal agencies should contact Gilbert Tran, Office of Management and Budget, Office of Federal Financial Management, at (202) 395–3052.

Mark Reger,

Deputy Controller.

[FR Doc. 2014–11804 Filed 5–21–14; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) Advisory Committee Meeting (1173).

Dates/Time: June 19, 2014, 1:00 p.m.–5:30 p.m. June 20, 2014, 9:00 a.m.–3:30 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your entry into the building, contact the individual listed below. Your request to attend this meeting must be received by email (*gfarves@nsf.gov*) on or prior to June 17, 2014.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of International and Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone Numbers: (703) 292–5151/703–292–8040 *banderso@nsf.gov*.

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the Web site at *http://www.nsf.gov/od/iia/activities/ceose/index.jsp*.

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda: Opening Statement by the CEOSE Chair.

Presentations and Discussions:

- Discussion of Key Points from the Meetings with NSF Leadership
- Update of Broadening Participation Activities by the CEOSE Executive Liaison
- Reports of CEOSE Liaisons to NSF Directorate/Office Advisory Committees
- Guest Presenter and NSF Leadership Panel on Broadening Participation in America's STEM Workforce
- Discussion by Federal Agency Liaisons About Interagency Broadening Participation Activities
- Panel Discussion: Science of Broadening Participation
- Panel Discussion: Increasing Hispanic Participation in STEM
- Discussion with NSF Director and Deputy Director
- Discussion of CEOSE Unfinished Business and New Business

Dated: May 19, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–11840 Filed 5–21–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[IA–13–012; NRC–2014–0111]

In the Matter of Armando N. Clavero

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order prohibiting Mr. Clavero from involvement in NRC-licensed activities for a period of 3 years. The order also requires Mr. Clavero to notify the NRC of any current involvement in NRC-licensed activities and for a period of 1 year after the 3-year period of prohibition has expired, that he provide a written notice for his acceptance of his first employment offer involving NRC-licensed activities.

DATES: *Effective Date:* See attachment.

ADDRESSES: Please refer to Docket ID NRC–2014–0111 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0111. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- 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.

FOR FURTHER INFORMATION CONTACT: Thomas Marenchin, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2979, email: *Thomas.Marenchin@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 13th day of May 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

Attachment—Order Prohibiting Involvement in NRC Licensed Activities

Order Prohibiting Involvement In NRC-Licensed Activities

I

Armando N. Clavero (Armando Clavero or Mr. Clavero) is employed as the Chief Technical Officer of University Nuclear and Diagnostics, LLC, (UND) located in Davie, Florida. University Nuclear and Diagnostics, LLC, holds an Agreement State license issued by the State of Florida and was contracted to Bradley D. Bastow (Bastow), who holds U.S. Nuclear Regulatory Commission (NRC) materials license No. 21–32316–01 issued by the NRC pursuant to 10 CFR Part 30 on April 20, 2001, and renewed on December 7, 2011. The Florida license authorizes use of diagnostic nuclear materials in accordance with the conditions specified therein. Armando Clavero is listed on the Florida license in Condition 16.A as President. The NRC license to Bastow authorizes the use of certain diagnostic nuclear materials in accordance with the conditions specified therein.

II

On February 28, and April 3, 2012, the NRC conducted a special inspection at the Bastow facility in South Haven, Michigan, with continued in-office review through May 24, 2012. The details of the inspection were documented in NRC Inspection Report No. 03035710/2012001(DNMS) issued to Bastow on December 19, 2012. This document is available in the NRC's Agencywide Documents Access and Management System (ADAMS) at accession number *ML12356A238.* ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* During the inspection, several unresolved items were identified that required further NRC review. The NRC Office of Investigations (OI) began an investigation on April 2, 2012 into several of the issues. OI completed its investigation on January 31, 2013. On April 18, 2013, the NRC issued letters to Bastow, UND, and Armando Clavero, providing them with the preliminary results of the investigation and requesting further input from them through a predecisional enforcement conference, alternative dispute resolution, or written response. These letters are available in ADAMS at

accession numbers *ML13108A154, ML13108A148,* and *ML13109A537.* On June 20, 2013, Mr. Clavero and a representative from UND met with the NRC in predecisional enforcement conferences, together and then in a separate individual conference. At both conferences a Spanish interpreter was available to Mr. Clavero if he had difficulty in understanding the NRC's questions or in expressing an adequate response.

Following the conferences, on July 15, 2013, Armando Clavero provided the NRC with additional information, received via electronic and regular mail. This document is available in ADAMS at accession number *ML13109A537.* On August 9, 2013, the NRC provided both Mr. Clavero and UND with letters outlining the information discussed at the conferences and informing both parties that the NRC was continuing to evaluate the information. These letters can be found in ADAMS at accession numbers *ML13226A459* for the letter to UND and *ML13226A479* for the letter to Mr. Clavero.

On July 1, 2013, the NRC and Bastow met in an alternative dispute resolution (ADR) mediation session. The parties reached a preliminary settlement agreement which was later finalized in a Confirmatory Order dated September 3, 2013. A copy of the Confirmatory Order to Bastow is available in ADAMS at accession number *ML13241A320.*

The NRC also performed additional investigation into the matter of a second meter as discussed at the June 20, 2013, predecisional enforcement conference, including conducting additional interviews with current and former UND employees. This supplemental investigation was completed on February 4, 2014. A synopsis of the NRC's review into the issue of whether a second meter existed, and other issues left unresolved at the conference, was provided to UND with a Notice of Violation and is available in ADAMS at accession number *ML13241A320.*

Based on the results of the inspection and investigation, the NRC determined that, by his deliberate actions, Armando Clavero caused Bastow to be in violation of NRC requirements by: (1) Deliberately not calibrating a survey meter yet providing falsified survey instrument calibration records dated August 13, 2010, and November 10, 2011, and providing inaccurate information about performing the survey meter calibration both during the NRC investigation and during the predecisional enforcement conference; (2) deliberately not performing a sealed source survey in October or November 2011 and providing falsified records of a sealed source survey on October 24, 2011, when there was no survey meter onsite; and (3) deliberately not performing an annual review on October 24, 2011, and providing a falsified record of an annual review dated November 24, 2011, containing erroneous information, including that surveys were performed when a survey meter was not onsite. Armando Clavero also did not ensure that Bastow's office had a working survey meter during the nearly eight week period from October 5, to November 28, 2011, when a UND NMT had sent the Bastow survey meter to UND for calibration and there was no other survey meter in Bastow's office. Armando Clavero did not ensure that records provided to Bastow's office were complete and accurate in all material respects in that he provided records that were dated one date but were based off surveys performed on a different date. Additionally, Armando Clavero, among others, caused UND to be in violation of 10 CFR 30.10.

III

Based on the above, Armando Clavero, an employee of UND and contractor to NRC licensee Bastow has engaged in deliberate misconduct, in violation of 10 CFR 30.10, that has caused the NRC licensee to be in violation of 10 CFR 30.9, 35.24, 35.61, and 35.67, and its license conditions. Bastow was required to follow those requirements by the license issued to it pursuant to 10 CFR Part 30 on April 20, 2001, and renewed on December 7, 2011. The NRC must be able to rely on the licensee and its contractors to act with integrity and comply with NRC requirements. Armando Clavero's actions in causing Bastow to violate 10 CFR 30.9, 35.24, 35.61, and 35.67, and its license conditions raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Armando Clavero were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Armando Clavero be prohibited from any involvement in NRC-licensed activities for a period of 3 years effective 30 days from the date of issuance of this Order. Additionally, Armando Clavero is required to notify the NRC of his first employment in NRC-licensed activities for a period of 1 year following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, IT IS *hereby ordered that:*

1. Armando N. Clavero is prohibited for 3 years from engaging in, supervising, directing, or in any other way conducting NRC-licensed activities, including participating in or overseeing contracted activities for NRC licensees. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in the NRC's jurisdiction pursuant to the authority granted by 10 CFR 150.20. This also includes ownership of NRC-licensed material located within NRC jurisdiction.

2. If Armando N. Clavero is currently involved with any licensee in NRC-licensed activities, then he must cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 1 year after the 3 year period of prohibition has expired, Armando N. Clavero shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Armando N. Clavero shall include a statement of his commitment to compliance with regulatory requirements, including providing complete and accurate information, and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The above provisions are effective 30 days from the date of issuance of this Order.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Armando N. Clavero of good cause.

V

In accordance with 10 CFR 2.202, Armando Clavero must submit a written answer to this Order under oath or

affirmation within 30 days of issuance of this order. Armando Clavero's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any other person adversely affected by this Order may submit a written answer to this Order within 30 days of issuance. In addition, Armando Clavero may demand, and any other person adversely affected by this Order may request, a hearing on this Order within 30 days of issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a demand or 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), as amended by 77 FR 46562; August 3, 2012 (codified in pertinent part at 10 CFR Part 2, Subpart C). 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 (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 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 NRC's ''Guidance for Electronic Submission,'' which is available on the agency'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 Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC 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 through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with 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 (ET) 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, any others who wish to participate in the proceeding (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 NRC'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 (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, 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. With respect to copyrighted works, participants are requested not to include copyrighted

materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than Armando Clavero requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is demanded by Mr. Clavero or requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 13th day of May 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2014–11909 Filed 5–21–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72180; File No. SR–NYSEArca–2014–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the following Under NYSE Arca Equities Rule 8.600: PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund

May 16, 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 May 1, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund. 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 list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares.[5] PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged) (''Hedged Foreign Bond Fund''), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged) (''Unhedged Foreign Bond Fund''), PIMCO Global Advantage Bond Exchange-Traded Fund (''Global Advantage Bond Fund''), and PIMCO International Advantage Bond Exchange-Traded Fund (''International Advantage Bond Fund''), each also referred to as a ''Fund,'' and collectively referred to as the ''Funds.'' The Shares will be offered by PIMCO ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6]

The investment manager to the Funds will be Pacific Investment Management Company LLC (''PIMCO'' or the ''Adviser''). PIMCO Investments LLC will serve as the distributor for the Funds (''Distributor''). State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Funds (''Custodian'' or ''Transfer Agent'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On January 27, 2014, the Trust filed an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Funds (File Nos. 333–155395 and 811–22250) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund's portfolio. If PIMCO elects to hire a sub-adviser for the Funds that is also affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the applicable portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

In the event (a) the Adviser becomes registered as a broker-dealer or 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 and/or changes to the applicable [sic], and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Characteristics of the Funds [8]

According to the Registration Statement, in selecting investments for each Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy, analyze credit and call risks and use other investment selection techniques. The proportion of each Fund's assets committed to investment in securities with particular characteristics (such as quality, sector, interest rate or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets and other factors.

With respect to each Fund, in seeking to identify undervalued currencies, PIMCO may consider many factors, including but not limited to, longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO will identify these areas by grouping fixed income investments into sectors such as money markets, governments, corporates, mortgages, asset-backed and international. Sophisticated proprietary software will then assist in evaluating sectors and pricing specific investments. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads and other factors.

Fixed Income Instruments

• Among other investments described in more detail herein, each Fund may invest in Fixed Income Instruments, which include:

• Securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities'');

• corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; [9]

• mortgage-backed and other asset-backed securities; [10]

• inflation-indexed bonds issued both by governments and corporations; [11]

• structured notes, including hybrid or ''indexed'' securities and event-linked bonds; [12]

• bank capital and trust preferred securities; [13]

• loan participations and assignments; [14]

• delayed funding loans and revolving credit facilities;

• bank certificates of deposit, fixed time deposits and bankers' acceptances;

• repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments;

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the 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 violations, 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.

[8] Many of the investment strategies of the Funds are discretionary, which means that PIMCO can decide from time to time whether to use them or not.

[9] With respect to each of the Funds, while non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $100 million or more par amount outstanding at the time of investment. *See also* note 24, *infra,* regarding emerging market corporate debt securities.

[10] Mortgage-related and other asset-backed securities include collateralized mortgage obligations (''CMO''s), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. A to-be-announced (''TBA'') transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[11] Inflation-indexed bonds (other than municipal inflation-indexed bonds and certain corporate inflation-indexed bonds) are fixed income securities whose principal value is periodically adjusted according to the rate of inflation (e.g., Treasury Inflation Protected Securities (''TIPS'')). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate plus the Consumer Price Index for All Urban Consumers (''CPI''). With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

[12] The Funds may obtain event-linked exposure by investing in ''event-linked bonds'' or ''event-linked swaps'' or by implementing ''event-linked strategies.'' Event-linked exposure results in gains or losses that typically are contingent, or formulaically related to defined trigger events. Examples of trigger events include hurricanes, earthquakes, weather-related phenomena, or statistics relating to such events. Some event-linked bonds are commonly referred to as ''catastrophe bonds.'' If a trigger event occurs, the Fund may lose a portion or its entire principal invested in the bond or notional amount on a swap.

[13] There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. According to the Registration Statement, Tier I securities often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock, are often perpetual (with no maturity date), callable and, under certain conditions, allow for the issuer bank to withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

[14] The Funds may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans.

• debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises (''Municipal Bonds'');

• obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and obligations of international agencies or supranational entities.

Use of Derivatives by the Funds

A Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. With respect to each Fund, derivative instruments primarily will include forwards,[15] exchange-traded and over-the-counter (''OTC'') options contracts, exchange-traded futures contracts, swap agreements and options on futures contracts and swap agreements. Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. A Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.[16]

As described further below, each Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. A Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, a Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees (''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, each Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[17] Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for a Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that each Fund would otherwise purchase. For example, a Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (*e.g.,* differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (e.g., interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or ''tail risks'') in each Fund.[18] Each Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection.'' Single name credit default swaps (CDS) can be used to allow a Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. A Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be much more efficient than buying underlying securities of an index, potentially lowering transaction costs.

The Adviser believes that the use of derivatives will allow each Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (*i.e.,* covered calls).

Hedged Foreign Bond Fund—Principal Investments

According to the Registration Statement, the Hedged Foreign Bond Fund will seek maximum total return,[19] consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances,[20] at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries,[21]

[15] Forwards are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time (forward commitments).

[16] Each Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

[17] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[18] Each Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation. According to the Registration Statement, the Funds have adopted procedures that are consistent with Section 18 of the 1940 Act and related Commission guidance, which require that a fund's derivative instruments be fully collateralized bv [sic] liquid assets of the fund.

[19] With respect to each Fund, the term ''total return'' sought by the Fund will consist of both income and capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

[20] With respect to each Fund, the term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as a systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[21] PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority or instrumentality of

Continued

representing at least three foreign countries (the ''Hedged Foreign Bond Fund 80% policy''). The average portfolio duration [22] of the Fund will normally vary within three years (plus or minus) of the portfolio duration of the securities comprising the Fund's broad-based securities market index, as calculated by PIMCO, which as of December 31, 2013 was 7.7 years.

The Hedged Foreign Bond Fund will invest primarily in investment grade debt securities, but may invest up to 10% of its total assets in high yield securities (''junk bonds'') rated B or higher by Moody's Investors Service, Inc. (''Moody's''), or equivalently rated by Standard & Poor's Ratings Services (''S&P'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality,[23] except that, within such limitation, the Fund may invest in mortgage-backed securities rated below B.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

The Hedged Foreign Bond Fund may invest in securities and instruments that are economically tied to emerging market countries subject to applicable limitations set forth herein.[24]

In furtherance of the Hedged Foreign Bond Fund 80% policy, or with respect to the Fund's other investments, the Hedged Foreign Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described herein.[25]

The Hedged Foreign Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[26]

According to the Registration Statement, the Hedged Foreign Bond Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis [27] and invest in foreign currency futures and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Hedged Foreign Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Hedged Foreign Bond Fund—Other (Non-Principal) Investments

The Hedged Foreign Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[28] The Fund may invest in variable and floating rate securities, which are securities that pay interest at rates that adjust whenever a specified interest rate

such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country. With respect to derivative instruments, PIMCO will generally consider such instruments to be economically tied to non-U.S. countries if the underlying assets are foreign currencies (or baskets or indices of such currencies), or instruments or securities that are issued by foreign governments or issuers organized under the laws of a non-U.S. country (or if the underlying assets are certain money market instruments, if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country).

[22] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[23] In determining whether a security is of comparable quality the Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

[24] PIMCO will generally consider an instrument to be economically tied to an emerging market country if the security's ''country of exposure'' is an emerging market country, as determined by the criteria set forth in the Registration Statement. Alternatively, such as when a ''country of exposure'' is not available or when PIMCO believes the following tests more accurately reflect which country the security is economically tied to, PIMCO may consider an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market country (or any political subdivision, agency, authority or instrumentality of such government), if the issuer or guarantor is organized under the laws of an emerging market country, or if the currency of settlement of the security is a currency of an emerging market country. With respect to derivative instruments, PIMCO will generally consider such instruments to be economically tied to emerging market countries if the underlying assets are currencies of emerging market countries (or baskets or indices of such currencies), or instruments or securities that are issued or guaranteed by governments of emerging market countries or by entities organized under the laws of emerging market countries. While emerging markets corporate debt securities (excluding commercial paper) generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $200 million or more par amount outstanding at the time of investment.

[25] With respect to each Fund, derivatives are generally financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, spreads between different interest rates, currencies or currency exchange rates, commodities, and related indices. Examples of derivative instruments include forwards, options contracts, futures contracts, options on futures contracts and swap agreements.

[26] With respect to each Fund, mortgage-related and asset-backed securities include mortgage pass-through securities, collateralized mortgage obligations (''CMO''s), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. A to-be-announced (''TBA'') transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[27] A forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, would reduce a Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of a Fund would be similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell a foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. Each Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, *see www.bis.org.*

[28] Convertible securities are generally preferred stocks and other securities, including fixed income securities and warrants, that are convertible into or exercisable for common stock at a stated price or rate. Equity-related investments may include investments in small-capitalization (''small-cap''), mid-capitalization (''mid-cap'') and large-capitalization (''large-cap'') companies. With respect to each Fund, a small-cap company will be defined as a company with a market capitalization of up to $1.5 billion, a mid-cap company will be defined as a company with a market capitalization of between $1.5 billion and $10 billion and a large-cap company will be defined as a company with a market capitalization above $10 billion. Not more than 10% of the net assets of a Fund in the aggregate shall consist of non-U.S. equity securities, including non-U.S. stocks into which a convertible security is converted, whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

changes and/or that reset on predetermined dates (such as the last day of a month or calendar quarter). The Fund may invest in floating rate debt instruments (''floaters''), inverse floating rate debt instruments (''inverse floaters'') and may engage in credit spread trades.

As disclosed in the Registration Statement, the Hedged Foreign Bond Fund may also invest in trade claims,[29] privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, and structured notes. The Fund may invest in Brady Bonds, which are securities created through the exchange of existing commercial bank loans to sovereign entities for new obligations in connection with a debt restructuring.

The Hedged Foreign Bond Fund may purchase or sell securities which it is eligible to purchase or sell on a when-issued basis, may purchase and sell such securities for delayed delivery and may make contracts to purchase or sell such securities for a fixed price at a future date beyond normal settlement time (forward commitments). The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

The Hedged Foreign Bond Fund may enter into repurchase agreements, in which the Fund purchases a security from a bank or broker-dealer, which agrees to repurchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements and dollar rolls subject to the Fund's limitations on borrowings.[30] The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Fund's Board to cover its obligations under reverse repurchase agreements and dollar rolls.

Unhedged Foreign Bond Fund—Principal Investments

According to the Registration Statement, the Unhedged Foreign Bond Fund will seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries[31] representing at least three foreign countries (the ''Unhedged Foreign Bond Fund 80% policy''). The average portfolio duration of the Fund will vary within approximately three years (plus or minus) of the portfolio duration of the securities comprising the Fund's broad-based securities market index, as calculated by PIMCO, which as of December 31, 2013 was 7.7 years.

The Unhedged Foreign Bond Fund will invest primarily in investment grade debt securities, but may invest up to 10% of its total assets in high yield securities (junk bonds) rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality,[32] except that, within such limitation, the Fund may invest in mortgage-backed securities rated below B.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

The Unhedged Foreign Bond Fund may invest in fixed income and equity securities and instruments that are economically tied to emerging market countries, subject to applicable limitations set forth herein.[33]

In furtherance of the Unhedged Foreign Bond Fund 80% policy, or with respect to the Fund's other investments, the Unhedged Foreign Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described in the Registration Statement.[34]

The Unhedged Foreign Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[35]

According to the Registration Statement, the Unhedged Foreign Bond Fund may invest in fixed income and equity securities denominated in foreign (non-U.S.) currencies, engage in foreign currency transactions on a spot (cash) basis and forward basis[36] and invest in foreign currency futures and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Unhedged Foreign Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Unhedged Foreign Bond Fund—Other (Non-Principal) Investments

The Unhedged Foreign Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[37] The Fund may invest in variable and floating rate securities. The Fund may invest in floaters, inverse floaters and may engage in credit spread trades.

The Unhedged Foreign Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, and structured notes. The Fund may invest in Brady Bonds.

The Unhedged Foreign Bond Fund may purchase or sell securities which it is eligible to purchase or sell on a when-issued basis, may purchase and sell such securities for delayed delivery and may make contracts to purchase or sell such securities for a fixed price at a future date beyond normal settlement time (forward commitments). The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

The Unhedged Foreign Bond Fund may enter into repurchase agreements, in which the Fund purchases a security from a bank or broker-dealer, which

[29] Trade claims are non-securitized rights of payment arising from obligations that typically arise when vendors and suppliers extend credit to a company by offering payment terms for products and services. If the company files for bankruptcy, payments on these trade claims stop and the claims are subject to compromise along with the other debts of the company. Trade claims may be purchased directly from the creditor or through brokers.

[30] With respect to each Fund, a reverse repurchase agreement involves the sale of a security by a Fund and its agreement to repurchase the instrument at a specified time and price. A dollar roll is similar except that the counterparty is not obligated to return the same securities as those originally sold by a Fund but only securities that are ''substantially identical.''

[31] *See supra,* note 21.

[32] *See supra,* note 23.

[33] *See supra,* note 24.

[34] *See supra,* note 25.

[35] *See supra,* note 26.

[36] *See supra,* note 27.

[37] *See supra,* note 28.

agrees to repurchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements and dollar rolls subject to the Fund's limitations on borrowings.

Global Advantage Bond Fund—Principal Investments

According to the Registration Statement, the Global Advantage Bond Fund will seek total return exceeding that of its benchmarks, consistent with prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to at least three countries, which may include foreign (non-U.S.) countries and may also include the U.S. (the ''Global Advantage Bond Fund 80% policy''). The average portfolio duration of the Fund will vary based on PIMCO's forecast for interest rates and, under normal circumstances, will not be expected to exceed eight years.[38]

The Global Advantage Bond Fund may invest in both investment-grade debt securities and high-yield securities (junk bonds) subject to a maximum of 15% of its total assets in securities rated below B by Moody's, S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

The Fund may invest, without limitation, in securities and instruments that are economically tied to emerging market countries.[39]

In furtherance of the Global Advantage Bond Fund 80% policy, or with respect to the Fund's other investments, the Global Advantage Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described herein.[40]

The Global Advantage Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[41]

The Global Advantage Bond Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers. The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures and options contracts.[42] The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another.

The Global Advantage Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Global Advantage Bond Fund—Other (Non-Principal) Investments

The Global Advantage Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[43] The Fund may invest in variable and floating rate securities. The Fund may invest in floaters, inverse floaters and may engage in credit spread trades.

The Global Advantage Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, and structured notes. The Fund may invest in Brady Bonds.

The Global Advantage Bond Fund may purchase or sell securities which it is eligible to purchase or sell on a when-issued basis, may purchase and sell such securities for delayed delivery and may make contracts to purchase or sell such securities for a fixed price at a future date beyond normal settlement time (forward commitments). The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

The Global Advantage Bond Fund may enter into repurchase agreements, in which the Fund purchases a security from a bank or broker-dealer, which agrees to repurchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements and dollar rolls subject to the Fund's limitations on borrowings.

International Advantage Bond Fund—Principal Investments

According to the Registration Statement, the International Advantage Bond Fund will seek total return exceeding that of its benchmarks, consistent with prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries,[44] representing at least three foreign countries (the ''International Advantage Bond Fund 80% policy''). The average portfolio duration of the Fund will vary based on PIMCO's forecast for interest rates and, under normal circumstances, will not be expected to exceed eight years.

The International Advantage Bond Fund may invest in both investment-grade debt securities and high-yield securities (junk bonds) subject to a maximum of 15% of its total assets in securities rated below B by Moody's, S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

The Fund may invest, without limitation, in securities and instruments that are economically tied to emerging market countries.[45]

In furtherance of the International Advantage Bond Fund 80% policy, or with respect to the Fund's other investments, the International Advantage Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described in its prospectus or Statement of Additional Information (''SAI'').[46]

[38] The Global Advantage Bond Fund will utilize the PIMCO Global Advantage® (''PIMCO Index'') as a secondary benchmark. PIMCO owns the intellectual property rights to the PIMCO Index, and has filed a patent application with respect to certain features of the PIMCO Index. PIMCO has retained an unaffiliated leading financial information services company and global index provider to independently administer and calculate the PIMCO Index (the ''Calculation Agent''). The Calculation Agent, using a publicly available rules-based methodology, will calculate, maintain and disseminate the PIMCO Index.

[39] *See supra,* note 24.

[40] *See supra,* note 25.

[41] *See supra,* note 26.

[42] *See supra,* note 27.

[43] *See supra,* note 28.

[44] *See supra,* note 21.

[45] *See supra,* note 24.

[46] *See supra,* note 25.

The International Advantage Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[47]

The International Advantage Bond Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers. The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures and options contracts.[48] The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another.

The International Advantage Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

International Advantage Bond Fund—Other (Non-Principal) Investments

The International Advantage Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[49]

The International Advantage Bond Fund may invest in variable and floating rate securities. The Fund may invest in floaters, inverse floaters and may engage in credit spread trades.

The International Advantage Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes and structured notes. The Fund may invest in Brady Bonds.

The International Advantage Bond Fund may purchase or sell securities which it is eligible to purchase or sell on a when-issued basis, may purchase and sell such securities for delayed delivery and may make contracts to purchase or sell such secure ties for a fixed price at a future date beyond normal settlement time (forward commitments). The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

The International Advantage Bond Fund may enter into repurchase agreements, in which the Fund purchases a security from a bank or broker-dealer, which agrees to repurchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements and dollar rolls subject to the Fund's limitations on borrowings.

All Funds—Other Restrictions

Each Fund may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds, provided that each Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of that Fund's total assets. Each Fund may invest in securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act, including series of PIMCO Funds.

Each Fund's investments, including investments in derivative instruments, will be subject to all of the restrictions under the 1940 Act, including restrictions with respect to illiquid assets; that is, the limitation that a Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.[50] 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 such Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[51]

The Funds will be non-diversified, which means that each Fund may invest its assets in a smaller number of issuers than a diversified fund.[52]

The Funds intend to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.[53] None of the Funds will concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.[54]

Each Fund may invest without limit, for temporary or defensive purposes, in U.S. debt securities, including taxable securities and short-term money market securities, if PIMCO deems it appropriate to do so. If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of each Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies or instrumentalities.

Each Fund's investments, including derivatives, will be consistent with that Fund's investment objective and each Fund's use of derivatives may be used to enhance leverage. However, each Fund's investments will not be used to

[47] *See supra,* note 26.

[48] *See supra,* note 27.

[49] *See supra,* note 28.

[50] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers willing 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 trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[51] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[52] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[53] 26 U.S.C. 851.

[54] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[55]

Net Asset Value and Derivatives Valuation Methodology for Purposes of Determining Net Asset Value

The NAV of each Fund's Shares will be determined by dividing the total value of a Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding.

Each Fund's Shares will be valued as of the close of regular trading of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m. Eastern time (''E.T.'') (the ''NYSE Close'') on each day NYSE Arca is open (''Business Day''). Information that becomes known to each of the Funds or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services.

Fixed Income Instruments, including those to be purchased under firm commitment agreements/delayed delivery basis, will generally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services. Foreign fixed income securities will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Short-term debt instruments having a remaining maturity of 60 days or less will generally be valued at amortized cost, which approximates market value.

As discussed in more detail below, derivatives will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Local closing prices will be used for all instrument valuation purposes. Foreign currency-denominated derivatives will generally be valued using market inputs as of the respective local region's market close.

With respect to specific derivatives:

- Currency spot and forward rates will generally be determined as of the NYSE Close.
- Exchange traded futures will generally be valued at the settlement price of the exchange.
- A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.
- Equity total return swaps will generally be valued using the actual underlying equity at local market closing, while bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan.
- Exchange traded non-equity options, (for example, options on bonds, Eurodollar options and U.S. Treasury options), index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.
- OTC and exchange traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services.
- OTC FX options will generally be valued by pricing vendors.
- All other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, CDX/CDS will generally be valued by pricing services.

Exchange-traded equity securities will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, exchange-traded equity securities will generally be valued at the mean of the last available bid and ask quotation on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing services.

If a foreign security's value has materially changed after the close of the security's primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Board. Foreign securities that do not trade when the NYSE is open are also valued at fair value.

Securities and other assets for which market quotes are not readily available are valued at fair value as determined in good faith by the Board or persons acting at their direction. The Board has adopted methods for valuing securities and other assets in circumstances where market quotes are not readily available, and has delegated to PIMCO the responsibility for applying the valuation methods. In the event that market quotes are not readily available, and the security or asset cannot be valued pursuant to one of the valuation methods, the value of the security or asset will be determined in good faith by the Valuation Committee of the Board generally based upon recommendations provided by PIMCO.

Market quotes are considered not readily available in circumstances where there is an absence of current or reliable market-based data (*e.g.,* trade information, bid/ask information, broker quotes), including where events occur after the close of the relevant market, but prior to the NYSE Close, that materially affect the values of a Fund's securities or assets. In addition, market quotes are considered not readily available when, due to extraordinary circumstances, the exchanges or markets on which the securities trade do not open for trading for the entire day and no other market prices are available. The Board has delegated to PIMCO the responsibility for monitoring significant events that may materially affect the values of the Fund's securities or assets and for determining whether the value of the applicable securities or assets should be re-evaluated in light of such significant events.

When a Fund uses fair value pricing to determine its NAV, securities will not be priced on the basis of quotes from the primary market in which they are traded, but rather may be priced by another method that the Board or persons acting at their direction believe reflects fair value. Fair value pricing may require subjective determinations about the value of a security. While the Trust's policy is intended to result in a calculation of the Fund's NAV that fairly reflects security values as of the time of pricing, the Trust cannot ensure that fair values determined by the Board or persons acting at their direction would accurately reflect the price that a Fund could obtain for a security if it were to dispose of that security as of the time of pricing (for instance, in a forced or distressed sale). The prices used by a Fund may differ from the value that would be realized if the securities were sold.

For a Fund's 4:00 p.m. E.T. futures holdings, estimated prices from Reuters will be used if any cumulative futures margin impact is greater than $0.005 to the NAV due to futures movement after the fixed income futures market closes (3:00 p.m. E.T.) and up to the NYSE

[55] Each Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following each Fund's first full calendar year of performance.

Close (generally 4:00 p.m. E.T.). Swaps traded on exchanges such as the Chicago Mercantile Exchange (''CME'') or the Intercontinental Exchange (''ICE–US'') will use the applicable exchange closing price where available.

Investments initially valued in currencies other than the U.S. dollar are converted to the U.S. dollar using exchange rates obtained from pricing services. As a result, the NAV of a Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar. The value of securities traded in markets outside the United States or denominated in currencies other than the U.S. dollar may be affected significantly on a day that the NYSE is closed. As a result, to the extent that a Fund holds foreign (non-U.S.) securities, the NAV of a Fund's Shares may change when an investor cannot purchase, redeem or exchange shares.

Derivatives Valuation Methodology for Purposes of Determining Portfolio Indicative Value

On each Business Day, before commencement of trading in Fund Shares on NYSE Arca, each Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by a Fund that will form the basis for a Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of Shares of a Fund, the NYSE Arca or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association (''CTA'') or other widely disseminated means an updated Portfolio Indicative Value (''PIV'') for each Fund as calculated by an information provider or market data vendor.

A third party market data provider will calculate the PIV for each Fund. For the purposes of determining the PIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps may be mapped to a swap curve and valued intraday based on the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- CDX/CDS may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

A third party market data provider's valuation of forwards will be similar to their valuation of the underlying securities, or another proxy as determined to be appropriate by the third party market data provider. The third party market data provider will generally use market quotes if available. Where market quotes are not available, they may fair value securities against proxies (such as swap or yield curves). Each Fund's disclosure of forward positions will include information that market participants can use to value these positions intraday.

Disclosed Portfolio

Each Fund's disclosure of derivative positions in the applicable Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio.

Impact on Arbitrage Mechanism

For each Fund, the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when each Fund processes purchases or redemptions of ''Creation Units'' (as described below) in-kind.

Creations and Redemptions of Shares

According to the Registration Statement, Shares of each of the Funds that trade in the secondary market will be ''created'' at NAV [56] by Authorized Participants [57] only in block-size creation units (''Creation Units'') of 100,000 Shares or multiples thereof. Each Fund will offer and issue Shares at their NAV per Share generally in exchange for a basket of debt securities held by that Fund (the ''Deposit Securities'') together with a deposit of a specified cash payment (the ''Cash Component''), or in lieu of Deposit Securities, a Fund may permit a ''cash-in-lieu'' amount for any reason at the Fund's sole discretion. Alternatively, each Fund may issue Creation Units in exchange for a specified all-cash payment (''Cash Deposit''). Similarly,

[56] The NAV of each of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of trading on the Exchange, generally 4:00 p.m. E.T. (the ''NAV Calculation Time'') on any Business Day. NAV per Share will be calculated by dividing a Fund's net assets by the number of that Fund's Shares outstanding. For more information regarding the valuation of each Fund's investments in calculating a Fund's NAV, see the Registration Statement.

[57] An ''Authorized Participant'' refers to a Participating Party (a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''); or a Depository Trust Company (''DTC'') Participant who has executed a Participant Agreement (an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit aggregations).

Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of debt securities held by each Fund and/or for a specified amount of cash.

Except when aggregated in Creation Units, Shares will not be redeemable by the Funds. The prices at which creations and redemptions occur will be based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the Authorized Participant agreement. PIMCO will make available on each business day via the NSCC, prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m., E.T.), the identity and the required amount of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current Fund Deposit [58] (based on information at the end of the previous Business Day). Creations and redemptions must be made by an Authorized Participant.

Additional information regarding the Trust, the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to but not defined in this proposed rule change are defined in the Registration Statement.

Availability of Information

The Trust's Web site (*www.pimcoetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each of the Funds that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for each of the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask [59] spread at the time of calculation of such NAV (the ''Bid/Ask Price''), and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, each of the Funds will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the [sic] each of the Fund's [sic] calculation of NAV at the end of the Business Day.[60]

On a daily basis, for each of the Funds, the Adviser, Funds or Trust will disclose for each portfolio security and other financial instrument of each of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares (if applicable) or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. In addition, price information for the debt securities and other financial instruments held by each of the Funds will be available through major market data vendors.[61] As noted above, each Fund's disclosure of derivative positions in the applicable Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio.

The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Funds' Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of each of the Funds. The NAV of each of the Funds will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) on each Business Day. Authorized participants may refer to the basket composition file for information regarding Fixed Income Instruments, and any other instrument that may comprise a Fund's basket on a given day.

Investors can also obtain the Trust's SAI, the Funds' Shareholder Reports, and the Funds' Forms N–CSR and Forms N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Intra-day and closing price information regarding equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange traded funds and other equity-related securities, will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding Fixed Income Instruments also will be available from major market data vendors. Price information relating to forwards will be available from major market data vendors. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. In addition, the PIV, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[62] The dissemination of the PIV, together with the Disclosed Portfolio, may allow investors to determine an approximate value of the underlying portfolio of each of the Funds on a daily

[58] The Deposit Securities and Cash Component or, alternatively, the Cash Deposit, will constitute the ''Fund Deposit,'' which will represent the investment amount for a Creation Unit of each of the Funds.

[59] The Bid/Ask Price of each of the Funds will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of that Fund's NAV. The records relating to Bid/Ask Prices will be retained by each of the Funds and their service providers.

[60] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[61] Supplementally, major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase Pricing Direct Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

[62] Currently, the Exchange understands that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

basis and to provide an estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of any of the Funds.[63] Trading in Shares of any of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of any of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of any of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Each Fund's Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Funds' Reporting Authority will 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 each Fund's portfolio. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [64] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[65] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures and options on futures with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, exchange-trade options, exchange-traded equities, futures and options on futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[66] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of a Fund in the aggregate shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each of the Funds is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement

[63] *See* NYSE Arca Equities Rule 7.12.

[64] 17 CFR 240.10A–3.

[65] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[66] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

under Section 6(b)(5)[67] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures and options on futures with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, exchange-trade options, exchange-traded equities, futures and options on futures from such markets *or* entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures and options on futures from markets *or* other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. Not more than 10% of the net assets of a Fund in the aggregate shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Hedged Foreign Bond Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of the Fund's total assets. Each of the Funds will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the BIS Triennial Central Bank Survey. Each Fund's investments, including derivatives, will be consistent with that Fund's investment objective and each Fund's use of derivatives may be used to enhance leverage. However, each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A). Each of the Fund's investment in illiquid assets will not exceed 15% of that Fund's net assets. The Hedged and Unhedged Foreign Bond Funds will invest primarily in investment grade debt securities and will not invest more than 10% of its total assets in high yield securities rated B or higher by Moody's, S&P or Fitch, or if unrated, determined by PIMCO to be of comparable quality. The Global and International Advantage Bond Funds will each primarily invest in investment-grade debt securities and will not invest more than 15% of its total assets in high yield securities rated below B (as described above). Each Fund's portfolio will include a minimum of 13 non-affiliated issuers. With respect to each of the Funds, while non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $100 million or more par amount outstanding at the time of investment. The PIMCO's Counterparty Risk Committee will evaluate the creditworthiness of swaps counterparties on an ongoing basis.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding each of the Funds and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each of the Funds will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for each Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. Exchange-traded options quotation and last sale information is available via the Options Price Reporting Authority. The Trust's Web site will include a form of the prospectus for each of the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the any of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of any of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding each of the Funds' holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer

[67] 15 U.S.C. 78f(b)(5).

regarding access to information concerning the composition and/or changes to each Fund's portfolio. In addition, the Funds' Reporting Authority will 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 each Fund's portfolio.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition with respect to such products among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–57, and should be submitted on or before June 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–11831 Filed 5–21–14; 8:45 am]

BILLING CODE 8011–01–P

[68] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling (AR) 14–1(8); Docket No. SSA–2014–0008]

Brock v. Astrue, 674 F.3d 1062 (8th Cir. 2012): Requiring Vocational Specialist (VS) or Vocational Expert (VE) Evidence When an Individual has a Severe Mental Impairment(s)—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling (AR).

SUMMARY: We are publishing this Social Security AR in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b).

DATES: *Effective Date:* May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Marc Epstein, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–8122, or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this AR to claims at all levels of administrative review within the Eighth Circuit. We will apply this AR to all determinations or decisions made on or after May 22, 2014. If we made a determination or decision on an application for benefits between March 28, 2012, the date of the Court of Appeals' decision, and May 22, 2014, the effective date of this AR, the claimant may request that we apply the AR to the prior determination or decision. The claimant must show, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that applying the AR could change our prior determination or decision in his or her case.

When we received this precedential Court of Appeals' decision and determined that an AR might be required, we began to identify those claims that were pending before the agency within the circuit that might be

subject to readjudication if we subsequently issued an AR. Because we have determined that an AR is required and are publishing this AR, we will send a notice to those individuals whose claims we have identified. In the notice, we will provide information about the AR and the right to request readjudication under the AR. However, a claimant does not need to receive a notice in order to request that we apply this AR to our prior determination or decision on his or her claim, as provided in 20 CFR 404.985(b)(2) and 416.1485(b)(2).

If we later rescind this AR as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by this AR, as provided by 20 CFR 404.985(c)and 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: April 17, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

Acquiescence Ruling 14–1(8)

Brock v. Astrue, 674 F.3d 1062 (8th Cir. 2012): Requiring Vocational Specialist (VS) or Vocational Expert (VE) Evidence When an Individual has a Severe Mental Impairment(s)—Titles II and XVI of the Social Security Act

Issue: Must an adjudicator obtain VS or VE evidence to determine whether a claimant with a severe mental impairment can perform jobs that exist in significant number in the national economy, given his or her residual functional capacity (RFC), age, education and work experience?

Statute/Regulation/Ruling Citation: Sections 205(b), 223(d)(2)(A); 223(d)(5)(A); 1614(a)(3)(B); 1614(a)(3)(H)(i) of the Social Security Act (42 U.S.C. 423(d)(2)(A); 423(d)(5)(A); 1382c(a)(3)(B); 1382c(a)(3)(H)(i)); 20 CFR 404.1520(a)(4)(v), 404.1520(g), 404.1566, 404.1569, 404.1569a, 416.920(a)(4)(v), 416.920(g), 416.966, 416.969, 416.969a; section 200.00(e) of 20 CFR Part 404, Subpart P, Appendix 2; Social Security Rulings (SSRs) 83–10, 83–12, 83–14, 85–15, 96–9p.

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota).

Applicability of Ruling: This ruling applies to determinations or decisions made in the Eighth Circuit at all levels of administrative review.

Description of Case: Michael Brock (Brock) applied for Supplemental Security Income (SSI) payments based on disability alleging he was disabled due to an anxiety disorder and attention deficit hyperactivity disorder.[1] The administrative law judge (ALJ) found that Brock's mental impairments were severe at step two of our sequential evaluation process. Despite the severe mental impairments, the ALJ found that Brock had the RFC to perform the full range of medium work contemplated in the Medical-Vocational Guidelines (the Grid rules). Considering Brock's RFC, age, education, and work experience, the ALJ used Medical-Vocational Rule 203.25 as a framework to find that Brock could adjust to work existing in significant numbers in the national economy and was ''not disabled.'' The ALJ did not request VE testimony.

On appeal, Brock argued that because his impairments were solely nonexertional, the ALJ erred in relying solely on the Grid rules and that the ALJ should have sought VE evidence to determine whether he could adjust to other work. Brock asserted that, because the Grid rules are premised only on exertional limitations, they are not meant to direct a conclusion of ''disabled'' or ''not disabled'' for individuals who have solely nonexertional limitations. Therefore, Brock asserted that substantial evidence in the record did not support the ALJ's decision.

Holding: The Court of Appeals for the Eighth Circuit concluded that the ALJ erred by relying solely on the Grid rules to determine that Brock could adjust to work existing in significant numbers in the national economy. The Court held that ''[b]ecause the ALJ determined that Brock suffered from severe mental impairments, the ALJ should have consulted a [VE] in determining whether Brock had the RFC to perform other jobs that exist in significant number in the national economy.''

Statement As to How Brock Differs From the Agency's Policy

At step five of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we consider the vocational factors of age, education, and work experience in conjunction with a claimant's RFC to determine whether the claimant can adjust to other work that exists in significant numbers in the national economy. Section 200.00(e)(1) of 20 CFR Part 404, Subpart P, Appendix 2 provides that ''[i]n the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.'' As explained below, the rules are, however, used as a framework for decision making.

Under SSR 85–15: Titles II and XVI: Capability To Do Other Work—The Medical–Vocational (Grid) Rules as a Framework for Evaluating Solely Nonexertional Impairments, where a person's only impairment is mental, it is not of listing severity but does prevent the person from meeting the mental demands of past relevant work and prevents the transferability of acquired work skills, the final consideration is whether the person can be expected to perform unskilled work. The basic mental demands of competitive, remunerative, unskilled work include the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; to respond appropriately to supervision, coworkers, and usual work situations; and to deal with changes in a routine work setting. Where there is no exertional impairment, unskilled jobs at all levels of exertion constitute the potential occupational base for persons who can meet the mental demands of unskilled work. Under our interpretation of the regulations, an adjudicator is not required to consult a VE or other vocational resource to determine whether a nonexertional limitation significantly erodes a claimant's occupational base when adjudicative guidance on the effect of the limitation is provided in an SSR.[2] If the

[1] Although *Brock* was a Title XVI case, the same principles apply to Title II. Therefore, this Acquiescence Ruling applies to both Title II and Title XVI disability claims.

[2] For example, the following non-exertional limitations do not significantly erode an occupational base: Limited exposure to dangerous moving machinery, unprotected heights, and ragweed allergies (sedentary jobs); limited climbing of ladders and scaffolding, crouching (sedentary and light jobs), exposure to feathers, use of a cane for prolonged ambulation and uneven terrain, or slopes (sedentary), and inability to sense texture or temperature with fingertips. See SSR 83–14: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments, at *2. Whereas, the

occupational base is not significantly eroded by non-exertional limitations, the adjudicator may use the Grid rules as a framework, and VE testimony is not required.

In *Brock,* the ALJ found that Brock retained the ability to perform unskilled work. Pursuant to SSR 85–15, the ALJ found Brock's non-exertional limitations had little or no effect on the occupational base of medium exertional level unskilled work before applying the framework of Grid rule 203.25 to find Brock was not disabled.

The *Brock* Court's decision differs from our policy because it held that, because the ALJ found Brock had severe mental impairments, ''the ALJ should have consulted a [VE] in determining whether Brock had the RFC to perform other jobs that exist in significant number in the national economy.'' The holding requires the ALJ to consult a VE before denying a claim at step five of our sequential evaluation process when the claim involves an individual with a severe mental impairment(s), regardless of whether adjudicative guidance available in an SSR holds that the resulting nonexertional limitation(s) does not significantly erode the occupational base and application of the applicable Grid rule is appropriate.

Explanation of How We Will Apply the Brock Decision Within the Circuit

This Ruling applies only to claims in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota at the time of the determinations or decision at the initial, reconsideration, and ALJ hearing levels.

In making a disability determination or decision at step five of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we will not rely exclusively on the Grid rules as a framework for decision making when an individual has a severe mental impairment(s). Before we deny a claim for disability benefits at step five (or the last step in the sequential evaluation process in continuing disability review claims) when a claimant has a severe mental impairment(s), we will produce VE evidence in claims at the hearing level. For claims decided at the initial and reconsideration levels, we will use evidence from a VS, the Dictionary of Occupational Titles (DOT), or another reliable source of job information, such as the ones listed in 20 CFR 404.1566(d) and 416.966(d).

At the Appeals Council level, the Appeals Council will use this AR to determine whether it was correctly applied at the hearing level. However, when the Appeals Council exercises its authority to issue a corrective unfavorable decision, the Appeals Council may rely on vocational evidence adduced at the hearing.

[FR Doc. 2014–11841 Filed 5–21–14; 8:45 am]

BILLING CODE 4191–02–P

following nonexertional limitations generally do significantly erode an occupational base: Loss of bilateral manual dexterity (sedentary jobs); constriction of visual field (light and medium jobs); no stooping, and poor balance when standing or walking on uneven terrain. See SSR 96–9p: Policy Interpretation Ruling Titles II and XVI: Determining Capability To Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work, at *5–6. SSR 83–14: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments. SSR 83–10: Titles II and XVI: Determining Capability to do Other Work—The Medical-Vocational Rules of Appendix 2 and SSR 83–12: Titles II and XVI: Capability to do Other Work—The Medical-Vocational Rules as a Framework For Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work also provide helpful adjudicative guidance on using the rules and the impact of nonexertional impairments on the exertional occupational base.

DEPARTMENT OF STATE

[PUBLIC NOTICE: 8743]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Holocaust'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Holocaust,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the United States Holocaust Memorial Museum, Washington, DC, from on or about June 12, 2014, until on or about June 11, 2017, 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: May 15, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–11907 Filed 5–21–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8741]

Culturally Significant Objects Imported for Exhibition Determinations: ''Taras Shevchenko: Poet, Artist, Icon''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On March 4, 2014, notice was published on page 12261 of the **Federal Register** (volume 79, number 42) of determinations made by the Department of State pertaining to the exhibition ''Taras Shevchenko: Poet, Artist, Icon.'' The referenced notice is corrected here to include additional objects as part of the exhibition. 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 additional objects to be included in the exhibition ''Taras Shevchenko: Poet, Artist, Icon,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the additional objects at the Ukrainian Museum, New York, New York, from on or about June 6, 2014, until on or about November 14, 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 imported 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: May 15, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–11915 Filed 5–21–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Requirements for the Secretary of Transportation's Recognizing Aviation and Aerospace Innovation in Science and Engineering Awards; Amendments

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: Reissuance of the announcement of Requirements for the Secretary of Transportation's RAISE (Recognizing Aviation and Aerospace Innovation in Science and Engineering) Awards. This notice is identical to the April 7, 2014 notice announcing the 2014 competition (located at 79 FR 19167) except for a change in the date for submitting expressions of interest. Department of Transportation has decided that interested students could benefit from more time to develop proposals for the 2014 competition. Thus, we are extending the date for submitting early expressions of interest until September 2, 2014. Students are strongly encouraged to submit outlines of their project proposals, as described below, by that date. The deadline for final submissions remains October 31, 2014.

Authority: 15 U.S.C. 3719 (America COMPETES Act).

Award Approving Official: Anthony Foxx, Secretary of Transportation.

SUMMARY: Pursuant to a recommendation by the Future of Aviation Advisory Committee, the Secretary of Transportation is announcing the third-annual competition to recognize students with the ability to demonstrate unique, innovative thinking in aerospace science and engineering. In its third year, the Secretary has decided to create two divisions within the award: a high school division and a university division (both undergraduate and graduate). The Secretary of Transportation intends to use the awards to incentivize students at high schools and universities to think creatively in developing innovative solutions to aviation and aerospace issues, and to share those innovations with the broader community.

DATES: Effective on April 01, 2014 to October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Watts, Ph.D., Federal Aviation Administration, (609) 485–5043, *patricia.watts@faa.gov*, or James Brough, Federal Aviation Administration, (781) 238–7027, *james.brough@faa.gov*.

SUPPLEMENTARY INFORMATION: *Subject of Challenge Competition:* The Secretary's RAISE (Recognizing Aviation & Aerospace Innovation in Science and Engineering) Award will recognize innovative scientific and engineering achievements that will have a significant impact on the future of aerospace or aviation. Following an open solicitation by the United States Department of Transportation (''the Department''), the Secretary of Transportation (''the Secretary'') will designate an Award Review Board Chair, who will submit nominations to the Secretary for final consideration. The rules for this competition will be available at *http://www.challenge.gov*.

Eligibility

To be eligible to participate in the Secretary's RAISE Award competition, students must be U.S. citizens or permanent residents. For the high school division, the students must have been enrolled in at least one semester (or quarterly equivalent) at a U.S. high school (or equivalent approved home school program) in 2014. For the University division, the student must have been enrolled in a U.S.-based college or university for at least one semester (or quarterly equivalent) in 2014. Students may participate and be recognized as individuals or in teams. Each member of a team must meet the eligibility criteria. An individual may join more than one team. There is no charge to enter the competition.

The following additional rules apply:

1. Candidates shall submit a project in the competition under the rules promulgated by the Department;

2. Candidates shall agree to execute indemnifications and waivers of claims against the Federal government as provided in this Notice;

3. Candidates may not be a Federal entity or Federal employee acting within the scope of employment;

4. Candidates may not be an employee of the Department, including but not limited to the Federal Aviation Administration, or the Research and Innovative Technology Administration;

5. Candidates shall not be deemed ineligible because an individual used Federal facilities or consulted with Federal employees during a competition, if the facilities and employees are made available to all individuals participating in the competition on an equitable basis;

6. The competition is subject to all applicable Federal laws and regulations. Participation constitutes the Candidates' full and unconditional agreement to these rules and to the Secretary's decisions, which are final and binding in all matters related to this competition;

7. Submissions which in the Secretary's sole discretion are determined to be substantially similar to a prior submitted entry may be disqualified;

8. Submissions must be original, be the work of the Candidates, and must not violate the rights of other parties. All submissions remain the property of the applicants. Each Candidate represents and warrants that he, she, or the team, is the sole author and owner of the submission, that the submission is wholly original, that it does not infringe any copyright or any other rights of any third party of which the Candidate is aware, and, if submitted in electronic form, is free of malware;

9. By submitting an entry in this contest, contestants and entrants agree to assume any and all risks and waive any claims against the Federal Government and its related entities (except in the case of willful misconduct) for any injury, death, damage, or loss of property, revenue or profits, whether direct, indirect, or consequential, arising from their participation in this contest, whether the injury, death, damage, or loss arises through negligence of otherwise. Provided, however, that by registering or submitting an entry, contestants and entrants do not waive claims against the Department arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential information of the entrant;

10. The Secretary and the Secretary's designees have the right to request access to supporting materials from the Candidates;

11. The submissions cannot have been submitted in the same or substantially

similar form in any previous Federally-sponsored promotion or Federally-sponsored contest, of any kind;

12. Each Candidate grants to the Department, as well as other Federal agencies with which it partners, the right to use names, likeness, application materials, photographs, voices, opinions, and/or hometown and state for the Department's promotional purposes in any media, in perpetuity, worldwide, without further payment or consideration; and

13. The Secretary collects personal information from Candidates when they enter this competition. The information collected is subject to the ChallengePost privacy policy located at *http://www.challengepost.com/privacy*.

Expression of Interest

While not required, students are strongly encouraged to send brief expressions of interest to the Department to be considered for an award. The expressions of interest should be sent by September 2, 2014 to the contact shown below and should include the following elements: (1) Name of Candidate(s); (2) Name of educational institution(s) with which Candidate(s) are affiliated; (2) Telephone and email addresses for Candidate(s); (3) brief high-level overview of the proposed project.

Submission Requirements

Final submission packages shall consist of the following elements:

1. Nomination letter from at least one teacher, advisor, faculty member, and others as appropriate. The nomination letter(s) must communicate accomplishments in the following areas:

a. Technical Merit of the Concept

Evidence of technical merit based upon teacher (parent or legal guardian in the case of home schooled applicants), advisor, or faculty nomination and evaluation of the submitted proposal, written paper, and/or reports.

b. Professionalism and Leadership

Evidence of professionalism and leadership may be in the form of, but not limited to:

(1) Membership and offices held in various groups
(2) Presentations made to various groups, meetings, and at symposia
(3) Leadership in student professional activities
(4) Community outreach activities

2. An overall summary of the innovation, not to exceed one page, which includes a title of the project and statement of the impact that the innovation will have on the field of aviation or aerospace;

3. A copy of the student's academic transcript or certified grade report (as applicable);

4. A copy of the paper(s) and related materials describing the innovative concept written by the student(s) being nominated (no page limit).

Once submissions have been received, the Department may request additional information, including supporting documentation, more detailed contact information, releases of liability, and statements of authenticity to guarantee the originality of the work. Failure to respond in a timely fashion may result in disqualification.

All materials should be forwarded with a cover letter to the attention of: Patricia Watts, Ph.D., Centers of Excellence Program Director, Federal Aviation Administration, L–28, FAA William J. Hughes Technical Center, Atlantic City International Airport, NJ 08405.

Hardcopy is preferred; however, the package also may be transmitted by email to *Patricia.Watts@FAA.gov*. The submission period begins on May 1, 2014. Submissions must be sent by 11:59 p.m. Pacific daylight time on October 31, 2014. The timeliness of submissions will be determined by the postmark (if sent in hard copy) or time stamp of the recipient (if emailed). Award administrators assume no responsibility for lost or untimely submissions for any reason.

Award

The winner will be announced by the end of 2014. A trophy with the winner's name and date of award will be displayed at the Department of Transportation and a display copy of the trophy will be sent to the winner's school/college/university. An additional plaque or trophy will be awarded to the individual or team. At the option of the Secretary, the Department will pay for invitational travel expenses to Washington, DC for up to four representatives of the winning teams to present their project to Department officials and receive the award from the Secretary.

Basis Upon Which the Winners Will Be Selected

All submissions will be initially reviewed by the FAA Centers for Excellence Program Director upon receipt to determine if the submissions meet the eligibility requirements. Registration packages meeting the eligibility requirements will be judged by advisory panels consisting of academic experts, government officials including FAA, the Department, and representatives of the private sector. The advisory panels will select the most highly qualified submissions and present them to the Secretary of the Department, who will select the winning entrant.

Submissions will be judged against other submissions from the same division on the following criteria:

Technical Merit

- Has the submission presented a clear understanding of the associated problems?
- Has the submission developed a logical and workable solution and approach to solving the problem/s?
- What are the most significant aspects of this concept?
- Has the submission clearly described the breadth of impact of the innovation?

Originality

- Is this concept new or a variation of an existing idea, and in what way(s)?
- How is this work unique?
- Was the concept developed independently or in cooperation with others?

Impact

- To what extent will this project make a significant impact and/or contribution to the future of the aviation and aerospace environment?

Practicality

- Who directly benefits from this work?
- Can this program or activity be implemented in a practical fashion?
- What are the costs anticipated to be incurred and saved by executing this concept?

Measurability

- How has this individual/group measured the impact on the aviation environment?
- To what extent does the innovation result in measurable improvements?

Applicability

- Can this effort be scaled?
- Is this work specific to one region, various regions, or to the entire nation?

All factors are important and will be given consideration, but the advisory panels will give the ''technical merit'' factor the most weight in the screening process. The Secretary retains sole discretion to select the winning entrant.

Additional Information

Federal grantees may not use Federal funds to develop COMPETES Act challenge applications.

Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

Issued on: May 16, 2014.

Susan L. Kurland,

Assistant Secretary of Aviation and International Affairs.

[FR Doc. 2014–11885 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Freeman Municipal Airport, Seymour, Indiana.

SUMMARY: The FAA is considering a proposal to change 3.1 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Freeman Municipal Airport, Seymour, Indiana. The aforementioned land is not needed for aeronautical use.

The property is located at 740 East C Avenue, on the corner of 4th Avenue. The property is surplus airport property, following its military air base use during World War II, and is no longer needed for aeronautical purposes. It is currently, and has long been, leased for use as light industrial business. Upon release, the land will be sold for continued use for light industrial purposes.

DATES: Comments must be received on or before June 23, 2014.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Michael Ferry, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018, Telephone: (847) 294–8251 *Michael.Ferry@faa.gov;* or at the Seymour Municipal Airport Authority, Don Furlow, 1025 A Avenue, Seymour, IN, 47274, 812–522–2031.

Written comments on the Sponsor's request must be delivered or mailed to: Michael Ferry, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL, 60018, Telephone Number: (847) 294–8251/FAX Number: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Michael Ferry, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number: (847) 294–8251/
Number: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property has long been surplus airport property, following its use as a military air base during World War II, and is currently being used for light industrial business. The land was acquired as airport property from the United States government in 1948 through the Surplus Property Act. The airport plans to sell the property at fair market value upon release. The income from the sale will be reinvested in the airport.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Freeman Municipal Airport, Seymour, Indiana, from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Legal Description

LOT 41A OF ''SEYMOUR MUNICIPAL AIRPORT AUTHORITY—MINOR SUBDIVISION'' AS RECORDED IN PLAT CABINET 7, PAGE 1948 IN THE OFFICE OF THE JACKSON COUNTY RECORDER AND DESCRIBED AS FOLLOWS:

BEGINNING AT A 1'' STEEL PIPE (FOUND) MARKING THE WEST CORNER OF LOT 41A; THENCE NORTH 44°13′57″ EAST (ASSUMED BEARING) ALONG THE NORTHWEST LINE OF SAID LOT A DISTANCE OF 351.16 FEET TO THE NORTH CORNER OF SAID LOT AND A 1'' STEEL PIPE (FOUND); THENCE SOUTH 45°48′15″ EAST ALONG THE NORTHEAST LINE OF SAID LOT A DISTANCE OF 384.04 FEET TO THE EAST CORNER OF SAID LOT AND A 5/8'' REBAR AND CAP (FOUND); THENCE SOUTH 44°11′45″ WEST ALONG THE SOUTHEAST LINE OF SAID LOT A DISTANCE OF 351.29 FEET TO THE SOUTH CORNER OF SAID LOT AND A 5/8'' REBAR AND CAP (FOUND); THENCE NORTH 45°47′01″ WEST ALONG THE SOUTHWEST LINE OF SAID LOT A DISTANCE OF 384.26 FEET TO THE POINT OF BEGINNING, CONTAINING 3.10 ACRES, MORE OR LESS, AND SUBJECT TO ALL LEGAL RIGHTS OF WAY AND EASEMENTS.

Issued in Des Plaines, Illinois, on May 12, 2014.

Jim Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2014–11857 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the ARAC.

DATES: The meeting will be held on June 19, 2014, starting at 2:00 p.m. Eastern Standard Time. Arrange oral presentations by June 12, 2014.

ADDRESSES: The meeting will take place at the Hyatt Regency Bethesda, One Bethesda Metro Center (7400 Wisconsin Avenue), Bethesda, MD 20814, Diplomat/Ambassador Room.

FOR FURTHER INFORMATION CONTACT: Renee Pocius, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–5093; fax (202) 267–5075; email *Renee.Pocius@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the ARAC taking place on June 19, 2014, at the Hyatt Regency Bethesda, One Bethesda Metro Center (7400 Wisconsin Avenue), Bethesda, MD 20814.

The Agenda includes:

1. Status Reports From Active Working Groups
   a. AC 120–17A Maintenance Control by Reliability Methods (ARAC)
   b. Airman Certification System Working Group (ARAC)
   c. Airworthiness Assurance Working Group (TAE)

d. Engine Harmonization Working Group (TAE)
i. Engine Bird Ingestion
ii. Engine Endurance Testing Requirements—Revision of Section 33.87
e. Flight Test Harmonization Working Group (TAE)—Phase 2 Tasking
2. New Tasks
3. Status Report from the FAA
4. Charter Renewal
a. Membership

Attendance is open to the interested public but limited to the space available. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than June 12, 2014. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by June 12, 2014 to present oral statements at the meeting. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on May 16, 2014.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2014–11829 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–31]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 11, 2014.

ADDRESSES: You may send comments identified by docket number FAA–2013–1033 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *mark.forseth@faa.gov*, phone (425) 227–2796; or Sandra Long, ARM–201, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *sandra.long@faa.gov*, phone (202) 267–47145.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 16, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–1033.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: § 26.21(b)(2)(ii).
Description of Relief Sought: The petitioner requests relief to enable it to revise Service Bulletin 737–52A1038. The relief requested is based on the fact that a widespread fatigue damage re-analysis has shown that the Inspection Start Point for the service actions for the aircraft listed in the service bulletin would occur after the aircraft had reached the limit of validity at which point they would be required to be withdrawn from service.

[FR Doc. 2014–11827 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–30]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 11, 2014.

ADDRESSES: You may send comments identified by docket number FAA–

2013–1052 using any of the following methods:

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.

• Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• Fax: Fax comments to the Docket Management Facility at 202–493–2251.

• Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Sandra Long, ARM–201, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW; Washington, DC 20591; email *Sandra.long@faa.gov*; (202) 267–4714.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 16, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–1052.

Petitioner: Embraer.

Section of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: The petitioner seeks relief to allow the installation of an electrically activated lavatory pocket door between passenger compartments and an emergency exit on Embraer Model EMB–545/550 airplanes.

[FR Doc. 2014–11828 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0195]

Agency Information Collection Activities; Revision of an Approved Information Collection Request: Commercial Driver Licensing and Test Standards

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

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to revise and renew an ICR entitled, ''*Commercial Driver Licensing and Test Standards,*'' due to an increase in the number of commercial driver's license records and the addition of one information collection item: ''Driver completion of knowledge and skills tests 49 CFR 384.201.'' This ICR is needed to ensure that drivers, motor carriers and the States are complying with notification and recordkeeping requirements for information related to testing, licensing, violations, convictions and disqualifications and that the information is accurate, complete and transmitted and recorded within certain time periods as required by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended.

DATES: We must receive your comments on or before July 21, 2014.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2014–0195 using any of the following methods:

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

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations; 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 12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8–794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, Commercial Driver's License Division (MC–ESL), Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC, 20590–0001. Telephone: 202–366–5014; email: *robert.redmond@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The licensed drivers in the United States deserve reasonable assurance that their fellow motorists are

properly qualified to drive the vehicles they operate. Before the Commercial Motor Vehicle Safety Act of 1986 (CMVSA or the Act) Public Law 99–570, Title XII, 100 Stat. 3207–170, codified at 49 U.S.C. chapter 313) was signed by the President on October 27, 1986, 18 States and the District of Columbia authorized any person licensed to drive an automobile to also legally drive a large truck or bus. No special training or special license was required to drive these vehicles, even though it was widely recognized that operation of certain types of vehicles called for special skills, knowledge and training. Even in the 32 States that had a classified driver licensing system in place, only 12 of these States required an applicant to take a skills test in a representative vehicle. Equally serious was the problem of drivers possessing multiple driver licenses that enabled these commercial motor vehicle (CMV) drivers to avoid license suspension for traffic law convictions. By spreading their convictions among several States, CMV drivers could avoid punishment for their infringements, and stay behind the wheel.

The CMVSA addressed these problems. Section 12002 of the Act makes it illegal for a CMV operator to have more than one driver's license. Section 12003 requires the CMV driver conducting operations in commerce to notify both the designated State of licensure official and the driver's employer of any convictions of State or local laws relating to traffic control (except parking tickets). This section also required the promulgation of regulations to ensure each person who applies for employment as a CMV operator to notify prospective employers of all previous employment as a CMV operator for at least the previous ten years.

In section 12005 of the Act, the Secretary of Transportation (Secretary) is required to develop minimum Federal standards for testing and licensing of operators of CMVs.

Section 12007 of the Act also directs the Secretary, in cooperation with the States, to develop a clearinghouse to aid the States in implementing the one driver, one license, and one driving record requirement. This clearinghouse is known as the commercial driver's license information system (CDLIS).

The CMVSA further requires each person who has a CDL suspended, revoked or canceled by a State, or who is disqualified from operating a CMV for any period, to notify his or her employer of such actions. Drivers of CMVs must notify their employers within 1 business day of being notified of the license suspension, revocation, and cancellation, or of the lost right to operate or disqualification. These requirements are reflected in 49 CFR part 383, titled *''Commercial Driver's License Standards; Requirements and Penalties.''*

Specifically, section 383.21 prohibits a person from having more than one license; section 383.31 requires notification of convictions for driver violations; section 383.33 requires notification of driver's license suspensions; section 383.35 requires notification of previous employment; and section 383.37 outlines employer responsibilities. Section 383.111 requires the passing of a knowledge test by the driver and section 383.113 requires the passing of a skills test by the driver; section 383.115 contains the requirement for the double/triple trailer endorsement, section 383.117 contains the requirement for the passenger endorsement, section 383.119 contains the requirement for the tank vehicle endorsement and section 383.121 contains the requirement for the hazardous materials endorsement.

Section 12011 of the CMVSA states that the Secretary shall withhold a portion of the Federal-aid highway funds apportioned to a State if the State does not substantially comply with the requirements in section 12009(a) of the Act. The information gathered during State compliance reviews is used to determine whether States are complying with these requirements.

A final rule was published on July 31, 2002 (67 FR 49742) implementing 15 of the 16 CDL related provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748 (Dec. 9, 1999)) that were designed to enhance the safety of drivers on our nation's highways by ensuring that only safe drivers operate CMVs. These new requirements are contained in 49 CFR part 383 and include: five new major and serious disqualifying offenses (section 383.51): Non-CMV disqualifying offenses by a CDL holder (section 383.51); disqualification of drivers determined to be an imminent hazard (section 383.52); a new school bus endorsement (section 383.123); a prohibition on issuing a hardship license to operate a CMV while under suspension (section 384.210); a prohibition on masking convictions (section 384.226); and various requirements for transmitting, posting and retaining driver convictions and disqualification records.

A Final Rule was published on December 1, 2008 (73 FR 73096) that implemented the 16th CDL related provision of MCSIA, the merging of the medical certification and CDL issuing processes.

An interim final rule (IFR) was published on May 5, 2003 (68 FR 23844), as a companion rule to the Transportation Security Administration's (TSA's) May 5, 2003 IFR implementing section 1012 of the USA PATRIOT Act (Pub. L. 107–56) on security threat assessments for drivers applying for or renewing a CDL with a hazardous materials endorsement. While TSA set the requirements in their rule; FMCSA has the responsibility as part of the CDL testing and issuance process to ensure that States are in compliance with the TSA requirements.

Section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. June 8, 1999 (Attachment I), requires the Secretary of Transportation to review the procedures established and implemented by the States under 49 U.S.C. 31305 for CDL knowledge and skills testing to determine whether the current testing system is an accurate measure and reflection of an individual's knowledge and skills to operate a CMV. The results of this review were incorporated into the new ''2005 CDL Test System.'' A final rule was published on May 9, 2011 (Attachment J) that requires the use of a State Testing System that is comparable to the 2005 CDL Test System.

Section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA–LU), Public Law 109–59, August 10, 2005, requires the Department of Transportation (DOT) to prescribe regulations on minimum uniform standards for the issuance of commercial learner's permits (CLPs), as it has already done for CDLs [49 U.S.C. 31308]. More specifically, section 4122 provides that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary and may have only one CLP at a time; that the CLP document must have the same information and security features as the CDL; and that the data on each CLP holder must be added to the driver's record in CDLIS. The Final Rule published on May 9, 2011 also includes each of those requirements.

Section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, October 13, 2006, requires the Secretary of Transportation to promulgate regulations implementing the recommendations in a memorandum issued by the DOT's Office of the Inspector General (OIG) on June 4, 2004,

concerning verification of the legal status of commercial drivers, as well as the recommendations in a report issued by the OIG on February 7, 2006 ''[Oversight of the Commercial Driver's License Program]'' dealing with steps needed to improve anti-fraud measures in the CDL program. The specific recommendations include: the establishment of a legal presence requirement for CDL issuance; declaring a State out of substantial compliance with the CDL requirements if the State fails to impose adequate internal controls to detect and help prevent fraud in the CDL program or fails to take adequate corrective action when fraud is discovered; and imposed sanctions against States for noncompliance. This Final Rule published on May 9, 2011 includes all of the OIG's recommendations. Many of the operational procedures suggested by the OIG for carrying out the recommendations have also been adopted.

This information collection supports the DOT Strategic Goal of Safety by requiring that drivers of CMVs are properly licensed according to all applicable Federal requirements.

The 10-year employment history information supplied by the CDL holder to the employer upon application for employment (49 CFR 383.35) is used to assist the employer in meeting his/her responsibilities to ensure that the applicant does not have a history of high safety risk behavior.

State officials use the information collected on the license application form (49 CFR 383.71), the medical certificate information that is posted to the driving record (proposed) and the conviction and disqualification data posted to the driving record (49 CFR 383.73) to prevent unqualified and/or disqualified CDL holders from operating CMVs on the nation's highways. State officials are also required to administer knowledge and skills tests to CDL driver applicants (49 CFR 384.202). The driver applicant is required to correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on that test. To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in the regulations. During State CDL compliance reviews, FMCSA officials review this information to ensure that the provisions of the regulations are being carried out. Without the aforementioned requirements, there would be no uniform control over driver licensing practices to prevent unqualified and/or disqualified drivers from being issued a CDL and to prevent unsafe drivers from spreading their convictions among several licenses in several States and remaining behind the wheel of a CMV. Failure to collect this information would render the regulations unenforceable.

Information submitted by the States will be used by the FMCSA to determine if individual States are in ''substantial compliance'' with section 12009(a) of the CMVSA. The FMCSA reviews information submitted by the States and conducts such reviews, audits, and investigations of each State once every three years or as it deems necessary to make compliance determinations for all States and the District of Columbia. If this information were not available, the FMCSA would have no means of independently verifying State compliance.

This request for renewed approval includes one additional information collection item: ''Driver completion of knowledge and skills tests [49 CFR 384.201].''

Title: Commercial Driver Licensing and Test Standards.

OMB Number: 2126–0011.

Type of Request: Revision of a currently-approved information collection.

Respondents: Drivers with a commercial learner's permit (CLP) or commercial driver's license (CDL) and State driver licensing agencies.

Estimated Number of Respondents: 11,410,100 driver respondents and 17,900.986 State respondents.

Estimated Time per Response: Drivers: 16.29 minutes per response and States: 1.86 minutes per response.

Expiration Date: August 31, 2014.

Frequency of Response: Variable.

Estimated Total Annual Burden: 3,651,867 hours.

The information collection is comprised of twelve components:

(1) *State Recording of Medical Examiner's Certificate Information:* Approximately 69% of the 2.96 million interstate CDL holders would renew their medical certification every 2 years. Approximately 31% of the 2.96 million interstate CDL holders would renew their medical certification every year as a condition of a medical variance (i.e., an exemption, Skill Performance Evaluation (SPE) certificate or pilot program) or their employer requires another examination. It takes approximately 2 minutes to record the medical examiner's certificate information on the CDLIS driver record.

FMCSA estimates that there are 657,000 new drivers (5% of the current total of 13.14 million active CDL driver records) who would obtain a CDL every year and that 74% of these new 657,000 CDL holders, or 486,180 new CDL holders would be engaged in interstate commerce.

The number of existing CDL holders who would need to renew and submit a copy of their medical examiner's certificate to the State would be 2.96 million CDL holders engaged in interstate commerce. Since 31% of the 2.96 million interstate CDL holders would need to submit a copy of their medical examiner's certificate to the State every year as a condition of their medical variance or their new employer requires another examination, the total number of renewal submittals (responses) for a 2-year cycle would be 3.88 million (2.96 million × 1.31 = 3.88 million). The annual submittal of medical examiner's certificates to the State would be 2.43 million annual responses (3.88 million/2 years + 486,180 new drivers = 2.43 million).

FMCSA estimates a total of 81,000 annual burden hours (2.43 million responses × 2/60 hours = 81,000) for the States to obtain and record the medical examiner's certificate information on the CDLIS driver record.

(2) State Recording of the Self Certification of Commercial Motor Vehicle (CMV) Operation: All CDL holders would need to have their self-certification of CMV operation information recorded on their CDLIS driver record as either ''non-excepted interstate,'' ''excepted interstate,'' 'non-excepted intrastate'' or ''excepted intrastate'' Only *CDL holders subject to part 391* (non-excepted, interstate drivers) would be required to submit a medical examiner's certificate to the SDLA.

CDLs are renewed on average every 5 years. It takes approximately 5 seconds (.083 minutes) for the SDLA to record the medical certification status information on the CDLIS driver record.

FMCSA estimates the annual SDLA recording of self- certification of CMV operation information would be 3,285,000 million annual responses (13.14 million/5 years + 657,000 million new CDL drivers = 3,285,000).

FMCSA estimates the SDLA recording of self-certification of CMV operation information at a total annual burden of 4,544 hours (3,285,000 million responses × .083/60 hours = 4,544 hours).

(2) *State Verification of Medical Certification Status:* Only the medical certification status information of CDL holders subject to part 391 must be verified because they are the only drivers required to be medically certified.

Approximately 2% of active CDLIS driver records are transferred to another State each year.

It takes approximately 5 seconds (.083 minutes) to verify the medical certification status information of a CDL driver who operates a CMV in interstate commerce.

FMCSA estimates that the SDLA's annual verification of medical certification status information would generate 651,200 annual responses [(2,960,000 renewals/5 years) + (.02 × 2,960,000 transfers per year) = 651,200).

FMCSA estimates a total annual burden of 901hours (651,200 × .083/60 hours = 901) for SDLAs to verify the medical certification status information of all interstate CDL drivers.

(4) *Driver Notification of Convictions/Disqualifications to Employer:* There are approximately 13.14 million active commercial driver's license (CDL) driver records. Each driver averages 1 conviction every 3 years. The estimated number of annual responses is 4,380,000 (13.14 million CDL drivers/3 = 4.380,000). It takes approximately 10 minutes to notify a motor carrier concerning convictions and disqualifications. The notification requirement has an estimated annual burden of 730,000 burden hours (4,380,000 convictions/disqualifications × 10/60 hours = 730,000 hours);

(5) *Driver Providing Previous Employment History to New Employer:* The estimated annual turnover rate of drivers is approximately 14 percent (%.) There are an estimated 1,839,800 annual responses to this requirement (13.14 million CDL holders × .14 annual turnover rate = 1,839,800). It takes approximately 15 minutes to complete this requirement. The employment history requirement has an estimated annual burden of 459,950 burden hours (1,839,800 annual responses × 15/60 hours = 459,950 hours);

(6) *Annual State Certification of Compliance:* There are 51 responses (50 States and the District of Columbia) to this requirement and it takes approximately 32 hours to complete compliance documents. The compliance certification requirement has an estimated annual burden of 1,632 burden hours (51 responses × 32 hours = 1,632 hours);

(7) *State Preparing For and Participating in Annual Program Review:* A State CDL program review is conducted every year. There are 51 responses (50 States and the District of Columbia) to this requirement. It takes approximately 40 hours to complete each response with a staff of 5 persons. The State annual program review requirement has an estimated annual burden of 10,200 burden hours (51 States × 40 hours × 5 staff = 10.200 hours).

(8) *CDLIS/PDPS/State Recordkeeping:* Fifty (50) States and the District of Columbia are required to enter data into the commercial driver's license information system (CDLIS) about operators of CMVs and to perform record checks before issuing, renewing, upgrading or transferring a CDL.

There are approximately 657,000 new drivers a year (13.14 million drivers × .05 = 657,000 new drivers). FMCSA estimates that the average amount of time for each record inquiry performed by a State to add a new driver is 2 minutes. The new driver requirement has an estimated annual burden of 27,900 burden hours (657,000 new drivers × 2/60 = 27,900 hours).

The average renewal period is 5 years. There are approximately 2,628,000 CDLs renewed each year (13.14 million drivers/5 years = 2,628,000). FMCSA estimates that the average amount of time for each record inquiry performed by a State to renew a license is 2 minutes. The renewal record inquiry requirement has an estimated annual burden of 87,600 burden hours (2,628,000 × 2/60 hours = 87,600 hours).

Approximately 2 percent of drivers transfer to a new state each year. There are 262,800 drivers a year who change their State of domicile (13.14 million drivers × .02 = 282,800 drivers). FMCSA estimate that the average amount of time for each record inquiry performed by a State to change a driver's State of domicile is 2 minutes. The driver transfer requirement has an estimated annual burden of 8.760 burden hours (262,800 transferred drivers × 2/60 hours = 8,760 hours).

Each driver averages approximately 1 conviction every three years and approximately 25 percent of the convictions result in a disqualification. There are 5,475,000 driver convictions and disqualifications (13.14 million/3 convictions × 1.25 = 5,475,000). We estimate that the average amount of time for each transaction performed by a State is 2 minutes. The driver conviction/disqualification transaction requirement has an estimated annual burden of 182,500 burden hours (5,475,000 transactions × 2/60 hours = 182,500 hours).

Approximately 33 percent of active CDL drivers have a hazardous materials endorsement. The average renewal period is approximately 5 years. There are 867,240 drivers a year renewing a CDL with a hazardous materials endorsement (13.14 million drivers × .33/5 years = 867,240 drivers). The Agency estimates that the average amount of time for each citizenship/resident alien status inquiry performed by a State is 2 minutes. The citizenship/resident alien status inquiry transaction requirement has an estimated annual burden of 28,908 burden hours (867,240 drivers × 2/60 hours = 28,908 hours).

The total annual burden hours for these combined collection of information activities is 335,668 burden hours (27,900 hours + 87,600 hours + 8.760 hours + 182,500 hours + 28,908 hours = 335,668 hours).

(9) *Driver Completion of the CDL Application Form:* There are approximately 657.000 new CDL applicants a year (13.14 million × .05 = 657,000). It takes approximately 1 minute to complete the CDL part of application form. The new applicant CDL application requirement has an estimated annual burden of 10,950 burden hours (657,000 applications × 1/60 hours = 10,950 hours).

The average CDL renewal period is approximately 5 years. Therefore, 2,628,000 drivers renew their CDL a year (13.14 million drivers/5 years = 2,628.000 drivers). It takes approximately 1 minute for renewal drivers to complete the CDL part of application form. The renewal driver CDL application form requirement has an estimated annual burden of 43,800 burden hours (2,628,000 × 1/60 hours = 43,800 hours).

Approximately 2 percent of drivers transfer to a new State each year. FMCSA estimates that there are 262,800 transfer drivers (13.14 million × .02 = 262,800). It takes approximately 1 minute for transfer drivers to complete the CDL part of application form. The transfer driver CDL application form requirement has an estimated annual burden of 4,380 hours (262,800 × 1/60 = 4,380).

The total annual burden hours for these combined collection of information activities is 59,130 hours (10,950 hours + 43,800 hours + 4,380 = 59,130 hours).

(10) *Driver Completion of Knowledge and Skills Tests:* FMCSA estimates that there are 657,000 new drivers (5% of the current total of 13.14 million active CDL driver records) would obtain a CDL every year.

Approximately 25 percent of the applicants fail the CDL knowledge and skills tests the first time they take the tests.

FMCSA estimates that a knowledge test on average takes 45 minutes to complete and a skills test on average takes 90 minutes to complete.

The Agency estimates there are 821,250 knowledge tests completed every year (657,000 × 1.25 = 821,250).

The Agency estimates the annual burden for taking the knowledge test is 615,938 burden hours (821,250 × 45/60 hour/test = 615,938).

The Agency estimates there are 821,250 skills tests completed every year (657,000 × 1.25 = 821,250).

The Agency estimates the annual burden for taking the skills tests is 1,231,875 hours (821,250 × 90/60 hour/test = 1,231,875).

The total annual burden hours for these combined collection of information activities is 1,847,813 burden hours (615,938 hours + 1,231,875 hours = 1,847,813 hours).

(11) *Knowledge and Skills Test Recordkeeping:* There are approximately 657.000 new CDL applicants a year (13.14 million × .05 = 657,000). It takes approximately 2 minute to record the results of knowledge tests and 5 minutes for the skills tests. Approximately 25 percent of the applicants fail the knowledge and skills tests the first time they take the tests.

The knowledge test recordkeeping requirement has an estimated annual burden of 27,375 burden hours (657,000 applicants × 2/60 hours × 1.25 = 27,375 hours).

The skills test recordkeeping requirement has an estimated annual burden of 68,438 hours (657,000 applicants × 5/60 hours × 1.25 = 68,438).

The total annual burden hours are 95,813 burden hours for these combined activities (27,375 + 68,438 = 95,813).

(12) *Knowledge and Skills Test Examiner Certification* Based on data from the American Association of Motor Vehicle Administrator, FMCSA estimates that 2,144 examiners who administer CDL tests.

Based on a sampling of several State driver licensing agencies (SDLA), approximately 25 percent of the examiners will only administer the knowledge test. Based on Federal employee experience in developing training courses, it is estimated that the initial combined knowledge and skills test examiner training will take 40 hours to complete and that the initial knowledge-test-only examiner training will take 20 hours to complete. States will spread the initial training over the 3 year implementation period.

Based on Federal employee observation of SDLA licensing activities, a criminal background check on an examiner will take approximately 15 minutes to process and evaluate the results and that average amount of time to record results of examiner training, certification and criminal background checks is approximately 2 minutes.

FMCSA estimates the annual burden for examiners to complete the initial combined knowledge and skills test training and certification is 21,440 burden hours ([.75 × 2,144 examiners/3 years] × 40 hours = 21,440) and that the annual burden for examiners to complete the initial knowledge-test-only training and certification is 3,573 burden hours ([.25 × 2,144 examiners/3 years] × 20 hours = 3,573). The total annual burden for initial examiner training is 25,013 burden hours (21,440 + 3,573 = 25,013).

FMCSA estimates the annual burden for States to process and evaluate criminal background checks is 179 burden hours ([2,144 examiners/3 years] × 15/60 hours = 179).

FMCSA estimates the annual burden for States to record results of examiner training, certification and criminal background checks is 24 burden hours ([2,144 examiners/3 years] × 2/60 hours = 24).

The total annual burden hours for these combined collection of information activities is 25,216 burden hours (25,013 hours + 179 hours + 24 hours = 25,216 hours).

Definitions: Under 49 CFR 383.5:

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of hazardous materials as defined in this section.

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: May 14, 2014

G. Kelly Leone,

Associate Administrator for Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2014–11890 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2014–0016]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 82 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 23, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0016 using any of the following methods:

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

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note

that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 82 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Curtis D. Andersen

Mr. Andersen, 66, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Andersen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Andersen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Thomas E. Armbrust

Mr. Armbrust, 68, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Armbrust understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Armbrust meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

David L. Baker Jr.

Mr. Baker, 52, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Baker understands diabetes management and monitoring, has stable control of his diabetes using ins'ulin, and is able to drive a CMV safely. Mr. Baker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Michael A. Barrett

Mr. Barrett, 66, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barrett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barrett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

John E. Barrineau, Sr.

Mr. Barrineau, 49, has had ITDM since 2011. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barrineau understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barrineau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Curk A. Beals

Mr. Beals, 51, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beals understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beals meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington.

Jene W. Bell

Mr. Bell, 59, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Norman Billie

Mr. Billie, 55, has had ITDM since 2008. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Billie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Billie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Howard R. Brandt

Mr. Brandt, 63, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brandt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brandt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Albert Bryan

Mr. Bryan, 64, has had ITDM since 1998. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bryan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bryan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Daniel P. Calaman

Mr. Calaman, 22, has had ITDM since 2001. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Calaman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Calaman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Rick L. Case

Mr. Case, 59, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Case understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Case meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Jerry G. Clise Jr.

Mr. Clise, 46, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Clise understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clise meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

George F. Cressey, II

Mr. Cressey, 62, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cressey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cressey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maine.

Richard K. Cressman

Mr. Cressman, 45, has had ITDM since 1994. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more)

severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cressman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cressman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

Bradley M. Crull

Mr. Crull, 32, has had ITDM since 1991. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crull understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crull meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Michael G. Cunningham

Mr. Cunningham, 62, has had ITDM since 2008. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cunningham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cunningham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Steven W. Dahl

Mr. Dahl, 61, has had ITDM since 1997. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dahl understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dahl meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Dakota.

Archie E. Eastling

Mr. Eastling, 35, has had ITDM since 1994. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eastling understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eastling meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Minnesota.

Shannon D. Eck

Mr. Eck, 33, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Manuel Fernandez

Mr. Fernandez, 58, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fernandez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fernandez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Kevin J. Franje

Mr. Franje, 28, has had ITDM since 1990. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Franje understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Franje meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Chad A. Fuehrer

Mr. Fuehrer, 43, has had ITDM since 1976. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fuehrer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fuehrer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Charles Gagnon

Mr. Gagnon, 81, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gagnon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gagnon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Michael E. Goldsberry

Mr. Goldsberry, 63, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Goldsberry understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goldsberry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Jared P. Greene

Mr. Greene, 37, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Greene understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Greene meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

James M. Haight

Mr. Haight, 56, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haight understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haight meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Gary R. Harper

Mr. Harper, 57, has had ITDM since 1963. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Harper understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

Wayne H. Haslam

Mr. Haslam, 74, has had ITDM since 2007. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haslam understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haslam meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

Gregg S. Hessler

Mr. Hessler, 56, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hessler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hessler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Kristopher J. Ilenda

Mr. Ilenda, 30, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ilenda understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ilenda meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

Jay A. Jennato

Mr. Jennato, 44, has had ITDM since 1986. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jennato understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Jennato meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

Michael L. Jobe

Mr. Jobe, 42, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jobe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jobe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Edwin P. Jonas, II

Mr. Jonas, 54, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jonas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jonas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

David W. Jones

Mr. Jones, 38, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

John J. Katcher

Mr. Katcher, 47, has had ITDM since 1980. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Katcher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Katcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Colorado.

Glenn T. Keller

Mr. Keller, 52, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Michael G. Keller

Mr. Keller, 65, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

James H. King

Mr. King, 50, has had ITDM since 2008. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. King understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. King meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Jay T. Kirschmann

Mr. Kirschmann, 36, has had ITDM since 1985. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kirschmann understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kirschmann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Vernon E. LaDuke

Mr. LaDuke, 47, has had ITDM since 1977. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. LaDuke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. LaDuke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Tennessee.

James L. Laufenberg

Mr. Laufenberg, 56, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Laufenberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Laufenberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

James R. Longo

Mr. Longo, 28, has had ITDM since 2001. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Longo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Longo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Eric M. Mardesen

Mr. Mardesen, 37, has had ITDM since 2011. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mardesen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mardesen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Charles R. Maybee

Mr. Maybee, 68, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Maybee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Maybee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Earl W. Meadows

Mr. Meadows, 43, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Meadows understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meadows meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

James E. Meek

Mr. Meek, 58, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Meek understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meek meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Ralph H. Mills

Mr. Mills, 56, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mills understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mills meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Matthew C. Moberly

Mr. Moberly, 26, has had ITDM since 1990. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moberly understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moberly meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy.

He holds an operator's license from Kentucky.

Timothy I. Monrian

Mr. Monrian, 34, has had ITDM since 1985. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Monrian understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Monrian meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

Alan E. Nelson

Mr. Nelson, 42, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nelson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nelson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

Erik O. Olson

Mr. Olson, 36, has had ITDM since 1988. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Olson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Utah.

Brant S. Perry

Mr. Perry, 40, has had ITDM since 2013. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Perry understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Greg R. Peterson

Mr. Peterson, 54, has had ITDM since 1971. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Peterson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Nebraska.

Zachary A. Petitt

Mr. Petitt, 52, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Petitt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petitt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

James W. Restuccio Jr.

Mr. Restuccio, 67, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Restuccio understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Restuccio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Adam L. Ridenbaugh

Mr. Ridenbaugh, 21, has had ITDM since 2007. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ridenbaugh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ridenbaugh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Tommy R. Riley

Mr. Riley, 57, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist

certifies that Mr. Riley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Riley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

Vincent Rodriguez

Mr. Rodriguez, 49, has had ITDM since 2008. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rodriguez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rodriguez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Tennessee.

Pedro Saavedra Garcia

Mr. Saavedra Garcia, 28, has had ITDM since 2004. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Saavedra Garcia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Saavedra Garcia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Juan A. Salinas

Mr. Salinas, 42, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Salinas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Salinas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

David Salmond

Mr. Salmond, 51, has had ITDM since 2003. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Salmond understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Salmond meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Phillip H. Shaw

Mr. Shaw, 60, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shaw understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shaw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Jerry J. Shipley

Mr. Shipley, 55, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shipley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shipley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Glen A. Skonberg

Mr. Skonberg, 59, has had ITDM since 1994. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Skonberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Skonberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

John Smeal

Mr. Smeal, 73, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smeal understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smeal meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Douglas R. Smith

Mr. Smith, 34, has had ITDM since 2005. His endocrinologist examined him

in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Howard C. Smith

Mr. Smith, 66, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Georgia.

Jerry Spurlock Jr.

Mr. Spurlock, 63, has had ITDM since 2003. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Spurlock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Spurlock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Cheryl G. Stephens

Ms. Stephens, 67, has had ITDM since 2005. Her endocrinologist examined her in 2014 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Stephens understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Stephens meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2013 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Delaware.

James F. Stewart

Mr. Stewart, 65, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stewart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stewart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Maria V. Stinson

Ms. Stinson, 27, has had ITDM since 2005. Her endocrinologist examined her in 2014 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Stinson understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Stinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2014 and certified that she does not have diabetic retinopathy. She holds an operator's license from New York.

Martin T. Struthers

Mr. Struthers, 48, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Struthers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Struthers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Dennis C. Svec

Mr. Svec, 51, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Svec understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Svec meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 201 and certified that he does not have diabetic retinopathy. He holds a Class E CDL from Michigan.

Larry L. Taff

Mr. Taff, 63, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Taff understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Filbert J. Torres

Mr. Torres, 70, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Torres understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Torres meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Jennifer A. Tyson

Ms. Tyson, 30, has had ITDM since 2006. Her endocrinologist examined her in 2014 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Tyson understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Tyson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2013 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from Pennsylvania.

Burdette Walker

Mr. Walker, 72, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Jacob D. Walter

Mr. Walter, 64, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Richard E. Watkins

Mr. Watkins, 52, has had ITDM since 2005. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Watkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Harold W. Wilson Jr.

Mr. Wilson, 57, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

Ronald D. Young

Mr. Young, 55, has had ITDM since 2000. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Young understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Young meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441) [1]. The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to http://www.regulations.gov and in the search box insert the docket number FMCSA–2014–0016 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to http://www.regulations.gov and in the search box insert the docket number FMCSA–2014–0016 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: May 8, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–11877 Filed 5–21–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0104]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 8 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 27, 2014. Comments must be received on or before June 23, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2012–0104], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 8 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 8 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Matthew G. Epps (FL)
Brian R. Gallagher (TX)
Randall L. Mathis (AL)
Michael E. McAfee (KY)
Dennis D. Pimley (CA)
Joe Ramirez (CA)
James E. Sikkink (IL)
John C. Smith (IL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 8 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (77 FR 27847; 77 FR 38386). Each of these 8 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 23, 2014.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 8 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2012–0104 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2012–0104 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued On: May 8, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–11884 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2014–0102]

Qualification of Drivers; Application for Exemptions; Hearing

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces that 17 individuals have applied for a medical exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on these requests. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant theses requests after reviewing the public comments submitted in response to this notice, the exemptions would enable 17 individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 23, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2014–0102 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to http://www.regulations.gov at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 CFR part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).[1] Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the **Federal Register**. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 CFR 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled ''Hearing Disorders and Commercial Motor Vehicle Drivers'' prepared for the Federal Highway Administration, FMCSA's predecessor, in 1993.[2]

FMCSA Requests Comments on the Exemption Applications

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a

[1] This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 [66 FR 49867 (Oct. 1, 2001)].

[2] This report is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm.*

determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption before granting any such requests.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0102'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0102'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Information on Individual Applicants

Donald Clupper

Mr. Clupper, 43, holds an operator's license in Delaware.

Andrew Deuschle

Mr. Deuschle, 44, holds an operator's license in Texas.

James Dignan

Mr. Dignan, 24, holds an operator's license in Illinois.

Timothy P. Gallagher

Mr. Gallagher, 51, holds an operator's license in Pennsylvania.

Joseph T. Kelly

Mr. Kelly, 27, holds an operator's license in Pennsylvania.

Timothy Laporte

Mr. Laporte, 26, holds an operator's license in Georgia.

James R. Lorshbaugh

Mr. Lorshbaugh, 43, holds an operator's license in Mississippi.

Douglas Mader

Mr. Mader, 45, holds an operator's license in Illinois.

Jose A. Martinez

Mr. Martinez, 51, holds a Class B commercial driver's license (CDL) in Texas.

Robert M. Mullens

Mr. Mullens, 33, holds a Class A commercial driver's license (CDL) in New Jersey.

Tim S. Oyler

Mr. Oyler, 46, holds a Class B commercial driver's license (CDL) in Utah.

Alfredo S. Ramirez

Mr. Ramirez, 43, holds a Class B commercial driver's license (CDL) in Texas.

Julie M. Ramirez

Ms. Ramirez, 42, holds an operator's license in Texas.

Tracy D. Robinson

Mr. Robinson, 48, holds an operator's license in California.

Linda L. Schmidt

Ms. Schmidt, 49, holds a Class A commercial driver's license (CDL) in Texas.

Kirk A. Soneson

Mr. Soneson, 48, holds an operator's license in Ohio.

Hayden A. Teesdale

Mr. Teesdale, 39, holds a Class A commercial driver's license (CDL) in Alabama.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business June 23, 2014. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 8, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–11878 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0004]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 66 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 22, 2014. The exemptions expire on May 23, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On April 1, 2014, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (79 FR 18392). That notice listed 66 applicants' case histories. The 66 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 66 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 66 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, central scar, ocular histoplasmosis, prosthetic eye, corneal scar, strabismic amblyopia, corneal ulcer, lens opacity, macular scar, cataract, congenital amblyopia, optic nerve damage, complete loss of vision, macular lesion, corneal laceration, scar tissue, refractive amblyopia, aphakia, total retinal detachment, central corneal scarring, detached retina, keratoconus, enucleation, strabismus, exotropia, macular hole, epiretinal membrane, congenital retinal damage, coloboma, central retinal artery occlusion, congenital cataract, glaucoma, retinoschisis, and anisometropia. In most cases, their eye conditions were not recently developed. Forty-seven of the applicants were either born with their vision impairments or have had them since childhood.

The nineteen individuals that sustained their vision conditions as adults have had it for a period of 5 to 31 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 66 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging from 1 to 55 years. In the past 3 years, two of the drivers were involved in crashes and five were convicted for moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 1, 2014 notice (79 FR 18392).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers

demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 66 applicants, two of the drivers were involved in crashes and five were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 66 applicants listed in the notice of April 1, 2014 (79 FR 18392).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 66 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received three comments in this proceeding. The comments are discussed below.

Simon Batter and Robert Turley are in favor of granting Blaine R. Dickman an exemption from the vision standard.

Kenneth Stewart is in favor of granting George E. Lewis and exemption from the vision standard.

Conclusion

Based upon its evaluation of the 66 exemption applications, FMCSA exempts Britton J. Anderson (KS), Rodney R. Anderson (PA), Kenneth R. Anselm (KY), James E. Baker (OH), Alphonso A. Barco (SC), Aaron D. Barnett (IA), Daniel W. Bobb (PA), Anatoliy A. Bogdanets (OR), Stanley R. Cap (SD), Louis Castro (MT), David F. Cialdea (MA), Bobby E. Collins (NC), Michael T. Craddock (CA), Eric C. Dettrey (NJ), Dean E. Dexter (SD), Blaine R. Dickman (NV), David C. Dockery (CA), Timothy C. Dotson (MO), Barent H. Eliason (MO), Peter D. J. Ensor (MD), Paul W. Fettig (SD), Roger L. Frazier (NC), Joey W. Freeman (AR), Kevin L. Fritz (IL), Grant G. Gibson (MN), Danny J. Goss (MO), Todd C. Grider (IN), James P. Griffin (WA), Dennis P. Hart (OR), Kyle C. Holschlag (IA), Michael T. Huso (MN), Earl E. Kennedy III (PA), James D. Kessler (SD), Eric W. Kopmann (MO), Robin D. Kurtz (CT), Sherell J. Landry (TX), George E. Lewis (OH), Ronald N. Lindgren (MN), James L. Maddox (GA), Robert P. Malarkey, Sr. (NY), Michael L. Manning (MO), Philip D. Mathys (OH), Rodney J. McMorran (IA), Johnny L. Meese (MO), Corey L. Morman (FL), Jaime P. Narte, Jr. (WA), James M. Nohl (MN), Thomas G. Ohlson (NY), Jason S. Otto (KY), Nathan J. Price (ID), Robert D. Reeder (MI), Ricky L. Rice (PA), Johnnie K. Richard (LA), Jorge L. Y. Rivera (CA), Craig Robinson (FL), Michael E. Schlachter (WY), Kenneth W. Sigl (WI), Robert A. Simpson (MS), Jeffrey L. Singley (MD), Dennis Torrence (WI), Julie J. Walsh (ND), Michael T. Wimber (MT), Elmer F. Winters (NC), Theodore R. Wolden (MN), Eugene T. Wolf (IA), and Duane R. Yoder (IN) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may

apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 8, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–11883 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0045; Notice 1]

General Motors, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of Petition.

SUMMARY: General Motors, LLC, ''GM'' has determined that certain model year (MY) 2014 GMC Sierra Denali vehicles do not fully comply with paragraph S3.1.4.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect.* GM has filed an appropriate report dated January 31, 2014 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is June 23, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. GM's Petition

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved

Affected are approximately 2,747 MY 2014 GMC Sierra Denali vehicles equipped with RPO code ''UHS'' instrument cluster displays that were manufactured between July 16, 2013 and January 27, 2014.

III. Noncompliance

GM explains that while the subject vehicles are being driven the gear shift selection indicator (a.k.a., PRNDM) may not be visible for approximately 1.3 seconds during an instrument cluster reset, thus, failing to fully meet the requirements set forth in paragraph S3.1.4.1 of FMVSS No. 102.

IV. Rule Text

Paragraph S3.1.4.1 of FMVSS No. 102 requires:

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the position in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following exist:

(a) The ignition is in a position where the transmission can be shifted; or

(b) The transmission is not in park.

V. Summary of GM's Analyses

GM stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. GM believes that the condition is extremely unlikely to occur. For the condition to occur, the instrument cluster design input rate must be exceeded. This can only happen under extreme load conditions. For example, GM was able to create the condition in the laboratory by simultaneously inputting a series of warnings into the cluster during an active search of a media device connected to the vehicle while a Bluetooth call is received by the vehicle.

2. GM states that any disruption of the PRNDM display as a result of this condition is very brief. In the unlikely event the condition were to occur and the instrument cluster resets, the PRNDM display would be restored within 1.3 seconds. This momentary reset would be a clear indication to the driver that service may be required.

3. GM also believes that the condition has little effect on the normal operation of the vehicle. While the operation of the instrument panel is briefly affected by the underlying condition, none of the other vehicle operations are affected.

4. GM states that the condition is extremely remote and not likely to occur during shifting. Considering the unusual combination of pre-conditions for the condition to occur, it is very unlikely the brief disruption of the PRNDM display would occur when it is needed, i.e., during shifting. Most shifting occurs shortly after the vehicle is started, or just prior to being turned off. In the rare instance of a cluster reset, it would be more likely to occur during driving, not immediately after starting the vehicle or just prior to the driver exiting the vehicle.

5. GM is not aware of any reported instrument cluster resets as a result of the subject noncompliance.

6. GM also expressed its belief that for previous noncompliances that GM believes were similar, NHTSA granted petitions for inconsequential noncompliance.

GM has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 102.

In summation, GM believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt GM from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that GM no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve GM distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after GM notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–11881 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0001; Notice 1]

Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of Petition.

SUMMARY: Cooper Tire & Rubber Company, ''Cooper'' has determined that certain Cooper light truck tires do not fully comply with paragraph S6.4 of Federal Motor Tire Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and Motorcycles.* Cooper has filed an appropriate report dated December 6, 2013 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is June 23, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- Mail: Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Deliver: Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- Electronically: Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Cooper's Petition

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Cooper submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved

Affected are approximately 83,343 Mickey Thompson Baja MTZ brand LT315/70R17 Load Range D Tubeless tires manufactured from January 28, 2006 through October 31, 2013.

III. Noncompliance

Cooper explains that the noncompliance is that, due to a molding error, the subject tires were manufactured with only five of the six treadwear indicators required by paragraph S6.4 of FMVSS No. 119.

IV. Rule Text

Paragraph S6.4 of FMVSS No. 119 requires in pertinent part:

S6.4 *Treadwear Indicators.* Except as specified in this paragraph, each tire shall have at least six treadwear indicators spaced approximately equally around the circumference of the tire that enable a person inspecting the tire to determine visually whether the tire has worn to a tread depth of 1.6mm (one-sixteenth of an inch). . . .

V. Summary of Cooper's Analyses

Cooper believes that the subject noncompliance is inconsequential to motor vehicle safety because the absence of a single treadwear indicator has no practical effect on motor vehicle safety. Cooper supported this belief by stating that the presence of five of the six treadwear indicators provides ample coverage over the surface of the tire

because consumers or technicians who attempt to inspect tread depth by relying on the treadwear indicators can easily see several of the indicators. In fact, when the vehicle is parked, only a small portion of the tread surface is not visible.

Therefore, Cooper believes that five treadwear indicators have an equivalent functionality of six indicators whether the tire is mounted on a vehicle or not.

Copper also points out that NHTSA has previously granted other petitions that Cooper believes were similar to the subject petition.

Cooper has informed NHTSA that it has corrected the noncompliance so that all future production of these tires will comply with FMVSS No. 119.

In summation, Cooper believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt Cooper from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Cooper no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve Cooper distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motor tires under their control after Cooper notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Acting Director, Office of Tire Safety Compliance.

[FR Doc. 2014–11882 Filed 5–21–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 414 (Sub-No. 8X)]

Iowa Interstate Railroad, Ltd.—Abandonment Exemption—in Polk, Jasper, and Marion Counties, Iowa

On May 2, 2014, Iowa Interstate Railroad, Ltd. (IAIS) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C 10502 for exemption from the prior approval requirements of 49 U.S.C 10903 to abandon approximately 10.75 miles of rail line between milepost 145.75 south of Mitchellville to the current end of the track at milepost 135.0 southeast of Prairie City, in Polk and Jasper Counties, Iowa (the Prairie City segment).

In the same petition, IAIS seeks exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon the following two contiguous line segments: (1) Between milepost 135.0 near Prairie City and milepost 123.50 near Otley, a distance of approximately 11.5 miles in Jasper and Marion Counties, Iowa (the Otley segment); and (2) between milepost 123.50 near Otley and milepost 114.80 in Pella, a distance of approximately 8.7 miles in Marion County, Iowa (the Pella segment).[1] Also, IAIS requests that the Pella and Otley segments be exempted from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions at 49 U.S.C.10905. These requests will be addressed in the final Board decision.

IAIS asserts that no rail shipments have been handled over the Prairie City segment since January of 2008 and that the last rail movements on the Otley and Pella segments occurred nearly 15 years ago.[2] IAIS indicates that it salvaged the Pella segment in 1999–2000 and has since ''disposed of much of the right-of-way'' of that segment, and that the portion of the Pella segment between mileposts 117.68 and 114.80 ''was subject to a sale agreement.'' As for the Otley segment, IAIS states that a Notice of Interim Trail Use or Abandonment (NITU) was issued and IAIS ultimately transferred approximately 5.6 miles of the right-of-way, between milepost 135.0 and milepost 129.4, to Jasper County ''in a transaction plainly intended to be subject to the Trails Act.'' According to IAIS, the remainder of the Otley segment ''has been disposed of piecemeal outside of the Trails Act,'' and salvage of the track and track materials from the Otley segment was completed by early 2002.

The Line traverses United States Postal Service Zip Codes 50169, 50228, 50170, 50214, and 50219.

IAIS states that, based on information in its possession, the Line does not contain federally granted rights-of-way. Any documentation in IAIS's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 20, 2014.

Any OFA under 49 CFR 1152.27(b)(2) will be due by August 29, 2014, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than June 11, 2014. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 414 (Sub-No. 8X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606. Replies to the petition are due on or before June 11, 2014.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer

[1] The Prairie City, Pella, and Otley segments together are referred to as the Line. IAIS previously obtained Board authorizations to abandon the Pella and Otley segments in 1998 and 2000, respectively. *See Iowa Interstate R.R.—Aban. Exemption—in Marion Cnty., Iowa,* AB 414 (Sub-No. 2X) (STB served Aug., 11, 1998); *Iowa Interstate R.R.—Aban. Exemption—in Marion & Jasper Cntys., Iowa,* AB 414 (Sub-No. 3X) (STB served Oct. 20, 2000). However, as stated by IAIS, the abandonments were never consummated.

[2] IAIS asserts that, ordinarily, abandonment of the Line would qualify for the two-year out-of-service class exemption at 49 CFR 1152.50, but it is acting via petition for exemption in light of its request for exemption from the OFA and public use provisions for the Pella and Otley segments.

to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 19, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–11854 Filed 5–21–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4684

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4684, Casualties and Thefts.

DATES: Written comments should be received on or before July 21, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Casualties and Thefts.

OMB Number: 1545–0177.

Form Number: 4684.

Abstract: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Current Actions: The department added a new section (Section C) which incorporates Appendix A from Revenue Procedure 2009–20. It will require taxpayers, claiming a theft loss deduction due to a Ponzi-type investment scheme and using the procedures in Rev. Proc. 2009–20, to include specific information supporting key eligibility requirements. In addition, the Department estimates an increase of 51,650 responses based on its most recent data on Form 4684 filings. The addition of section C and the estimated increase in the number of responses will increase the estimated annual burden hours from 1,486,659 to 1,830,400.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 320,000.

Estimated Time per Respondent: 5 hrs., 43 min.

Estimated Total Annual Burden Hours: 1,830,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 9, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–11668 Filed 5–21–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nomination for Appointment to the Advisory Committee on Women Veterans

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominees to be considered for membership on the Advisory Committee on Women Veterans (Committee) for the 2014–2015 membership cycle. The Committee is authorized by 38 U.S.C. § 542, to provide advice to the Secretary of Veterans Affairs (Secretary) on: the administration of VA's benefits and services (health care, rehabilitation benefits, compensation, outreach, and other relevant programs) for women Veterans; reports and studies pertaining to women Veterans; and the needs of women Veterans.

The Committee provides a Congressionally-mandated report to the Secretary each even-numbered year, which includes: an assessment of the needs of women Veterans, with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by VA; a review of the programs and activities of VA designed to meet such needs; and other recommendations (including recommendations for administrative and legislative action), as the Committee considers appropriate. The Committee reports to the Secretary through the Director of the Center for Women Veterans.

The Secretary appoints Committee member, and determines the length of

terms in which Committee members serve. A term of service for any member may not exceed 3 years. However, the Secretary can reappoint members for additional terms. Each year, there are several vacancies on the Committee, as members' terms expire.

Self-nominations are acceptable. Letters of nomination from organizations or other individuals should also be submitted with the package. Non-Veterans are eligible for nomination. In accordance with the Obama Administration's policy regarding lobbyists serving on advisory boards and commissions (www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions), individuals who are Federally-registered lobbyists are prohibited from serving on Federal advisory committees.

SUPPLEMENTARY INFORMATION: The Committee is currently comprised of 12 members. By statute, the Committee consists of members appointed by the Secretary from the general public, including: representatives of women Veterans; individuals who are recognized authorities in fields pertinent to the needs of women Veterans, including the gender specific health-care needs of women; representatives of both female and male Veterans with service-connected disabilities, including at least one female Veteran with a service-connected disability and at least one male Veteran with a service-connected disability; and women Veterans who are recently separated from service in the Armed Forces.

The Committee meets at least two times annually, which may include a site visit to a VA field location. In accordance with the Federal Travel Regulation, all members receive travel expenses and a per diem allowance for any travel made in connection with their duties as members of the Committee. A copy of the Committee's most recent charter and a list of the current membership can be found at *www.va.gov/ADVISORY/or www.va.gov/womenvet/.*

The Department makes every effort to ensure that the membership of its advisory committees is fairly balanced, in terms of points of view represented. In the review process, consideration is given to nominees' potential to address the Committee's demographic needs (regional representation, race/ethnicity representation, professional expertise, war era service, gender, former enlisted or officer status, branch of service, etc.). Other considerations to promote a balanced membership include longevity of military service, significant deployment experience, ability to handle complex issues, experience running large organizations, and ability to contribute to the gender-specific health care and benefits needs of women Veterans.

Nomination Package Requirements: Nomination packages must be typed (12 point font) and include (1) a cover letter from the nominee, and (2) a current resume that is no more than four pages in length. The cover letter must summarize: the nominees' interest in serving on the committee and contributions she/he can make to the work of the committee; any relevant Veterans service activities she/he is currently engaged in; the military branch affiliation and timeframe of military service (if applicable). To promote inclusion and demographic balance of membership, please include as much information related to your race, national origin, disability status, or any other factors that may give you a diverse perspective on women Veterans matters. Finally, please include in the cover letter the nominee's complete contact information (name, address, email address, and phone number); and a statement confirming that she/he is not a Federally-registered lobbyist. The resume should show professional work experience, and Veterans service involvement, especially service that involves women Veterans' issues.

Nominations for membership on the Committee must be received by June 30, 2014, no later than 4:00 p.m., eastern standard time. Packages received after this time will not be considered for the current membership cycle. All nomination packages should be sent to the Advisory Committee Management Office by email (recommended) or mail. Please see contact information below.

Advisory Committee Management Office (00AC), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, *VA.Advisory.Cmte@va.gov.*

Dated: May 19, 2014.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2014–11880 Filed 5–21–14; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 99 May 22, 2014

Part II

Securities and Exchange Commission

17 CFR Part 240

Standards for Covered Clearing Agencies; Proposed Rule; Republication

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–71699; File No. S7–03–14]

RIN 3235–AL48

Standards for Covered Clearing Agencies

Republication

Editorial Note: Proposed rule document 2014–05806 was originally published on pages 16865 through 16975 in the issue of Wednesday, March 26, 2014. In that publication the footnotes contained erroneous entries. The corrected document is republished in its entirety.

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') proposes to amend Rule 17Ad–22 and add Rule 17Ab2–2 pursuant to Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''), adopted in Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''). Among other things, the proposed rules would establish standards for the operation and governance of certain types of registered clearing agencies that meet the definition of a ''covered clearing agency.''

DATES: Submit comments on or before May 27, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–03–14 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number S7–03–14.

To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*).

Comments are also available for 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. 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.

FOR FURTHER INFORMATION CONTACT: Katherine Martin, Senior Special Counsel; Stephanie Park, Special Counsel; Mark Saltzburg, Special Counsel; Matthew Lee, Attorney-Adviser; and Abraham Jacob, Attorney-Adviser; Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010, at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend Rule 17Ad–22 to add new Rule 17Ad–22(e) to establish requirements for risk management, operations, and governance of registered clearing agencies that meet the definition of a ''covered clearing agency.'' Covered clearing agencies would include registered clearing agencies that (i) have been designated as systemically important by the Financial Stability Oversight Council (''FSOC'') and for which the Commission is the supervisory agency, pursuant to the Clearing Supervision Act (''designated clearing agencies''), (ii) provide central counterparty (''CCP'') services for security-based swaps or are involved in activities the Commission determines to have a more complex risk profile, where in either case the Commodity Futures Trading Commission (''CFTC'') is not the supervisory agency for such clearing agency as defined in Section 803(8) of the Clearing Supervision Act, or (iii) are otherwise determined to be covered clearing agencies by the Commission. The Commission also proposes to add new Rule 17Ad–22(f) to codify the Commission's statutory authority and new Rule 17Ab2–2 to establish procedures for making determinations regarding covered clearing agencies under proposed Rule 17Ad–22(e). The Commission also proposes to amend existing Rule 17Ad–22(d) to limit its application to clearing agencies other than covered clearing agencies and to revise existing Rule 17Ad–22(a) to add 15 new definitions. The Commission has begun, and intends to continue, consultation with the FSOC and the Board of Governors of the Federal Reserve System (''the Board'') and has considered the relevant international standards as required by Section 805(a)(2)(A) of the Clearing Supervision Act.[1]

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[1] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (''CPSS–IOSCO''), Principles for Financial Market Infrastructures (Apr. 16, 2012), *available at http://www.bis.org/publ/cpss101a.pdf* (''PFMI Report'').

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I. Current Regulatory Framework for Clearing Agencies

A. Section 17A of the Exchange Act

When Congress added Section 17A to the Exchange Act as part of the Securities Acts Amendments of 1975, it directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[2] In Section 17A of the Exchange Act, Congress directed the Commission to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.[3] The Commission's ability to achieve these goals and its supervision of securities clearance and settlement systems is based upon the regulation of clearing agencies registered with the Commission (''registered clearing agencies''). Clearing agencies are broadly defined under the Exchange Act and undertake a variety of functions.[4] One such function is to act as a CCP, which is an entity that interposes itself between the counterparties to a trade.[5] Over the years, registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets.[6] Registered clearing agencies help reduce the costs and increase the safety and efficiency of securities trading and are required to be structured to manage and reduce counterparty risk.[7]

Section 17A of the Exchange Act and Rule 17Ab2–1 require entities to register with the Commission prior to performing the functions of a clearing agency.[8] Under the statute, the Commission is not permitted to grant registration unless it determines that the rules and operations of the clearing agency meet the standards set forth in Section 17A of the Exchange Act.[9] If the Commission registers a clearing agency, the Commission oversees the clearing agency to facilitate compliance with the Exchange Act using various tools that include, among other things, the rule filing process for self-regulatory organizations (''SROs'') and on-site examinations by Commission staff.[10] The Commission also oversees registered clearing agencies through regular contact, including onsite visits, by Commission staff with clearing agency senior management and other personnel and ongoing interactions of Commission staff with the registered

[2] *See* 15 U.S.C. 78q–1; Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 4 (1975) (urging that ''[t]he Committee believes the banking and security industries must move quickly toward the establishment of a fully integrated national system for the prompt and accurate processing and settlement of securities transactions'').

[3] *See* 15 U.S.C. 78q–1(a)(2)(A).

[4] Section 3(a)(23)(A) of the Exchange Act defines the term ''clearing agency'' to mean any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of securities certificates, or otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. *See* 15 U.S.C. 78c(a)(23)(A).

[5] *See id.; see also* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66221–22 (Nov. 2, 2012) (''Clearing Agency Standards Release''). An entity that acts as a CCP for securities transactions is a clearing agency as defined in the Exchange Act and is required to register with the Commission. For further discussion of the economic effects of CCPs, see *infra* notes 19, 563, and accompanying text.

[6] *See* Risk Management Supervision of Designated Clearing Entities (July 2011), Report by the Commission, the Board & CFTC to the Senate Committees on Banking, Housing & Urban Affairs and Agriculture in fulfillment of Section 813 of Title VIII of the Dodd-Frank Act, at 3 (stating that designated clearing entities ''play a vital role in the proper functioning of financial markets and are increasingly important given the mandated central clearing of certain swaps and security-based swaps that is required by the [Dodd-Frank] Act'') (''Risk Management Supervision Report'').

[7] *See id.* at 12 (describing the risk management practices of designated clearing entities and the economic and legal incentives for sound risk management).

[8] *See* 15 U.S.C. 78q–1(b) and 17 CFR 240.17Ab2–1 thereunder; *see also infra* notes 20–23 and accompanying text (noting that the Dodd-Frank Act also added new paragraphs (g), (i), and (j) to Section 17A of the Exchange Act to establish requirements for any entity that performs the functions of a clearing agency for security-based swaps).

[9] A clearing agency can be registered with the Commission only if the Commission makes a determination that the clearing agency satisfies the requirements set forth in Section 17A(b)(3)(A) through (I) of the Exchange Act. *See* 15 U.S.C. 78q–1(b)(3)(A) through (I). In 1980, the Commission published a statement of the views and positions of the Commission staff regarding the requirements of Section 17A in its Announcement of Standards for the Registration of Clearing Agencies. *See* Exchange Act Release No. 34–16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[10] Under the Clearing Supervision Act, the supervisory agency must consult annually with the Board regarding the scope and methodology of on-site examinations of designated FMUs, and those examinations may include participation by the Board, if requested. *See infra* note 32 and accompanying text; *see also* 15 U.S.C. 78u(a) (providing the Commission with authority to initiate and conduct investigations to identify potential violations of the federal securities laws); 15 U.S.C. 78s(h) (providing the Commission with authority to institute civil actions seeking injunctive and other equitable remedies and/or administrative proceedings).

clearing agencies regarding current and expected proposed rule changes under Section 19(b) of the Exchange Act.

B. OTC Swaps Clearing and the Dodd-Frank Act

The Commission drew on its experience regulating clearing agencies to address recent developments in the over-the-counter (''OTC'') derivatives markets. In December 2008, the Commission acted to facilitate the central clearing of credit default swaps (''CDS'') by permitting certain entities that performed CCP services to clear and settle CDS on a temporary, conditional basis.[11] Consequently, some CDS transactions were centrally cleared prior to the enactment of the Dodd-Frank Act.

On July 21, 2010, President Barack Obama signed the Dodd-Frank Act into law.[12] The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[13] It is intended, among other things, to bolster the existing regulatory structure and provide regulatory tools to address risks in the OTC derivatives markets, which have experienced dramatic growth in recent years and are capable of affecting significant sectors of the U.S. economy.[14]

1. Title VII of the Dodd-Frank Act

Title VII of the Dodd-Frank Act (''Title VII'') provides the Commission and the CFTC with enhanced authority to regulate certain OTC derivatives in response to the 2008 financial crisis.[15] Title VII provides that the CFTC will regulate ''swaps,'' the Commission will regulate ''security-based swaps,'' and both the CFTC and the Commission will regulate ''mixed swaps.'' [16] Title VII provides the Commission with new regulatory authority over security-based swaps by requiring, among other things, that security-based swaps generally be cleared and that clearing agencies for security-based swaps register with the Commission.

The swap and security-based swap markets traditionally have been characterized by privately negotiated transactions entered into by two counterparties, in which each assumes the credit risk of the other counterparty.[17] Title VII amended the Exchange Act to require that transactions in security-based swaps be cleared through a clearing agency if they are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies.[18] When structured and operated appropriately, clearing agencies may improve the management of counterparty risk in security-based swap markets and may provide additional benefits, such as the multilateral netting of trades.[19]

Title VII also added new provisions to the Exchange Act that require entities performing the functions of a clearing agency with respect to security-based swaps (''security-based swap clearing agencies'') to register with the Commission and require the Commission to adopt rules with respect to security-based swap clearing agencies.[20] Specifically, new Section 17A(j) requires the Commission to adopt rules governing security-based swap clearing agencies, and new Section 17A(i) gives the Commission authority to promulgate rules that establish standards for security-based swap clearing agencies.[21] Compliance with any such rules is a prerequisite to the registration of a clearing agency that clears security-based swaps with the Commission and is also a condition to maintain its continued registration.[22] Section 17A(i) also provides that the Commission, in establishing clearing agency standards and in its oversight of clearing agencies, may conform such standards and such oversight to reflect evolving international standards.[23] Before commencing any rulemaking regarding, among other things, security-based swap clearing agencies, Title VII provides that the Commission shall consult and coordinate, to the extent possible, with the CFTC and the prudential regulators for the purpose of assuring regulatory consistency and comparability, to the extent possible.[24]

Title VII further provides that some of the entities that the Commission permitted to clear and settle CDS on a temporary, conditional basis prior to the

[11] The Commission authorized five entities to clear CDS. *See* Exchange Act Release Nos. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009), 61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010) and 63389 (Nov. 29, 2010), 75 FR 75520 (Dec. 3, 2010) (CDS clearing by ICE Clear Europe Limited); 60373 (July 23, 2009), 74 FR 37740 (July 29, 2009), 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) and 63390 (Nov. 29, 2010), 75 FR 75518 (Dec. 3, 2010) (CDS clearing by Eurex Clearing AG); 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) and 63388 (Nov. 29, 2010), 75 FR 75522 (Dec. 3, 2010) (CDS clearing by Chicago Mercantile Exchange, Inc.); 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) and 63387 (Nov. 29, 2010), 75 FR 75502 (Dec. 3, 2010) (CDS clearing by ICE Trust US LLC); 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) (collectively ''CDS clearing exemption orders''). LIFFE A&M and LCH.Clearnet Ltd. allowed their orders to lapse without seeking renewal.

[12] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[13] *See id.*

[14] From their beginnings in the early 1980s, the notional value of these markets grew to approximately $693 trillion globally by June 2013. *See* Bank for International Settlements (''BIS''), Statistical Release: OTC Derivatives Statistics at End-June 2013, at 2 (Nov. 2013), *available at http://www.bis.org/publ/otc_hy1311.pdf.*

[15] *See* Dodd-Frank Act, 124 Stat. at 1641–1802.

[16] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board, shall further define the terms ''swap,'' ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement.'' 124 Stat. at 1644. The Commission and the CFTC jointly adopted rules to further define the terms ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and ''eligible contract participant,'' as well as rules to further define the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement'' and to govern the regulation of mixed swaps. *See* Exchange Act Release Nos. 34–67453 (July 18, 2012), 77 FR 48208 (Aug. 13, 2012); 34–66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

[17] *See, e.g.,* Exchange Act Release No. 34–60372 (July 23, 2009), 74 FR 37748 (July 29, 2009), at 37748 n.2 (discussing credit default swaps).

[18] *See* 15 U.S.C. 78c–3; *see also* Exchange Act Release No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (adopting rules establishing a process for submissions for review of security-based swaps for mandatory clearing); Exchange Act Release No. 34–63556 (Dec. 15, 2010), 75 FR 79992 (Dec. 21, 2010) (proposing an end-user exception to the mandatory clearing requirement).

[19] *See* Stephen G. Cecchetti, Jacob Gyntelberg & Marc Hollanders, Central Counterparties for Over-the-Counter Derivatives, BIS Q. Rev., Sept. 2009, at 46, *available at http://www.bis.org/publ/qtrpdf/r_qt0909f.pdf* (stating that the structure of a CCP ''has three clear benefits. First, it improves the management of counterparty risk. Second, it allows the CCP to perform multilateral netting of exposures as well as payments. Third, it increases transparency by making information on market activity and exposures—both prices and quantities—available to regulators and the public'') (emphasis omitted); *see also* Exchange Act Release No. 34–60372, supra note 17, at 37749 (discussing the benefits of using well-regulated CCPs to clear transactions in credit default swaps). *But see infra* note 563 and accompanying text (discussing the limits of clearing through central counterparties).

[20] *See* 15 U.S.C. 78q–1(g); Dodd-Frank Act, Sec. 763(b), Public Law 111–203, 124 Stat. 1376, 1768 (2010) (adding paragraph (g) to Section 17A of the Exchange Act). Pursuant to Section 774 of the Dodd-Frank Act, the requirement in Section 17A(g) of the Exchange Act for security-based swap clearing agencies to be registered with the Commission took effect on July 16, 2011. *See* 124 Stat. at 1802.

[21] *See* 15 U.S.C. 78q–1(i), (j); Dodd-Frank Act, Sec. 763(b), 124 Stat. at 1768–69 (adding paragraphs (i) and (j) to Section 17A of the Exchange Act).

[22] *See supra* note 9 (describing the requirements under Section 17A(b)(3) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)).

[23] *See* 15 U.S.C. 78q–1(i) (stating that, in establishing standards for security-based swap clearing agencies, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards).

[24] *See* Dodd-Frank Act, Sec. 712(a)(2), 124 Stat. at 1641–42.

July 21, 2010 enactment of the Dodd-Frank Act are deemed under the Dodd-Frank Act to be registered clearing agencies (the ''deemed registered provision'').[25] As a result, the Chicago Mercantile Exchange, Inc. (''CME''), ICE Clear Credit LLC (''ICE''), and ICE Clear Europe LLC (''ICEEU'') became clearing agencies deemed registered with the Commission on July 16, 2011, solely for the purpose of clearing security-based swaps.

2. Title VIII of the Dodd-Frank Act

The Clearing Supervision Act, adopted in Title VIII of the Dodd-Frank Act (''Title VIII''), provides for enhanced regulation of financial market utilities (''FMUs''), such as clearing agencies that manage or operate a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the FMU.[26] The enhanced regulatory regime in Title VIII applies only to FMUs that the FSOC designates as systemically important (or likely to become systemically important) in accordance with Section 804 of the Clearing Supervision Act.[27] On July 11, 2011, the FSOC published a final rule concerning its authority to designate FMUs as systemically important.[28]

Section 806(e) of the Clearing Supervision Act requires FMUs designated as systemically important to file 60 days advance notice of changes to its rules, procedures, or operations that could materially affect the nature or level of risk presented by the FMU (''Advance Notice'').[29] In addition, Section 806(e) requires each supervisory agency to adopt rules, in consultation with the Board, that define and describe when a designated FMU is required to file an Advance Notice with its supervisory agency.[30] The Commission published a final rule concerning the Advance Notice process for designated clearing agencies on June 28, 2012.[31] In evaluating an Advance Notice filed with the Commission, the Commission would assess, among other things, the consistency of the Advance Notice with the rules proposed herein, if adopted.

The Clearing Supervision Act also provides for enhanced coordination between the Commission, the Board, and the CFTC by facilitating examinations and information sharing. Under Section 807 of the Clearing Supervision Act, the Commission and the CFTC must consult annually with the Board regarding the scope and methodology of any examination of a designated FMU, and the Board is authorized to participate in any such examination.[32] Section 809 of the Clearing Supervision Act authorizes the Commission, the Board, and the CFTC to disclose to each other copies of examination reports or similar reports regarding any designated FMU.[33] It further authorizes the Commission, the Board, and the CFTC to promptly notify each other of material concerns about a designated FMU and share appropriate reports, information, or data relating to such concerns.[34] Section 813 of the Clearing Supervision Act requires the Commission and the CFTC to coordinate with the Board to develop risk management supervision programs for designated clearing agencies.[35]

Section 805(a) of the Clearing Supervision Act[36] also provides that the Commission may prescribe risk management standards governing the operations related to payment, clearing, and settlement activities (''PCS activities'') of designated FMUs for which it acts as the supervisory agency, in consultation with the FSOC and the Board and taking into consideration relevant international standards and existing prudential requirements.[37]

On July 18, 2012, the FSOC designated as systemically important the following registered clearing agencies: CME, The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC''), ICE, National Securities Clearing Corporation (''NSCC''), and The Options Clearing Corporation (''OCC'').[38] Under the Clearing Supervision Act, the Commission is the supervisory agency for DTC, FICC, NSCC, and OCC.[39] The

[25] *See* 15 U.S.C. 78q–1(l). The deemed registered provision applies to certain depository institutions that cleared swaps as multilateral clearing organizations and certain derivatives clearing organizations (''DCOs'') that cleared swaps pursuant to an exemption from registration as a clearing agency before the date of enactment of the Dodd-Frank Act. Under the deemed registered provision, such a clearing agency is deemed registered for the purpose of clearing security-based swaps and is therefore required to comply with all requirements of the Exchange Act, and the rules thereunder, applicable to registered clearing agencies, including, for example, the obligation to file proposed rule changes under Section 19(b) of the Exchange Act. *See infra* note 96 (describing the requirements in Section 19(b) of the Exchange Act).

[26] The definition of ''financial market utility'' in Section 803(6) of the Clearing Supervision Act contains a number of exclusions that include, but are not limited to, certain designated contract markets, registered futures associations, swap data repositories, swap execution facilities, national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, security-based swap execution facilities, brokers, dealers, transfer agents, investment companies and futures commission merchants. *See* 12 U.S.C. 5462(6)(B).

[27] Pursuant to Section 803(9) of the Clearing Supervision Act, an FMU is systemically important if the failure of or a disruption to the functioning of such FMU could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. *See* 12 U.S.C. 5462(9).

[28] *See* 76 FR 44763 (July 27, 2011). Under Section 804 of the Clearing Supervision Act, the FSOC has the authority, on a non-delegable basis and by a vote of no fewer than two-thirds of the members then serving, including the affirmative vote of its chairperson, to designate those FMUs that the FSOC determines are, or are likely to become, systemically important. *See* 12 U.S.C. 5463. The FSOC may, using the same procedures as discussed above, rescind such designation if it determines that the FMU no longer meets the standards for systemic importance. Before making either determination, the FSOC is required to consult with the Board and the relevant supervisory agency (as determined in accordance with Section 803(8) of the Clearing Supervision Act). *See id.* Finally, Section 804 of the Clearing Supervision Act sets forth the procedures for giving entities a 30-day notice and the opportunity for a hearing prior to a designation or rescission of the designation of systemic importance. *See id.*

[29] *See* 12 U.S.C. 5465(e)(1)(A).

[30] Section 803(8) of the Clearing Supervision Act defines the term ''supervisory agency'' in reference to the primary regulatory authority for the FMU. For example, it provides that the Commission is the supervisory agency for any FMU that is a registered clearing agency. *See* 12 U.S.C. 5462(8). To the extent that an entity is both a clearing agency registered with the Commission and registered with another agency, such as a DCO registered with the CFTC, the statute requires the two agencies to agree on one agency to act as the supervisory agency, and if the agencies cannot agree on which agency has primary jurisdiction, the FSOC shall decide which agency is the supervisory agency for purposes of the Clearing Supervision Act. *See* 12 U.S.C. 5462(8).

[31] *See* Exchange Act Release No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012).

[32] *See* 12 U.S.C. 5466.

[33] *See* 12 U.S.C. 5468.

[34] *See id.*

[35] *See* 12 U.S.C. 5472; *see also* Risk Management Supervision Report, supra note 6.

[36] 12 U.S.C. 5464(a).

[37] *See* 12 U.S.C. 5464(a)(2) (stating that these regulations may govern the operations related to payment, clearing, and settlement activities of such designated clearing entities, and the conduct of designated activities by such financial institutions). PCS activities are defined in Section 803(7) of the Clearing Supervision Act. *See* 12 U.S.C 5462(7).

[38] *See* U.S. Treasury Dep't, Financial Stability Oversight Council Makes First Designations in Effort to Protect Against Future Financial Crises (July 18, 2012), *http://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx*; *see also* 12 U.S.C. 5321 (establishing the FSOC and designating its voting and non-voting members); 12 U.S.C. 5463 (describing the designation of systemic importance by the FSOC); *supra* note 28 (describing the process by which the FSOC would make or rescind a designation of systemic importance). Section 804 of the Clearing Supervision Act, 12 U.S.C. 5463, further sets forth procedures that give entities 30 days advance notice and an opportunity for a hearing prior to being designated as systemically important. *See* FSOC, 2012 Annual Report, at app. A, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[39] *See supra* note 30 (discussing designation as the supervisory agency); *see also* FSOC, 2013 Annual Report, at 99–101, 113 (further discussing the same), *available at http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202013%20Annual%20Report.pdf.*

Commission jointly regulates DTC with the Board and OCC with the CFTC.[40] The Commission also jointly regulates CME and ICE with the CFTC, which serves as their supervisory agency.[41]

C. Rule 17Ad–22 Under the Exchange Act

On October 22, 2012, the Commission adopted Rule 17Ad–22 under the Exchange Act.[42] Through Rule 17Ad–22, the Commission sought to strengthen the substantive regulation of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency, and access to registered clearing agencies by establishing minimum requirements with due consideration given to observed practices and international standards.[43] At that time, the Commission noted that the implementation of Rule 17Ad–22 would be an important first step in developing the regulatory changes contemplated by Titles VII and VIII of the Dodd-Frank Act.[44] Rule 17Ad–22 requires all registered clearing agencies to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[45] These requirements are designed to work in tandem with the SRO rule filing process and the requirement in Section 17A of the Exchange Act that the Commission must make certain determinations regarding a clearing agency's rules and operations for purposes of initial and ongoing registration.[46] Rule 17Ad–22 does not apply to entities that are operating pursuant to an exemption from registration as a clearing agency granted by the Commission,[47] and it does not give particular consideration to issues relevant to clearing agencies designated as systemically important FMUs.

D. Relevant International Standards

In proposing amendments to Rule 17Ad–22, the Commission considered international standards, as required by Section 805(a) of the Clearing Supervision Act, that are relevant to its supervision of covered clearing agencies.[48] CPSS–IOSCO published in April 2012 the PFMI Report[49] to replace previous standards applicable to clearing agencies contained in two earlier reports: *Recommendations for Securities Settlement Systems* (2001) (''RSSS'') and *Recommendations for Central Counterparties* (2004) (''RCCP'') (collectively ''CPSS–IOSCO Recommendations'').[50] Commission staff participated in the development and drafting of the PFMI Report,[51] and the Commission believes that the standards set forth in the PFMI Report are generally consistent with the requirements applicable to clearing agencies set forth in the Exchange Act.[52] Regulatory authorities around the world are in various stages of updating their regulatory regimes to adopt measures that are in line with the standards set forth in the PFMI Report.[53] The rule

[40] As a member of the U.S. Federal Reserve System and a limited purpose trust company under New York State banking law, DTC is subject to regulation by the Board.

[41] In addition, the Commission jointly regulates ICEEU, which is not currently designated as systemically important by the FSOC, with the CFTC and the Bank of England.

[42] *See* Clearing Agency Standards Release, *supra* note 5.

[43] *See id.* at 66225, 66263–64.

[44] *See* Clearing Agency Standards Release, *supra* note 5, at 66225.

[45] Rules 17Ad–22(b)(1) through (4) contain several requirements that address risk management practices by registered clearing agencies that provide CCP services. Rules 17Ad–22(b)(5) through (7) establish certain requirements regarding access to registered clearing agencies that provide CCP services. Rule 17Ad–22(c) requires that a registered clearing agency providing CCP services calculate and maintain a record of its financial resources and requires each registered clearing agency to publish annual audited financial statements. Rule 17Ad–22(d) sets forth certain minimum standards for the operations of registered clearing agencies providing CCP or central securities depository (''CSD'') services. *See infra* Part II.B.4.b (discussing the current requirements for CCPs under Rule 17Ad–22); *see also* Clearing Agency Standards Release, *supra* note 5 (adopting the existing standards under Rule 17Ad–22).

[46] *See supra* note 9 (describing the requirements under Section 17A(b)(3) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)) and *infra* note 96 (further describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[47] *See, e.g.,* Exchange Act Release No. 34–44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2011) (the Omgeo exemption); Exchange Act Release No. 34–39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998) (the Euroclear exemption); Exchange Act Release No 34–38328 (Feb. 24, 1997), 62 FR 9225 (Feb. 28, 1997) (the Clearstream exemption).

[48] *See supra* note 36. In addition, the Basel Committee on Banking Supervision (''BCBS''), the international body that sets standards for the regulation of banks, published in July 2012 the *Capital Requirements for Bank Exposures to Central Counterparties* (''Basel III capital requirements''). The Basel III capital requirements set forth interim rules governing the capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives, and securities financing transactions (which term, as used throughout this release, refers generally to repurchase agreements and securities lending). Among other things, the Basel III framework imposes lower capital requirements on CCPs that obtain ''qualifying CCP'' (''QCCP'') status and would apply QCCP status only to CCPs that are subject to a regulatory framework consistent with the standards set forth in the PFMI Report. *See* BCBS, Capital Requirements for Bank Exposures to Central Counterparties (July 2012), *available at http://www.bis.org/publ/bcbs227.pdf* (setting forth he interim requirements set forth in this report, currently under revision by the BCBS, in consultation with CPSS and IOSCO). *See* also BCBS, Capital Treatment of Bank Exposures to Central Counterparties: Consultative Document (rev. July 2013), *available at http://www.bis.org/publ/bcbs253.pdf*; BIS, Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems (rev. June 2011), *available at http://www.bis.org/publ/bcbs189.htm* (''Basel III framework''). The Basel III capital requirements are one component of the Basel III framework.

[49] *See supra* note 1.

The PFMI Report defines a ''financial market infrastructure'' (''FMI'') as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions. *See id.* at 7; FMIs include CCPs, CSDs, securities settlement systems (''SSSs''), and trade repositories (''TRs''). *Cf.* 12 U.S.C. 5462(6)(B), *supra* note 30 (defining ''financial market utility'' under the Clearing Supervision Act).

The PFMI Report presumes that all CSDs, SSSs, CCPs, and TRs are systemically important in their home jurisdiction. *See* PFMI Report, *supra* note 1, at 131 & n.177 (noting the ''presumption . . . that all CSDs, SSSs, CCPs, and TRs are systemically important because of their critical roles in the markets they serve,'' but also noting that ultimately ''national law will dictate the criteria to determine whether an FMI is systemically important'').

The Commission notes that the PFMI Report's definition of ''financial market infrastructure'' is consistent with the Commission's prior use of the term. *See* Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971) (defining ''financial market infrastructure'' as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions).

[50] The CPSS–IOSCO Recommendations are available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD123.pdf* and *http://www.iosco.org/library/pubdocs/pdf/IOSCPD176.pdf.*

The Board applies these standards in its supervisory process and expects systemically important FMUs, as determined by the Board and subject to its authority, to complete a self-assessment against the standards set forth in the policy. *See* Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012) (the Board adopting Regulation HH for FMUs) (''Reg. HH''); Policy on Payments System Risk, 72 FR 2518 (Jan. 12, 2007).

The Board has proposed to amend the standards in Regulation HH to replace the current standards for payment systems with standards based those set forth in the PFMI Report. It has also proposed to amend its Policy on Payments System Risk. *See infra* note 53.

[51] Commission staff co-chaired the Editorial Team, a working group within CPSS–IOSCO that drafted both the consultative and final versions of the PFMI Report.

[52] *See* 15 U.S.C. 78q–1; 15 U.S.C. 78s(b).

[53] *See* CPSS–IOSCO, Implementation Monitoring of PFMIs—Level 1 Assessment Report (Aug. 2013), *available at http://www.bis.org/publ/cpss111.pdf* (describing efforts by various jurisdictions to adopt standards for FMIs in line with the PFMI Report) (''PFMI Implementation Monitoring Report''); *see also* Reg. HH, *supra* note 50; Financial Market Utilities, 79 FR 3665 (Jan. 22, 2014) (the Board proposing to amend Reg. HH) (''proposed Reg. HH''); Policy on Payment System Risk, 79 FR 2838 (Jan. 16, 2014) (the Board proposing to amend its Federal Reserve Policy on Payments System Risk) (''proposed PSR Policy''); Derivatives Clearing Organizations and International Standards, 78 FR 72475 (Dec. 2, 2013) (CFTC adopting rules for DCOs

Continued

proposals set forth below are a continuation of the Commission's active efforts to foster the development of the national clearance and settlement system.

II. Discussion of the Proposed Amendments to Rule 17Ad–22 and Proposed Rule 17Ab2–2

The Commission is proposing to amend Rule 17Ad–22 and add Rule 17Ab2–2 pursuant to Section 17A of the Exchange Act and the Clearing Supervision Act to provide a new regulatory framework for ''covered clearing agencies,'' as defined below.

Generally, Section 17A directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers and dealers.[54] It further requires that a clearing agency be so organized and have the capacity and rules designed to, among other things, facilitate the prompt and accurate clearance and settlement of securities transactions, and to comply with the provisions of the Exchange Act and the rules and regulations thereunder.[55] In establishing a regulatory framework for clearance and settlement, the Exchange Act requires that a registered clearing agency's rules not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.[56]

Consistent with these statutory objectives, the Commission previously adopted Rule 17Ad–22(d) to establish minimum requirements for registered clearing agencies and indicated that it might consider further rulemaking at a later date.[57] In furtherance of the provisions of Section 17A of the Exchange Act and the Clearing Supervision Act described above and as previously considered by the Commission, the Commission is proposing Rule 17Ad–22(e) to establish new requirements for covered clearing agencies, which the Commission preliminarily believes are appropriate given the risks that their size, operation, and importance pose to the U.S. securities markets, the risks inherent in the products they clear, and the goals of Title VII and the Exchange Act.[58] In connection with its supervision of registered clearing agencies under Section 17A of the Exchange Act, including after the adoption of Rule 17Ad–22,[59] the Commission has considered whether enhanced requirements for covered clearing agencies could contribute to the stability of U.S. securities markets, as described further in Part IV, and has determined to issue this proposal for comment.

The Commission has preliminarily chosen to retain Rule 17Ad–22(d) and to continue to apply it to registered clearing agencies that are not covered clearing agencies.[60] The Commission preliminarily believes that retaining Rule 17Ad–22(d) ensures that clear, comprehensive, and transparent standards for registered clearing agencies that are not covered clearing agencies will continue to exist and, because they are narrower in scope, would thereby provide a more flexible regime for new entrants seeking to establish and operate registered clearing agencies, consistent with the continuing development of the national system for clearance and settlement, than would otherwise be the case with a single regime under proposed Rule 17Ad–22(e).

The Commission notes that it is not proposing to alter the existing requirements under Rule 17Ad–22(b), which establishes risk-management and participant access requirements for registered clearing agencies that perform CCP services for security-based swaps, or Rule 17Ad–22(c), which requires registered clearing agencies that provide CCP services to maintain a record of financial resources and all registered clearing agencies to post on their Web sites annual audited financial statements.[61] These requirements continue to be appropriate for all registered clearing agencies because they promote prompt and accurate clearance and settlement of securities and security-based swap transactions. Notably, Rule 17Ad–22(b) reduces the likelihood, in a participant default scenario, that losses from default would disrupt the operations of the clearing agency, and Rule 17Ad–22(c) provides an additional layer of information about the activities and financial strength of a registered clearing agency that market participants may find useful in assessing their use of the registered clearing agency's services while also assisting the Commission in its oversight of registered clearing agencies' compliance with Rule 17Ad–22 by providing a clear record of the method used by the clearing agency to, among other things, maintain sufficient financial resources.[62]

A. Overview

The Commission is proposing Rule 17Ad–22(e) to establish requirements for covered clearing agencies with respect to general organization,[63] financial risk management,[64] settlement,[65] CSDs and exchange-of-

in line with international standards) (''DCO Int'l Standards Release''); Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations, 78 FR 49663 (Aug. 15, 2013) (CFTC adopting rules for systemically important DCOs) (''SIDCO Release''); Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011) (CFTC adopting rules for DCOs); (''DCO Principles Release'').

In addition, the Board and the Office of the Comptroller of the Currency have adopted rules implementing the material elements of the BCBS interim framework for capitalization of bank exposures to CCPs. *See* Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 76 FR 62017, 62099 (Oct. 11, 2013) (''Regulatory Capital Rules''). The Board also noted the ongoing international discussions on this topic and stated that it intends to revisit its rules once the Basel III capital framework is revised. *See id.* The Board and the Office of the Comptroller of the Currency's final rules define ''QCCP'' to mean, among other things, a designated FMU under the Clearing Supervision Act. *See* 12 CFR 217.2; *see also* Regulatory Capital Rules, *supra,* at 62100.

[54] *See* 15 U.S.C. 78q–1(a)(2)(A).

[55] *See* 15 U.S.C. 78q–1(a)(3)(A), (F).

[56] *See* 15 U.S.C. 78q–1(b)(3)(I).

[57] *See* Clearing Agency Standards Release, *supra* note 5, at 66224–25.

[58] *See id.* (contemplating future Commission action on clearing agency standards).

[59] *See* Clearing Agency Standards Release, *supra* note 5, at 66227 (stating that Rule 17Ad–22 generally codifies existing practices that reflect the CPSS–IOSCO Recommendations published in 2001 and 2004).

[60] *See infra* Part II.E (discussing the proposed language amending Rule 17Ad–22(d) to apply to registered clearing agencies that are not covered clearing agencies).

[61] The standards in Rules 17Ad–22(b) and (c) were also adopted by the Commission in 2012. *See* 17 CFR 240.17Ad–22(b), (c); *see also* Clearing Agency Standards Release, *supra* note 5.

The Commission is proposing to revise Rule 17Ad–22(a) to account for new proposed definitions. *See* proposed revision of Rule 17Ad–22(a), *infra* Part VII. The existing definitions in 17 CFR 240.17Ad–22(a) would be renumbered to account for new terms. In addition, the definition of ''participant family'' would be amended to include references to its use in proposed paragraphs (e)(4) and (e)(7). *See* proposed Rule 17Ad–22(a)(13), *infra* Part VII.

[62] *See* Exchange Act Release No. 34–64017 (Mar. 3, 2011), 76 FR 14474, 14477–83 (Mar. 16, 2011); *see also* Clearing Agency Standards Release, *supra* note 5, at 66244.

[63] *See infra* Parts II.B.1–3 (discussing proposed Rules 17Ad–22(e)(1) (legal risk), 17Ad–22(e)(2) (governance), and 17Ad–22(e)(3) (framework for the comprehensive management of risk)).

[64] *See infra* Part II.B.4 (discussing proposed Rules 17Ad–22(e)(4) (credit risk), 17Ad–22(e)(5) (collateral), 17Ad–22(e)(6) (margin), and 17Ad–22(e)(7) (liquidity risk)).

[65] *See infra* Parts II.B.5–7 (discussing proposed Rules 17Ad–22(e)(8) (settlement finality), 17Ad–

value settlement systems,[66] default management,[67] general business risk and operational risk management,[68] access,[69] efficiency,[70] and transparency.[71] The discussion below provides greater detail regarding each respective requirement in proposed Rule 17Ad–22(e). Several aspects of proposed Rule 17Ad–22(e) are similar to existing Rule 17Ad–22(d),[72] but in general the Commission preliminarily notes that certain requirements under proposed Rule 17Ad–22(e) would require covered clearing agencies to consider and adopt policies and procedures more closely tailored to the risks that are posed by covered clearing agencies, which the Commission preliminarily identified as appropriate in connection with its experience in supervising registered clearing agencies under Section 17A of the Exchange Act, including since the adoption of Rule 17Ad–22.

The Commission preliminarily believes that the requirements of proposed Rule 17Ad–22(e) would help promote governance, operations, and risk management practices more closely tailored to the risks raised by registered clearing agencies that have been designated systemically important, are engaged in activities with a more complex risk profile, or are determined to be covered clearing agencies by the Commission, consistent with Section 17A of the Exchange Act. The Commission preliminarily believes these requirements would also enable consistent supervision of designated FMUs and would reflect the Commission's consideration of international standards, as contemplated by Section 17A(i) and the Clearing Supervision Act.[73] While the Commission has made its own determination to issue the proposed rules for comment, the Commission preliminarily believes that generally updating its rules, where appropriate, to take into account the standards set forth in the PFMI Report would contribute to the efforts of regulators around the world, described above,[74] to implement consistent standards for FMIs.[75] The Commission also preliminarily believes that Rule 17Ad–22(e) would provide an additional benefit of providing support for a determination by foreign bank regulators that covered clearing agencies providing CCP services for derivatives and securities financing transactions meet the requirements for QCCP status under the Basel III framework and could therefore help reduce competitive frictions among CCPs in different jurisdictions.

Part II.A first discusses the scope of proposed Rule 17Ad–22(e), the role that written policies and procedures play in framing the proposed rule, and the reasons for imposing certain frequency of review requirements throughout the proposed rules. It then discusses the anticipated impact of the proposed rules given the existing requirements applicable to registered clearing agencies under Rules 17Ad–22(b) through (d), with which a covered clearing agency must already be in compliance.

Part II.B next discusses the proposed rules under Rule 17Ad–22(e). Finally, Parts II.C, D, and E discuss, in turn, proposed Rule 17Ab2–2, proposed Rule 17Ad–22(f), and the proposed amendment to Rule 17Ad–22(d).

1. Scope of Proposed Rule 17Ad–22(e)

The Commission is proposing to add four terms to Rule 17Ad–22(a) to identify the registered clearing agencies that would be subject to proposed Rule 17Ad–22(e). First, the Commission is proposing to add Rule 17Ad–22(a)(9) to define ''financial market utility'' (''FMU'') as defined in Section 803(6) of the Clearing Supervision Act.[76] Second, the Commission is proposing Rule 17Ad–22(a)(8) to define ''designated clearing agency.''[77] A designated clearing agency would mean a clearing agency registered with the Commission under Section 17A of the Exchange Act that has been designated as a systemically important FMU by the FSOC and for which the Commission is the supervisory agency as defined in Section 803(8) of the Clearing Supervision Act.[78] Third, the Commission is proposing to add Rule 17Ad–22(a)(4) to define ''clearing agency involved in activities with a more complex risk profile''[79] to mean a clearing agency registered with the Commission under Section 17A of the Exchange Act that either (i) provides central counterparty services for security-based swaps or (ii) has been determined by the Commission to be involved in activities with a more complex risk profile (''complex risk profile clearing agency''), either at the time of its initial registration or upon a subsequent determination by the Commission pursuant to proposed Rule 17Ab2–2.[80] Fourth, the Commission is proposing to add Rule 17Ad–22(a)(7) to define a ''covered clearing agency'' as a designated clearing agency, a complex risk profile clearing agency, or any clearing agency determined to be a covered clearing agency by the Commission pursuant to proposed Rule 17Ab2–2.[81]

The Commission preliminarily believes there could be several different bases under which registered clearing agencies would be required to comply with proposed Rule 17Ad–22(e). For instance, because DTC, FICC, NSCC, and OCC are registered clearing agencies pursuant to Section 17A of the Exchange Act and are designated clearing agencies for which the Commission is the supervisory agency

22(e)(9) (money settlements), and 17Ad–22(e)(10) (physical delivery risks)).

[66] *See infra* Parts II.B.8–9 (discussing proposed Rules 17Ad–22(e)(11) (CSDs) and 17Ad–22(e)(12) (exchange-of-value settlement systems)).

[67] *See infra* Parts II.B.10–11 (discussing proposed Rules 17Ad–22(e)(13) (participant-default rules and procedures) and 17Ad–22(e)(14) (segregation and portability)).

[68] *See infra* Parts II.B.12–14 (discussing proposed Rules 17Ad–22(e)(15) (general business risk), 17Ad–22(e)(16) (custody and investment risk), and 17Ad–22(e)(17) (operational risk management)).

[69] *See infra* Parts II.B.15–17 (discussing proposed Rules 17Ad–22(e)(18) (access and participation requirements), 17Ad–22(e)(19) (tiered participation arrangements), and 17Ad–22(e)(20) (links)).

[70] *See infra* Parts II.B.18–19 (discussing proposed Rules 17Ad–22(e)(21) (efficiency and effectiveness) and 17Ad–22(e)(22) (communication procedures and standards)).

[71] *See infra* Part II.B.20 (discussing proposed Rule 17Ad–22(e)(23) (disclosure of rules, key procedures, and market data)).

[72] *See infra* Part II.A.4 (discussing the anticipated impact of proposed Rule 17Ad–22(e) given the existing requirements for registered clearing agencies under Rule 17Ad–22).

[73] *See supra* Part I.B.2, in particular notes 36–37 and accompanying text (discussing the requirements under Section 17A(i) of the Exchange Act, 15 U.S.C. 78q–1(i), and Section 805(a) of the Clearing Supervision Act, 12 U.S.C. 5464(a)).

[74] *See supra* note 53 and accompanying text.

[75] *See infra* Part IV.C.1.e (further discussing the economic effects of obtaining QCCP status under the Basel III capital requirements); *see also supra* note 48.

[76] See proposed Rule 17Ad–22(a)(9), *infra* Part VII; *see also* 12 U.S.C. 5462(6) (defining ''financial market utility'' pursuant to the Clearing Supervision Act); *supra* note 26 (providing further explanation of ''financial market utility'').

[77] *See* proposed Rule 17Ad–22(a)(8), *infra* Part VII.

[78] Rule 17Ad–22 does not currently apply to entities operating pursuant to an exemption from clearing agency registration. The proposed amendments to Rule 17Ad–22 would not broaden the scope of Rule 17Ad–22 to an entity operating pursuant to an exemption from registration as a clearing agency granted by the Commission.

[79] *See* proposed Rule 17Ad–22(a)(4), *infra* Part VII.

[80] The Commission is proposing Rule 17Ab2–2 to establish a process for making determinations regarding clearing agencies involved in activities with a more complex risk profile. *See infra* Part II.C (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part VII (proposed text of Rule 17Ab2–2).

The Commission is also proposing Rule 17Ad–22(a)(16) to define ''security-based swap'' to mean security-based swap as defined in Section 3(a)(68) of the Exchange Act, 15 U.S.C. 78c(a)(68). *See infra* Part VII.

[81] *See* proposed Rule 17ad–22(a)(7), *infra* Part VII.

under the Clearing Supervision Act,[82] they would be covered clearing agencies under proposed Rule 17Ad–22(a)(7) and would be subject to the requirements for covered clearing agencies in proposed Rule 17Ad–22(e). In addition, because ICEEU provides CCP services for security-based swaps and has been deemed registered with the Commission as a security-based swap clearing agency,[83] it would be a complex risk profile clearing agency under proposed Rule 17Ad–22(a)(4) and also subject to the requirements for covered clearing agencies proposed in Rule 17Ad–22(e).

By comparison, CME and ICE would not be subject to the proposed requirements for covered clearing agencies in Rule 17Ad–22(e) because (i) they have been designated as systemically important FMUs under Section 804 of the Clearing Supervision Act; [84] (ii) they are each dually registered with the Commission and the CFTC as a clearing agency and DCO, respectively; and (iii) the CFTC is their supervisory agency under the Clearing Supervision Act.[85] The Commission preliminarily believes that, because CME and ICE would be subject to the CFTC's requirements for systemically important DCOs,[86] applying proposed Rule 17Ad–22(e) to them could impose duplicative requirements. Given the Commission's existing regulatory authority under Section 17A(l) of the Exchange Act,[87] however, CME and ICE would remain subject to the continuing requirements for registered clearing agencies in Rules 17Ad–22(b) through (d).

Two dormant clearing agencies, the Stock Clearing Corporation of Philadelphia (''SCCP'') and the Boston Stock Exchange Clearing Corporation (''BSECC''), have not been designated systemically important by the FSOC and are not involved in activities with a more complex risk profile.[88] Accordingly, each would also remain subject to the requirements in Rules 17Ad–22(b) through (d).

Further, proposed Rule 17Ab2–2 would provide the Commission flexibility to determine that the operations or circumstances of a registered clearing agency, including a registered clearing agency that is exempt from certain requirements applicable to registered clearing agencies generally, warrant designation as a covered clearing agency.[89] It would also provide flexibility to make determinations regarding newly registered clearing agencies.

The Commission preliminarily believes the requirements proposed in Rule 17Ad–22(e) aid the regulation of covered clearing agencies by, as noted above, establishing requirements more closely tailored to the risks they pose to the U.S. securities markets. For example, designated clearing agencies are systemically important because of their significance to the U.S. financial system and the risk that the failure of, or a disruption to, their functioning would increase the risk of significant liquidity or credit problems spreading among financial institutions, thereby threatening the stability of the U.S. financial system.[90] Similarly, the Commission preliminarily believes that complex risk profile clearing agencies, such as those providing CCP services for security-based swaps, subject the U.S. securities markets to a material level of systemic risk due to the nature of the products that they clear.[91] The requirements proposed in Rule 17Ad–22(e) are intended to ensure that covered clearing agencies have robust policies and procedures that help promote sound governance, operations, and risk management.

As noted above,[92] the Commission preliminarily believes that establishing separate rules for covered clearing agencies and registered clearing agencies that are not covered clearing agencies is appropriate given the Commission's goals to facilitate the development of a national system for the prompt and accurate clearance and settlement of securities consistent with Section 17A of the Exchange Act and to mitigate systemic risk consistent with Titles VII and VIII of the Dodd-Frank Act.[93] In this regard, the Commission intends that Rule 17Ad–22(d) would continue to provide minimum requirements for the operation and governance of registered clearing agencies that also facilitate the entrance of new participants, as appropriate, into the market for clearance and settlement services.[94] The Commission preliminarily believes that Rule 17Ad–22(e) would establish new requirements for established participants in the market for clearance and settlement services commensurate to the risks that their size, operation, and importance pose to the U.S. securities markets.[95]

Request for Comments. The Commission generally requests comments on all aspects of the scope of proposed Rule 17Ad–22(e), the relationship between proposed Rule 17Ad–22(e) and Rule 17Ad–22(d), and on proposed Rules 17Ad–22(a)(4), (7), (8), and (9). In addition, the Commission requests comments on the following specific issues:

- Is the scope of proposed Rule 17Ad–22(e) appropriate? Why or why not? Is the scope sufficiently clear? Why or why not? Has the Commission provided sufficient guidance regarding the scope of the proposed rule? Are there aspects of the scope of the proposed rule for which the Commission should consider providing additional guidance? If so, please explain.
- Given that all non-dormant registered clearing agencies would either be covered clearing agencies subject to Commission supervision or be subject to CFTC regulation as designated clearing entities for which the CFTC is the supervisory agency, should the Commission replace the existing requirements under Rule 17Ad–22(d) with the requirements proposed under Rule 17Ad–22(e)? Why or why not?
- Is the Commission's proposed definition of ''financial market utility'' appropriate and sufficiently clear given the proposed requirements? Why or why not? Should the definition be modified? If so, how? Is there an

[82] *See supra* Part I.B.2.

[83] *See supra* note 41 and accompanying text.

[84] *See* 12 U.S.C. 5463.

[85] *See supra* Part I.B.2; *see also* FSOC, 2013 Annual Report, *supra* note 39, at 100.

[86] *See supra* note 41 and accompanying text.

[87] *See* 15 U.S.C. 78q–1(l).

[88] In 2008, NASDAQ OMX Group, Inc. acquired SCCP and BSECC. *See* Exchange Act Release No. 34–58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (order approving acquisition of BSECC); Exchange Act Release No. 34–58180 (July 17, 2008), 73 FR 42890 (July 23, 2008) (order approving acquisition of SCCP).

Both SCCP and BSECC are currently registered with the Commission as clearing agencies but conduct no clearing or settlement activities. *See* Exchange Act Release No. 34–63629 (Jan. 3, 2011), 76 FR 1473 (Jan. 10, 2011); Exchange Act Release No. 34–63268 (Nov. 8, 2010), 75 FR 69730 (Nov. 15, 2010).

[89] *See infra* Parts II.C and VII (discussing determinations under proposed Rule 17Ab2–2 and providing rule text, respectively).

[90] *See supra* note 27 and accompanying text.

[91] *See generally* Gov't Accountability Office, Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps (Mar. 2009), *available at http://www.gao.gov/new.items/d09397t.pdf.*

[92] *See supra* notes 54–61 and accompanying text.

[93] *See supra* notes 2, 13–14, and accompanying text (noting the goals of, respectively, Section 17A of the Exchange Act and the Dodd-Frank Act).

[94] *See supra* note 43 and accompanying text (noting the Commission's intent in adopting Rule 17Ad–22 in the Clearing Agency Standards Release).

[95] *See supra* note 44 and accompanying text (noting further that the requirements adopted under Rule 17Ad–22 constituted an important first step to enhance the substantive regulation of registered clearing agencies pursuant to the Dodd-Frank Act); *see also infra* Part IV.C.1.a (addressing systemic risk in the context of discussing the general economic considerations undertaken by the Commission in proposing Rule 17Ad–22(e)).

alternative definition the Commission should consider?

• Is the Commission's proposed definition of ''designated clearing agency'' appropriate and sufficiently clear given the requirements proposed? Why or why not? Should the definition be modified? If so, how? Is there an alternative definition the Commission should consider?

• Is the Commission's proposed definition of ''clearing agency involved in activities with a more complex risk profile'' appropriate and sufficiently clear given the requirements proposed? Why or why not? Should the definition be modified? If so, how? Is there an alternative definition the Commission should consider?

• Is the Commission's proposed definition of ''covered clearing agency'' appropriate and sufficiently clear given the requirements proposed? Why or why not? Should the definition be modified? If so, how? Is there an alternative definition the Commission should consider?

• Are the requirements in proposed Rule 17Ad–22(e) necessary, or do the existing provisions in Rule 17Ad–22(d) already sufficiently address the issues identified in this release as justification for increased regulation?

2. Role of Written Policies and Procedures

Proposed Rule 17Ad–22(e) would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, fulfill the requirements set forth in paragraphs (e)(1) through (23) of the proposed rule. The Commission preliminarily believes that this approach would facilitate the Commission's supervision of covered clearing agencies, is appropriate given their role as SROs,[96] and is consistent with the approach taken by the Commission elsewhere in Rule 17Ad–22.[97] The Commission preliminarily believes that, by requiring written policies and procedures and, where appropriate, their disclosure, proposed Rule 17Ad–22(e) should help promote the development of improved standards for clearing agencies by allowing market participants to compare certain of the operations of covered clearing agencies with those of other clearing entities, which choose to make their policies and procedures publicly available or are required to do so by equivalent regulatory standards.[98]

The Commission is proposing to require policies and procedures developed by each covered clearing agency to fulfill the requirements of proposed Rule 17Ad–22(e) because the Commission preliminarily believes that it is important to allow covered clearing agencies enough flexibility to use their market experience and understanding of their institutions to shape the rules, policies, and procedures implementing proposed Rule 17Ad–22(e). This proposed approach is consistent with the Commission's established approach for supervising SROs, and the Commission preliminarily believes continuing this practice under Rule 17Ad–22(e) will allow the Commission to continue to perform its supervisory function through the SRO rule filing process under Section 19(b) of the Exchange Act and Rule 19b–4,[99] periodic inspections and examinations, other monitoring of the activities of registered clearing agencies, and other established supervisory processes. Because of the importance the Commission gives to both maintaining clearing agency flexibility and to existing oversight mechanisms, the Commission preliminarily believes that the proposed approach is appropriate.

The Commission anticipates that a covered clearing agency's rules, policies, and procedures will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its members and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a covered clearing agency serves. Accordingly, the Commission preliminarily believes that covered clearing agencies should continually evaluate and make appropriate updates and improvements to their operations and risk management practices to facilitate prompt and accurate clearance and settlement.

3. Frequency of Review Required Under Certain Policies and Procedures

Many of the policies and procedures requirements proposed in Rule 17Ad–22(e) specify a frequency of review. Generally, the proposed regularity of review falls into three categories—daily, monthly, or annually—and is based on the Commission's understanding of the current review practices generally at covered clearing agencies. The Commission's rationale for these differences is as follows:

• *Daily:* For those activities that the Commission understands to be directly related to the day-to-day operations of a covered clearing agency,[100] such as activities related to the calculation and collection of margin, the Commission preliminarily believes that a covered clearing agency should undertake a daily review and make decisions on a daily basis;

• *Monthly:* For those activities that the Commission understands to coincide with and complement the review and reporting cycles of the governance structures related to the risk management function of the covered clearing agency,[101] the Commission preliminarily believes that a covered clearing agency should undertake a monthly review; based on its supervisory experience, the Commission notes that well-functioning risk management committees of the board and similar management committees or other board or management committees commonly meet or receive reports and other risk management information from management on a monthly basis and the monthly requirement would be consistent with such meeting and reporting frequency;

• *Annually:* For those activities that are less integral to day-to-day operations, involve issues that merit review of information collected over longer time periods, or require more high-level review and consideration by, for example, the full board of directors of a clearing agency,[102] the Commission

[96] Registered clearing agencies are SROs as defined in Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26). After a clearing agency has been registered with the Commission, the clearing agency, as an SRO, must submit most proposed rule changes to the Commission, for approval pursuant to Rule 19b–4 under the Exchange Act. A stated policy, practice, or interpretation of an SRO, such as a clearing agency's written policies and procedures, would generally be deemed to be a proposed rule change. *See* 17 CFR 240.19b–4.

[97] *See* Clearing Agency Standards Release, *supra* note 5, at 66228–29 (describing the scope of Rule 17Ad–22 at adoption).

[98] *Compare* proposed Rule 17Ad–22(e)(23), *infra* Part VII (requiring public disclosure of, among other things, a covered clearing agency's rules, policies, and procedures) *with* proposed Reg. HH, *supra* note 53, at 3666–67, 3686–88, 3693 (the Board proposing disclosure requirements intended to be in line with the PFMI Report in Sec. 234.3(a)(23)); DCO Int'l Standards Release, *supra* note 53, at 72493–94, 72521 (CFTC adopting disclosure requirements intended to be in line with the PFMI Report in Sec. 39.37).

[99] *See supra* note 96 (describing requirements for SROs under the Exchange Act and Rule 19b–4).

[100] *See* proposed Rules 17Ad–22(e)(4)(vi)(A); 17Ad–22(e)(6)(ii); 17Ad–22(e)(6)(vi)(A); 17Ad–22(e)(7); 17Ad–22(e)(7)(vi)(A); and 17Ad–22(e)(11)(ii), *infra* Part VII.

[101] *See* proposed Rules 17Ad–22(e)(4)(vi)(B); 17Ad–22(e)(4)(vi)(C); 17Ad–22(e)(6)(vi)(B); 17Ad–22(e)(6)(vi)(C); 17Ad–22(e)(7)(vi)(B); and 17Ad–22(e)(7)(vi)(C), *infra* Part VII.

[102] *See* proposed Rules 17Ad–22(e)(3)(i); 17Ad–22(e)(4)(vii); 17Ad–22(e)(5); 17Ad–22(e)(6)(vii); 17Ad–22(e)(7)(v); 17Ad–22(e)(7)(vii); 17Ad–22(e)(7)(x); 17Ad–22(e)(13)(iii); and 17Ad–22(e)(15)(iii), *infra* Part VII.

preliminarily believes that a covered clearing agency should undertake an annual review; additionally, the Commission preliminary believes that an annual cycle is appropriate in certain instances because other major reviews such as auditing of the financial statements of registered clearing agencies and their disclosure are required to occur on an annual basis.

Request for Comments. The Commission generally requests comments on all aspects of the frequency of review that would be required to be included in a covered clearing agency's policies and procedures under each of the requirements in proposed Rule 17Ad–22(e). In addition, the Commission requests comments on whether its assessment of daily, monthly, and annual activities at covered clearing agencies is accurate and appropriate given the proposed rules. The Commission also requests comment on what factors should be considered in determining the nature, timing, and extent of the required reviews and whether other frequencies of review might be appropriate under some or all of the proposed rules.

4. Anticipated Impact of Proposed Rule 17Ad–22(e)

Based on the Commission's experience supervising registered clearing agencies, and given the current requirements applicable to registered clearing agencies under Rule 17Ad–22, the Commission preliminarily anticipates that the degree of changes that covered clearing agencies may need to make to their policies and procedures to satisfy the proposed requirements of Rule 17Ad–22(e) would vary among the particular provisions of the proposed rule and depend in part on the business model and operations of the clearing agency itself, as discussed below. The Commission preliminarily believes that, for the provisions in its proposal where a similar existing requirement has been identified, covered clearing agencies may need to make only limited changes to update their policies and procedures, and the table below provides summary information regarding the Commission's preliminary assessment of the impact of the proposed rules:

Proposed requirement	Existing requirement
Rule 17Ad–22(e)(1) ..	Rule 17Ad–22(d)(1).
Rule 17Ad–22(e)(2) ..	Rule 17Ad–22(d)(8).
Rule 17Ad–22(e)(3) ..	None.
Rule 17Ad–22(e)(4) ..	Rules 17Ad–22(b)(1), (b)(3), (d)(14) [103].
Rule 17Ad–22(e)(5) ..	None.
Rule 17Ad–22(e)(6) ..	Rule 17Ad–22(b)(2), (b)(4) [104].
Rule 17Ad–22(e)(7) ..	None.
Rule 17Ad–22(e)(8) ..	Rules 17Ad–22(d)(12).
Rule 17Ad–22(e)(9) ..	Rule 17Ad–22(d)(5).
Rule 17Ad–22(e)(10)	Rule 17Ad–22(d)(15).
Rule 17Ad–22(e)(11)	Rule 17Ad–22(d)(10).
Rule 17Ad–22(e)(12)	Rule 17Ad–22(d)(13).
Rule 17Ad–22(e)(13)	Rule 17Ad–22(d)(11).
Rule 17Ad–22(e)(14)	None.
Rule 17Ad–22(e)(15)	None.
Rule 17Ad–22(e)(16)	Rule 17Ad–22(d)(3).
Rule 17Ad–22(e)(17)	Rule 17Ad–22(d)(4).
Rule 17Ad–22(e)(18)	Rules 17Ad–22(b)(5) through (7), (d)(2).
Rule 17Ad–22(e)(19)	None.
Rule 17Ad–22(e)(20)	Rule 17Ad–22(d)(7).
Rule 17Ad–22(e)(21)	Rule 17Ad–22(d)(6).
Rule 17Ad–22(e)(22)	None.
Rule 17Ad–22(e)(23)	Rule 17Ad–22(d)(9).

With respect to the provisions in its proposal where no similar existing requirement has been identified, the Commission preliminarily anticipates that covered clearing agencies may need to make more extensive changes to their policies and procedures (or implement new policies and procedures), and may need to take other steps, to satisfy the proposed requirements of Rule 17Ad–22(e).

For further discussion of the anticipated impact and costs and benefits of proposed Rule 17Ad–22(e), see Part IV.C.

5. General Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e) and on all aspects of the definitions included in proposed Rule 17Ad–22(a), as discussed in more detail in Part II.B.[105] In addition, the Commission requests comments on the following issues:

- Is each aspect of proposed Rules 17Ad–22(e)(1) through (23), including any terms used therein, sufficiently clear given the proposed requirements? Why or why not? Has the Commission provided sufficient guidance as to the meaning of each provision of the proposed rules? Are there aspects of the proposed rules for which the Commission should consider providing additional guidance? If so, please explain.
- Are the Commission's definitions in proposed Rule 17Ad–22(a) accurate, appropriate, and sufficiently clear? Why or why not? Should the definitions be modified? If so, how? Should the Commission adopt alternative definitions than those proposed? Are there additional terms used in Rule 17Ad–22(e) that should be defined? Please explain.
- Is the Commission's use of certain terms it believes to be commonly understood (*e.g.,* ''high degree of confidence'' or ''due diligence'') appropriate and accurate? Why or why not?
- Would the proposed rules require covered clearing agencies to change their current practices? If so, how? What are the expected costs and benefits to covered clearing agencies in connection with adding or revising their current practices with respect to the implementation of the Commission's proposed rules? [106]
- Should the Commission consider an alternative approach with respect to written policies and procedures included in the proposed rules? Why or why not? If so, what alternative approaches should the Commission consider? Please explain in detail.
- Should the Commission's proposed rules be less or more prescriptive? Why or why not? If so, what alternative approaches should the Commission consider? Please explain in detail.
- Are there any other factors that the Commission should take into consideration with respect to the requirements of the proposed rules?
- Should there be a phase-in period with respect to any of the requirements of proposed Rule 17Ad–22(e)? If so, what should the phase-in periods be? What facts and circumstances should the Commission consider in evaluating whether to adopt a potential phase-in period? Please explain in detail.
- Could the proposed rules affect the ability of covered clearing agencies to compete for certain types of business

[103] The Commission notes that requirements under Rules 17Ad–22(b) apply only to registered clearing agencies that provide CCP services, the ''cover two'' requirement under Rule 17Ad–22(b)(3) applies only to registered clearing agencies that provide CCP services for security-based swaps, and requirements under Rule 17Ad–22(d)(14) apply only to registered clearing agencies that provide CSD services. *See infra* Part II.B.4 (discussing, among other things, the relationship between existing requirements under Rule 17Ad–22 and proposed Rule 17Ad–22(e)(4)); *see also* 17 CFR 240.17Ad–22; Clearing Agency Standards Release, *supra* note 5.

[104] The Commission notes that the relevant requirement in Rule 17Ad–22(b)(4) concerns policies and procedures regarding an annual model validation for margin models while proposed Rule 17Ad–22(e)(6) would impose, in addition to requiring policies and procedures regarding an annual model validation for margin models, additional requirements that do not appear in Rule 17Ad–22(b)(4). *See infra* Part II.B.4.e (discussing the requirements under proposed Rule 17Ad–22(e)(6)).

[105] Part II.B also contains additional requests for comments on each proposed rule regarding particular issues specific to each proposed rule.

[106] For a complete discussion of the anticipated economic effect of the proposed rules, see Part IV.

either within the United States or internationally? If so, how? Please provide specific examples and data.

• Are there significant operational or legal impediments to implementing the proposed rules? Would the proposed rules impact the ability of covered clearing agencies to clear certain products? Are any additional rules or regulations needed to facilitate compliance with the proposed rules?

• Are there any requirements under existing Rule 17Ad–22 that could be viewed as being consistent with the PFMI standards without being supplemented or replaced by new requirements in proposed Rule 17Ad–22(e)? Please explain in detail.

B. Proposed Rule 17Ad–22(e)

1. Proposed Rule 17Ad–22(e)(1): Legal Risk

Proposed Rule 17Ad–22(e)(1) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[107] Rule 17Ad–22(d)(1) currently requires a registered clearing agency's policies and procedures to meet substantially the same requirement.[108] Because the requirements under Rule 17Ad–22(d)(1) and proposed Rule 17Ad–22(e)(1) are substantially the same, the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with the proposed rule.[109]

Consistent with the Exchange Act requirements discussed above,[110] the Commission is proposing Rule 17Ad–22(e)(1) to require that a covered clearing agency have a legal basis for each aspect of its activities in all relevant jurisdictions. The legal framework for a particular clearing agency may cover a broad array of areas and issues, in particular including but not limited to its (i) organizational and governance documents, such as its charter, bylaws, and any charters for board and management committees;[111] (ii) rules, policies, and procedures,[112] including those regarding settlement finality, netting,[113] default of a member, margin, collateral,[114] payments, obligations to the participant or default fund, eligibility and participation requirements for members, and recovery and wind-down plans; (iii) contracts (notably including with service providers, settlement banks and liquidity providers); (vi) its use of novation or similar legal devices;[115] and (vii) service restrictions that may be imposed on participants such as restrictions on activities or access.

In addition, the Commission is proposing to add Rule 17Ad–22(a)(20) to define ''transparent'' to mean, for proposed Rules 17Ad–22(e)(1), (2), and (10), that relevant documentation is disclosed, as appropriate, to the Commission and other relevant authorities, clearing members and customers of clearing members, the owners of the covered clearing agency, and the public, to the extent consistent with other statutory and Commission requirements.[116] In proposing this definition, the Commission recognizes that certain types of information, such as confidential information, may not be appropriate for public disclosure or disclosure to certain third parties. Confidential information might include, for instance, policies and procedures with respect to the security of information technology or other critical systems or governance arrangements relating to the creation of special advisory committees by the board of directors. With regard to public disclosures contemplated by proposed Rule 17Ad–22(a)(20), a covered clearing agency could comply with the proposed requirement by posting the relevant documentation to a covered clearing agency's Web site. The Commission preliminarily believes that these disclosures would support a participant's ability to evaluate the risks associated with participating in the covered clearing agency. For example, disclosures that facilitate market participants' understanding of the legal basis for a covered clearing agency's activities and its governance arrangements may encourage participation in the covered clearing agency (with respect to prospective clearing members) and may encourage trading in the United States that would result in clearance and settlement through the covered clearing agency (with respect to prospective investors).

As was the case when the Commission considered Rule 17Ad–22(d)(1), where a clearing agency is faced with significant uncertainty regarding legal risk, the Commission preliminary believes this uncertainty may undermine a covered clearing agency's ability to provide prompt and accurate clearance and settlement, to safeguard securities and funds and to provide fair procedures, as required under Section 17A of the Exchange Act. For example, where a covered clearing

[107] *See* proposed Rule 17Ad–22(e)(1), *infra* Part VII.

The Commission preliminarily believes that (i) the United States is the relevant jurisdiction for covered clearing agencies that perform the functions of a clearing agency in the United States for purposes of Rule 17Ad–22(e)(1), and (ii) that covered clearing agencies operating in multiple jurisdictions would be required to address any conflicts of laws issues that they may encounter.

[108] Rule 17Ad–22(d)(1) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions. *See* 17 CFR 240.17Ad–22(d)(1); *see also* Clearing Agency Standards Release, *supra* note 5, at 66245–46.

[109] *See supra* Part II.A.4.

[110] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[111] The role of governance arrangements in promoting effective risk management has also been a focus of rules proposed by the Commission to mitigate conflicts of interest at certain registered clearing agencies. *See* Exchange Act Release No. 34–64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing Rule 17Ad–23 to address conflicts of interest and Rule 17Ad–26 to require standards for board members or board committee directors at registered clearing agencies); Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881, 65893 (Oct. 26, 2010) (proposing Regulation MC to mitigate conflicts of interest at security-based swap clearing agencies).

[112] *See supra* note 96 (describing the requirements in Section 19(b) of the Exchange Act).

[113] Netting offsets obligations between or among participants in the netting arrangement, thereby reducing the number and value of payments or deliveries needed to settle a set of transactions. Netting can reduce potential losses in the event of a participant default and may reduce the probability of a default. Netting arrangements can differ as to both timing and the parties to the arrangement: (i) Certain netting arrangements net payments or other contractual obligations resulting from market trades (or both) on a continuous basis, while others close-out payments or obligations when an event such as insolvency occurs; and (ii) netting arrangement may net obligations bilaterally among two parties or multilaterally among multiple parties.

[114] Collateral arrangements may involve either a pledge or a title transfer. Therefore, regarding pledged assets, a covered clearing agency would examine the degree of legal certainty that a pledge has been validly created in the relevant jurisdiction and, as appropriate, validly perfected. Regarding transfer of title to assets, a covered clearing agency would examine the degree of legal certainty that the transfer is validly created in the relevant jurisdiction and will be enforced.

[115] Novation enables a clearing agency to act as a CCP. In novation, the original contract between the buyer and seller is discharged and two new contracts are created, one between the CCP and the buyer and the other between the CCP and the seller. The CCP thereby assumes the original parties' contractual obligations to each other. Legal certainty regarding novation may reinforce market participants' confidence regarding CCP support for or guarantee of the transaction.

[116] *See* proposed Rule 17Ad–22(a)(20), *infra* Part VII; *see also* Parts II.B.2 and 7 (discussing proposed Rules 17Ad–22(e)(2) and (10), respectively).

Separately, the Commission has proposed rules to require policies and procedures to protect the confidentiality of trading information and procedures. *See* Exchange Act Release No. 34–64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing Rule 17Ad–23).

agency's procedures addressing a participant default and establishing a security interest in collateral lack clarity or there is significant uncertainty regarding enforceability, there is a risk the clearing agency may face claims to void, stay or reverse its actions, which could be made by a bankruptcy trustee or other type of receiver in an insolvency of a participant, undermining the clearing agency's ability to safeguard securities and funds. As a similar example, if covered clearing agency netting activities are voided or reversed on legal grounds, which could involve a participant's insolvency, clearing and settlement could be disrupted as participant accounts are rebalanced. Also, for example, if a covered clearing agency's plan for recovery and wind-down is subject to legal uncertainty, the covered clearing agency or governmental authorities may be delayed in or prevented from taking appropriate actions, resulting in disorder that may undermine the provision of prompt and accurate clearance and settlement.[117]

Therefore, like Rule 17Ad–22(d)(1), the Commission preliminarily believes that proposed Rule 17Ad–22(e)(1) would support the effectiveness of a covered clearing agency's risk management procedures in two ways. First, by imposing requirements addressing legal risk, it would continue to promote effective risk management at covered clearing agencies. Second, the proposed rule would reinforce covered clearing agency policies and procedures regarding risks other than legal risk, including, among others, credit, liquidity, operational, and general business risk.[118]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(1) and proposed Rule 17Ad–22(a)(20). In addition, the Commission requests comments on the following specific issues:

- Should the proposed rule include more specific requirements based on the type of business or the types of services offered by covered clearing agencies and/or whether the covered clearing agency operates in multiple jurisdictions? If so, are there any considerations, such as those concerning compliance with regulations in other jurisdictions, the Commission should take into account for covered clearing agencies operating in multiple jurisdictions?
- Should the Commission adopt more prescriptive or less prescriptive rules to define how covered clearing agencies would provide for a well-founded, clear, transparent, and enforceable legal basis? Why or why not? If so, what would those rules be?
- Should the Commission require a covered clearing agency to maintain documentation to demonstrate the legal adequacy of the mechanisms at the clearing agency that are in place to handle participant defaults? If so, what kinds of documentation should the Commission require?
- In proposing Rule 17Ad–22(a)(20), has the Commission taken the right approach with respect to requiring public disclosures? Why or why not? Should the Commission adopt rules that would require either more or less disclosure? Why or why not?
- What should be the minimum level of public disclosure required of a covered clearing agency? What information should a covered clearing agency be permitted to withhold? What form should that disclosure take? What content should be required? Please explain in detail.

2. Proposed Rule 17Ad–22(e)(2): Governance

Proposed Rule 17Ad–22(e)(2)(i) through (iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements in Section 17A of the Exchange Act and the objectives of owners and participants.[119] The proposed rule contains requirements similar to those currently applicable to registered clearing agencies under Rule 17Ad–22(d)(8), but the proposed rule also requires that a covered clearing agency's policies and procedures provide for governance arrangements that clearly prioritize the safety and efficiency of the covered clearing agency.[120]

Governance arrangements are critical to the sound operation of SROs, including covered clearing agencies.[121] The Exchange Act explicitly conditions clearing agency registration on a clearing agency having rules that (i) assure a fair representation of shareholders or members and participants in the selection of its directors and administration of affairs, (ii) facilitate prompt and accurate clearance and settlement, (iii) protect investors and the public interest, (iv) do not permit unfair discrimination in the use of the clearing agency by participants and (v) provide certain fair procedures regarding participants and other interested parties.[122] Accordingly, the proper functioning of registered clearing agencies pursuant to the requirements of the Exchange Act is premised on the existence of a well-organized and operating governance function.

Consistent with these requirements and the Exchange Act requirements discussed above,[123] the Commission preliminarily believes that the governance requirements proposed in Rule 17Ad–22(e)(2) are appropriate because governance arrangements are fundamental to the functioning of a covered clearing agency pursuant to Section 17A of the Exchange Act.[124] Consistent with the Commission's statutory mandate under the Exchange Act, the proposed rule would specify that governance arrangements also be consistent with the public interest requirements in Section 17A of the Exchange Act as applicable to clearing agencies. Because a covered clearing agency's decisions can have widespread impact, affecting multiple market participants, financial institutions, markets, and jurisdictions, the Commission preliminarily believes it is important that each covered clearing agency place a high priority on the safety and efficiency of its operations and explicitly support the objectives of owners and participants. In addition, supporting the public interest is a broad

[117] Issues addressed in such wind-down plans may include termination, netting, and the transfer of securities positions and assets.

[118] *Cf.* PFMI Report, *supra* note 1, at 21–25 (discussing Principle 1, legal basis).

[119] *See* proposed Rule 17Ad–22(e)(2), *infra* Part VII. Proposed Rule 17Ad–22(e)(2) would complement other requirements that may apply separately, including requirements in proposed Rules 17Ad–25 and 17Ad–26, and requirements for security-based swap clearing agencies under Section 765 of the Dodd-Frank Act, 12 U.S.C. 8343. *See supra* note 111 (noting rules proposed by the Commission to address potential conflicts of interest).

[120] Specifically, Rule 17Ad–22(d)(8) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures. *See* 17 CFR 240.17Ad–22(d)(8); *see also* Clearing Agency Standards Release, *supra* note 5, at 66251–52.

[121] *See supra* Part I.A and note 96 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[122] *See* 15 U.S.C. 78q–1(a)(3)(F), (H).

[123] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[124] *See* 15 U.S.C. 78q–1(a)(2)(A).

concept that includes, for example, contributing to the ongoing development of the U.S. financial system, in particular the national clearance and settlement system contemplated by Section 17A of the Exchange Act, and protecting investors and fostering fair and efficient markets. The Commission believes that, by supporting the public interest, market participants can develop common processes that help reduce uncertainty in the market, such as industry standards and market protocols related to clearance and settlement that facilitate a common understanding and interactions among clearing agencies and their members. The Commission preliminarily believes that covered clearing agencies, as SROs, are appropriately positioned to determine, based on their experience in providing clearance and settlement services and based on information obtained from their members and other stakeholders, as appropriate in the circumstances, what governance arrangements appropriately support the public interest requirements in Section 17A applicable to clearing agencies consistent with the expectations of such stakeholders,[125] balancing the potentially competing viewpoints of the various stakeholders. The Commission also preliminarily believes that mechanisms through which a covered clearing agency could support the objectives of owners and participants could potentially include representation on the board of directors, user committees, and various public consultation processes.

As with Rule 17Ad–22(d)(8), the Commission preliminarily believes that requiring policies and procedures for clear and transparent governance arrangements support accountability in the decisions, rules, policies, and procedures of the covered clearing agency. Such policies and procedures requirements for governance arrangements provide owners, participants, and, if applicable, general members of the public, with an opportunity to comment on or otherwise provide input to governance arrangements and, in turn, provide a covered clearing agency with the opportunity to balance the potentially competing viewpoints of various stakeholders in its decision making.[126] Similarly, these policies and procedures requirements for governance arrangements may promote the effectiveness of a covered clearing agency's risk management procedures by fostering a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement.[127]

In addition, proposed Rule 17Ad–22(e)(2)(iv) would require that the covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements establishing that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[128] The Commission preliminarily believes that these aspects of a covered clearing agency's governance framework are particularly important and that establishing requirements in these areas would be appropriate given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.[129]

The Commission preliminarily believes that directors serving on the board and board committees of a clearing agency play an important role in creating a framework that supports prompt and accurate clearance and settlement because of their role in the decision-making process within a clearing agency. Additionally, the Commission preliminarily believes that a covered clearing agency's senior management has an important role in ensuring, under the board's direction, that the clearing agency's activities are consistent with the objectives, strategy, and risk tolerance of the clearing agency, as determined by the board. Accordingly, the expertise and skills of senior management and directors serving on the board of a covered clearing agency are likely to affect its effective operation. For example, a lack of expertise by board members may deter them from challenging decisions by management and lessen the potential that management would escalate appropriate issues to the board for the board's consideration. Similarly, board members and management should not have conflicts of interests that could undermine the decision-making process within a covered clearing agency or interfere with fair representation and equitable treatment of clearing members or other market participants by a covered clearing agency.

The Commission believes that covered clearing agencies are well positioned to determine which individuals would have the appropriate experience, skills, incentives and integrity to discharge their duties and responsibilities that reflect the particular characteristics of each covered clearing agency. Accordingly, the Commission preliminarily believes that the proposed requirement for policies and procedures would provide the covered clearing agency with a process to evaluate the expertise and skills of board members and senior management, consistent with the particular circumstances of the covered clearing agency. Such policies and procedures may include provisions requiring the covered clearing agency to consider, for example, the specific qualifications, experience, competence, character, skills, incentives, integrity or other relevant attributes to support a conclusion that an individual nominee can appropriately serve as a board member or on senior management. Such policies and procedures could also include, among other things, requirements as to industry experience relevant to the services provided by the covered clearing agency, educational background, the absence of a criminal or disciplinary record, or other factors relevant to the qualifications of nominees being considered.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(2). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to provide for governance arrangements that prioritize the safety and efficiency of the covered clearing agency? Why or why not?
- The Commission is not proposing at this time to require a covered clearing agency's policies and procedures provide for governance arrangements that also support the objectives of participants' customers, securities issuers and holders, and other stakeholders. Should the Commission consider such a requirement? Why or why not? Are existing protections under the Exchange Act, such as those in Section 17A(b)(3)(H) (requiring clearing agency rules to provide fair procedures to persons with respect to access to services offered by the clearing

[125] *See supra* note 95 (describing requirements for SROs under the Exchange Act and Rule 19b–4).

[126] *See id.*

[127] *See supra* note 111 (discussing rules proposed by the Commission to mitigate conflicts of interest at clearing agencies as part of efforts to promote sound risk management and governance arrangements).

[128] *See* proposed Rule 17Ad–22(e)(2), *infra* Part VII.

[129] For a discussion of current practices at registered clearing agencies regarding boards of directors and senior management, and the anticipated impact of the proposed requirements for governance, see Parts IV.B.3.a.ii and IV.C.3.a.ii, respectively.

agency),[130] Section 17A(b)(5)(B) (establishing requirements for clearing agencies when determining whether a person may be prohibited or limited with respect to services offered),[131] and Section 19(d)(2) (persons aggrieved by SRO actions may apply to the Commission for review) [132] already satisfactory or would additional Commission governance requirements also be appropriate? What would be the possible advantages and disadvantages of expanding the scope of proposed Rule 17Ad–22(e)(2)(iii) to require covered clearing agency policies and procedures to consider the interests of persons other than owners and participants?

• Should the Commission require a covered clearing agency's policies and procedures to provide for governance arrangements establishing that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities? Why or why not? Has the Commission provided sufficient guidance on what ''experience and skills'' would require? Why or why not?

• Are there any other requirements that should be included in the rule to promote clear and transparent governance arrangements?

• The Commission is not proposing at this time to require a covered clearing agency's policies and procedures provide for governance arrangements to ensure that lines of responsibility and accountability at the covered clearing agency are clear and direct. Should the Commission consider such a requirement? Why or why not?

• The Commission is not proposing at this time to require a covered clearing agency's policies and procedures provide for governance arrangements that ensure major decisions of the board of directors are disclosed to the public. Should the Commission consider such a requirement? Why or why not?

• Should there be a phase-in period for covered clearing agencies to comply with proposed Rule 17Ad–22(e)(2), such as until the next annual meeting of shareholders of the covered clearing agency or other time period? Why or why not?

• Are the governance requirements in proposed Rule 17Ad–22(e)(2) necessary to achieve the benefits discussed in Part IV.C.3.a.ii? Why or why not? For example, how and why would particular features of the proposed rules, such as expectations that directors and officers of covered clearing agencies have certain skills and experience, contribute to greater market stability and reduced risk of insufficient internal controls endangering broader financial stability? Are there existing requirements under Section 17A of the Exchange Act, such as the ''fair representation'' requirement in Section 17A(b)(3)(C), rules and regulations adopted by the Commission and applicable to SROs, or relevant interpretations published by the Commission that already provide a clear and sufficient basis for the Commission to supervise covered clearing agencies in the manner contemplated by proposed Rule 17Ad–22(e)(2) without adopting the proposed rule? What are the possible benefits of adopting the rule as proposed and what possible detriments may arise that the Commission should consider?

• Are there disclosures that a covered clearing agency should be required to make with respect to its governance arrangements? Why or why not? If so, what should be the form and content of those disclosures?

• Should the Commission require that the performance of the board of directors and senior management—individually and as a group—are reviewed on a regular basis? If so, how often should this review be conducted? Should this review be conducted independently?

• Should the board of directors of covered clearing agencies include individuals who are not executives, officers, or employees of the covered clearing agency, or an affiliate of the covered clearing agency? Should the board of directors of covered clearing agencies include an independent audit committee?

• Should the Commission be involved in and/or set requirements and standards with respect to board and management governance at covered clearing agencies? Does the Commission have the requisite statutory authority to adopt the rule proposals and matters addressed in the related questions set forth in this release as to governance arrangements, standards, composition, and qualifications of covered clearing agencies' boards and management? Is the Commission's oversight and establishment of corporate governance measures and standards at clearing agencies a proper and good use of Commission resources? What are the potential costs and benefits of these corporate governance provisions?

3. Proposed Rule 17Ad–22(e)(3): Framework for the Comprehensive Management of Risks

Proposed Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.[133]

Existing Rules 17Ad–22(b) and (d) require registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to meet several requirements that address risk management practices by registered clearing agencies that provide CCP services (Rules 17Ad–22(b)(1) through (4)), certain requirements regarding access to registered clearing agencies that provide CCP services (Rules 17Ad–22(b)(5) through (7)), and certain minimum standards for the operations of registered clearing agencies providing CCP or CSD services.[134] Consistent with these requirements and the Exchange Act requirements discussed above, [135] the Commission preliminarily believes that proposed Rule 17Ad–22(e)(3) is appropriate and would require a covered clearing agency's policies and procedures to take a broader, more comprehensive approach to risk management, which the Commission believes is fundamental to a covered clearing agency's functioning given its size, operation, and importance in the U.S. securities markets. While existing rules under the Exchange Act already target certain aspects of risk management, the Commission preliminarily believes that comprehensive risk management policies and procedures established pursuant to proposed Rule 17Ad–22(e)(3) would further support the examination of risks, the assessment of their probability and impact, and the

[130] *See* 15 U.S.C. 78q–1(b)(3)(H).

[131] *See* 15 U.S.C. 78q–1(b)(5)(B).

[132] *See* 15 U.S.C. 78s(d)(2).

[133] *See* proposed Rule 17Ad–22(e)(3), *infra* Part VII.

[134] *See* 17 CFR 240.17Ad–22(b), (d); *see also* Clearing Agency Standards Release, *supra* note 5, at 66230–43, 66244–58. Specifically, as examples, Rule 17Ad–22(d)(4) requires a registered clearing agency to have policies and procedures reasonably designed to address certain aspects of operational risk, and Rule 17Ad–22(d)(7) requires a registered clearing agency to have policies and procedures reasonably designed to address certain aspects of risks relating to linkages. *See* 17 CFR 240.17Ad–22(d)(4), (7).

[135] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

identification of linkages to other entities that in turn pose risks to the covered clearing agency. The Commission also believes that comprehensive risk management policies and procedures would facilitate the development of mechanisms to better prioritize, manage, and monitor risks, and to measure the covered clearing agency's risk tolerance and capacity. In proposing Rule 17Ad–22(e)(3), the Commission is emphasizing a comprehensive approach to risk management that would require risk management policies and procedures be designed holistically, be consistent with each other, and work effectively together in order to mitigate the risk of financial losses to covered clearing agencies' members and participants in the markets they serve.

In addition, policies and procedures for the comprehensive management of risks have the potential to play an important role in making sure that covered clearing agencies better fulfill the Exchange Act requirements that the rules of a clearing agency be designed to protect investors and the public interest.[136] Similarly, these requirements may promote the effectiveness of a covered clearing agency's risk management procedures by fostering a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement. Accordingly, the Commission preliminarily believes that it is important that covered clearing agencies have policies and procedures that enable them to identify, monitor, and manage the range of risks that arise in or are borne by all aspects of their clearance and settlement activities.

In addition, the Commission is proposing the requirements described below, which do not appear in existing Rules 17Ad–22(b) or (d). The Commission preliminarily believes these requirements would be appropriate for covered clearing agencies given the risks that their size, operation, and importance pose to the U.S. securities markets.

a. Policies and Procedures Requirements, Periodic Review, and Annual Board Approval

Proposed Rule 17Ad–22(e)(3)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, and subject them to review on a specified periodic basis and approval by the board of directors annually.[137]

The Commission preliminarily believes periodic review of the risk management policies and procedures would allow covered clearing agencies to assess whether the risk management policies and procedures should be updated to account for changing factors in the market and to address and codify in a uniform way the approach to new risks taken since the last periodic review. The Commission preliminarily believes that the board of directors of a covered clearing agency should be required to approve the risk management policies and procedures. The Commission preliminarily believes that, in complying with this requirement, a board of directors may want to subject all material components of the covered clearing agency's risk management policies and procedures to review pursuant to Rule 17Ad–22(e)(3)(i) due to the critical role that risk management plays in promoting prompt and accurate clearance and settlement.

b. Recovery and Orderly Wind-Down Plans

Proposed Rule 17Ad–22(e)(3)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it establishes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[138]

Securities exchanges, market participants, and investors rely upon the safe, sound, and efficient operations of covered clearing agencies, and accordingly the Commission preliminarily believes that a disorderly wind-down of a covered clearing agency would have systemic consequences.[139] The Commission preliminarily believes that a recovery plan designed to deal with possible scenarios that may threaten or potentially prevent a covered clearing agency from being able to provide its critical operations and services as a going concern and that assesses a full range of options for recovery could mitigate the impact of a near failure of a covered clearing agency.

Based on its supervisory experience, the Commission recognizes that covered clearing agencies operating in the market today each have relevant standards and practices relating to recovery and orderly wind-down with differing degrees of formality. The Commission therefore preliminarily expects that Rule 17Ad–22(e)(3)(ii) would require covered clearing agencies to review such standards and practices for sufficiency with respect to the safe operation of the covered clearing agency and revise such practices in a manner consistent with the findings of such review consistent with the proposed rule, if adopted, and the requirements of the Exchange Act.

c. Risk Management and Internal Audit

Proposed Rule 17Ad–22(e)(3)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors. The Commission preliminarily believes that a covered clearing agency could satisfy the policies and procedures requirement for independence from management by, for example, providing reporting lines for risk management functions that are clear and separate from those for other operations and providing for direct reporting to the board of directors or a relevant committee of the board. In that regard, proposed Rule 17Ad–22(e)(3)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with oversight by and a direct reporting line to a risk management committee and an audit committee of the board of directors, respectively. Furthermore, proposed Rule 17A–22(e)(3)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an independent audit committee.

The Commission preliminarily believes that a covered clearing agency should have an effective internal audit function in order to provide, among other things, a rigorous and independent assessment of the effectiveness of the clearing agency's

[136] *See* 15 U.S.C. 78q–1(a)(2).

[137] *See id.*

[138] *See* proposed Rule 17Ad–22(e)(3), *infra* Part VII.

[139] *See generally* Clearing Agency Standards Release, *supra* note 5, at 66283 (noting, in discussing Rule 17Ad–22(d)(11), that having policies and procedures ''allow[s] a clearing agency to wind down positions in an orderly way and continue to perform its obligations in the event of a participant default, assuring continued functioning of the securities market in times of stress and reducing systemic risk'').

risk management and control processes, and should have an independent audit committee overseeing the internal audit function in order to help promote the integrity and efficiency of the audit process and strengthen internal controls. In order to satisfy the independence requirement for an audit committee under proposed Rule 17Ad–22(e)(2), a covered clearing agency could use such independence criteria as are established by its board of directors. The Commission further preliminarily believes that policies and procedures for risk management are important to the effective operation of a covered clearing agency.

d. Request for Comments

The Commission generally requests comments on all aspects of Proposed Rule 17Ad–22(e)(3). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses? Why or why not?
- How and to whom should the board of directors communicate the results of its review of the risk management framework, if at all?
- Are there any other requirements that should be included in the rule to facilitate policies and procedures that maintain a sound risk management framework, including the proposed requirements for policies and procedures regarding board review and approval of risk management policies and policies and procedures with respect to recovery and orderly wind-down plans? Why or why not? For example, should the Commission require a covered clearing agency's policies and procedures to identify, measure, monitor, and manage the material risks that it poses to other entities, such as other financial market utilities, settlement banks, liquidity providers, or service providers, as a result of interdependencies? Why or why not?
- The Commission is not proposing at this time to require a covered clearing agency's policies and procedures to, in its comprehensive risk management framework, provide for criteria for the independence of audit committee members. Should the Commission consider requirements that specify such criteria? Why or why not? If so, should those criteria be similar to the audit committee independence requirements for listed companies in Rule 10A–3 under the Exchange Act? [140] In order to satisfy the policies and procedures requirement for independence of the audit committee under proposed Rule 17Ad–22(e)(3), should a covered clearing agency be allowed to use such independence criteria as are established by its board of directors?

4. Proposed Rules 17Ad–22(e)(4) through (7): Financial Risk Management

a. Overview of Financial Risks Faced by Clearing Agencies

Covered clearing agencies face a variety of financial risks from their participants and service providers, including credit or counterparty default risk, market risk, and liquidity risk. For example, for clearing agencies that provide CSD services, credit risk arises from the potential that a participant will not pay what it owes for securities that it has purchased or will not deliver securities that it has sold. For clearing agencies that clear and settle derivatives contracts, credit risk arises from the potential that a participant will not meet its margin or settlement obligations or pay any other amounts owed to the covered clearing agency.[141] Credit risk also arises for clearing agencies of any type from commercial banks or custodians that the covered clearing agency uses to effect money transfers among participants, to hold overnight deposits, or to safeguard cash or other collateral.

Clearing agencies that provide CCP services take offsetting positions as the substituted counterparty to a transaction and, therefore, do not ordinarily face market risk except in the event of a participant default. In such an event, market risk takes two forms. First, the clearing agency may need to liquidate collateral posted by the defaulting participant. The clearing agency is therefore exposed to volatility in the market price of the defaulting participant's non-cash collateral that could result in the clearing agency having insufficient financial resources to cover the losses in the defaulting participant's open positions. Second, a clearing agency providing CCP services is subject to volatility in the market price of the defaulting participant's open positions during the interval between the point at which the clearing agency takes control of those positions and the point at which the clearing agency is able to offset, transfer, or liquidate those positions. A clearing agency faces the risk that its exposure to a participant can change as a result of a change in prices, positions, or both.

A clearing agency must be able to measure the counterparty credit exposures that it is expected to manage effectively. A clearing agency can ascertain its current credit exposure to each participant by marking each participant's outstanding positions to current market prices and (to the extent permitted by a clearing agency's rules and supported by law) netting any gains against any losses.

In addition to credit risk and market risk, clearing agencies also face liquidity or funding risk. Currently, to complete the settlement process, clearing agencies generally rely on incoming payments from participants in net debit positions in order to make payments to participants in net credit positions. If a participant does not have sufficient funds to make an incoming payment immediately when it is due (even though it may be able to pay at some future time), or if a settlement bank is unable to make an incoming payment on behalf of a participant, the clearing agency faces a funding shortfall. A clearing agency typically holds additional financial resources to cover potential funding shortfalls such as margin collateral or lines of credit. However, if collateral cannot be liquidated within a short time, or if lines of credit are unavailable, liquidity risk would be exacerbated.

b. Current Financial Risk Management Requirements for CCPs

Rules 17Ad–22(b)(1) through (4) concern risk management requirements for clearing agencies that perform CCP services (hereinafter ''CCPs'' in this part). Rule 17Ad–22(b)(1) requires that CCPs establish, implement, maintain and enforce written policies and procedures reasonably designed to measure their credit exposures at least once per day.[142] Rule 17Ad–22(b)(2) requires that CCPs establish, implement, maintain and enforce written policies

[140] *See* 17 CFR 240.10A–3.

[141] In this context, the clearing agency's credit risk is closely related to the participant's market risk. A participant's ability to meet its obligations to the clearing agency may be affected by the participant's exposure to fluctuations in the market value of the participant's open positions. In addition, fluctuations in the market value of the collateral posted by the participant may require the clearing agency to obtain additional margin from the participant.

[142] *See* 17 CFR 240.17Ad–22(b)(1).

and procedures reasonably designed to use margin requirements to limit their exposures to participants.[143] This margin can also be used to reduce a CCP's losses in the event of a participant default. Rule 17Ad–22(b)(3) requires that CCPs establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which a CCP has the largest exposure in extreme but plausible market conditions, except that CCPs clearing security-based swap transactions must maintain additional financial resources sufficient to withstand the simultaneous default by the two participant families to which a CCP has the largest exposures.[144] Finally, Rule 17Ad–22(b)(4) requires that CCPs establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation that consists of evaluating the performance of a clearing agency's margin models and the related parameters and assumptions associated with such models and that is performed by a qualified person who is free from influence from the persons responsible for development or operation of the models being validated.[145]

c. Proposed Rule 17Ad–22(e)(4): Credit Risk

Proposed Rule 17Ad–22(e)(4) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.[146] The Commission preliminarily believes the proposed rule is consistent with the requirements of the Exchange Act discussed above.[147]

Proposed Rule 17Ad–22(e)(4)(i) would require a covered clearing to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. The Commission's intention in proposing the term ''high degree of confidence'' is to refer to the statistical meaning of this term.[148] The proposed rule would require a covered clearing agency to use statistical methods to develop models in order to estimate the financial resources required under proposed Rule 17Ad–22(e)(4)(ii) and (iii),[149] and to comply with the requirements of proposed Rule 17Ad–22(e)(4)(ii) and (iii), while recognizing that such an approach is necessarily imprecise to at least some degree.

Proposed Rule 17Ad–22(e)(4)(ii) would require a covered clearing agency that provides CCP services, and that is ''systemically important in multiple jurisdictions'' or ''a clearing agency involved in activities with a more complex risk profile,'' to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at a minimum level necessary to enable it to cover a wide range of foreseeable stress scenarios, including but not limited to the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover two'' requirement).

Proposed Rule 17Ad–22(e)(4)(iii) would require a covered clearing agency that is not subject to proposed Rule 17Ad–22(e)(4)(ii) to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at the minimum to enable it to cover a wide range of foreseeable stress scenarios, including the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover one'' requirement).[150] The Commission notes that the requirement in proposed Rules 17Ad–22(e)(4)(ii) and (iii) to examine exposure under foreseeable stress scenarios including extreme but plausible market conditions means the covered clearing agency may need to use models to determine how its estimated exposure under such conditions differs from its actual exposure to positions of such participants, which it would be required to measure under proposed Rule 17Ad–22(e)(4)(i).

Also, as previously discussed, the Commission is proposing Rule 17Ad–22(a)(4) to define ''clearing agency involved in activities with a more complex risk profile.'' [151] The Commission is also proposing Rule 17Ad–22(a)(19) to define ''systemically important in multiple jurisdictions'' to mean a covered clearing agency that has been determined by the Commission to be systemically important in more than one jurisdiction pursuant to Rule 17Ab2–2.[152]

Like the ''cover two'' requirement in Rule 17Ad–22(b)(3), which applies to registered clearing agencies that provide CCP services for security-based swaps,[153] proposed Rule 17Ad–22(e)(4)(ii) would impose a ''cover two'' requirement to address credit risk of certain covered clearing agencies: Those systemically important in multiple jurisdictions and those involved in activities with a more complex risk profile. The Commission notes that the set of complex risk profile clearing agencies subject to this requirement would include, as of the date of this proposal, only registered clearing agencies that provide CCP services for security-based swaps, which are already subject to the ''cover two'' requirement in Rule 17Ad–22(b)(3). In addition, the Commission notes that no covered clearing agency would be systemically important in multiple jurisdictions unless and until the Commission made such a determination pursuant to

[143] *See* 17 CFR 240.17Ad–22(b)(2).

[144] *See* 17 CFR 240.17Ad–22(b)(3).

[145] *See* 17 CFR 240.17Ad–22(b)(4).

[146] *See* proposed Rule 17Ad–22(e)(4), *infra* Part VII.

[147] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[148] *See, e.g.,* Arthur S. Goldberger, A Course in Econometrics 122–23 (Harvard Univ. Press, 2003) (defining confidence intervals for parameter estimates).

[149] *See supra* Part II.B.4.a (noting that a clearing agency must be able to measure the counterparty credit exposures in order to manage risk effectively).

[150] The Commission notes that, with the exception of security–based swap clearing agencies, all registered clearing agencies providing CCP services are all currently required to meet a ''cover one'' standard under Rule 17Ad–22(b)(3), and therefore the Commission anticipates that covered clearing agencies may need to make only limited changes to policies and procedures to satisfy the proposed requirement, if adopted. *See infra* Parts IV.B.3.b.i and IV.C.3.a.iv(1) (discussing current practices at registered clearing agencies relating to credit risk and the anticipated economic effect of the proposed requirement, respectively).

[151] *See supra* Part II.A.1 (discussing the scope of proposed Rule 17Ad–22(e)); *supra* notes 79–80 and accompanying text.

[152] *See* proposed Rule 17Ad–22(a)(19), *infra* Part VII; *see also infra* Parts II.C and VII (discussing the determinations process under proposed Rule 17Ab2–2 and providing proposed rule text).

[153] *See* 17 CFR 240.17Ad–22(b)(3); *see also infra* Part II.A.1 (discussing the scope of proposed Rule 17Ad–22(e)); Clearing Agency Standards Release, *supra* note 5, at 66233–36 (discussing proposed Rule 17Ad–22(b)(3)).

proposed Rule 17Ab2–2.[154] For any covered clearing agency not currently subject to a ''cover two'' requirement that could be determined by the Commission in the future to be either systemically important in multiple jurisdictions or involved in activities with a more complex risk profile, the Commission believes that requiring such entities to improve their resilience to offset increased risk and to prepare for extreme but plausible market conditions is appropriate because it could decrease the likelihood that systemic events in other jurisdictions or extreme volatility in more complex financial instruments would result in interruptions to the provision of clearance and settlement services in the U.S. securities markets.

In addition, the Commission is proposing the requirements described below. In discussing these requirements, the below sections describe how they differ from existing requirements in Rules 17Ad–22(b)(1) through (4) applicable to security-based swap clearing agencies, previously discussed above.[155]

i. Prefunded Financial Resources

Proposed Rule 17Ad–22(e)(4)(iv) would require a covered clearing agency providing CCP services that is either systemically important in multiple jurisdictions or a complex risk profile clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include prefunded financial resources, excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable.[156] The Commission preliminarily believes that prefunding default obligations is appropriate because of the importance of the ability of a covered clearing agency to meet its default resource obligations to the clearance and settlement system, given the risks that its size, operation, and importance pose to the U.S. securities markets.[157] Immediately available financial resources are necessary to ensure that a covered clearing agency can meet its financial obligations on an ongoing basis. Without prefunded financial resources, a covered clearing agency may be unable to meet its financial obligations in stressed market conditions, when clearing members may be unwilling or unable to contribute to the clearing agency's guaranty fund in the event of a member default.

The Commission notes that while the ability to assess participants for contributions under applicable covered clearing agency governing documents, rules, or agreements could not be included in this calculation, previously paid-in participant contributions into a covered clearing agency default fund could be counted to the extent the clearing agency's rules, policies, or procedures permit such resources to be used in a manner equivalent to other financial resources in the default fund. Other sources of prefunded resources, such as margin previously posted to the clearing agency by participants, could also be treated in this manner. In addition, while the ability to draw down under a revolving loan facility could not be counted towards prefunded resources because funds from such loan facility would not be in the covered clearing agency's immediate possession, the covered clearing agency could count borrowed funds already drawn down, such as under a term loan or other credit facility.

Existing requirements under Rule 17Ad–22 do not include requirements for prefunded financial resources at registered clearing agencies. The proposed requirement reflects the Commission's recognition of the importance of a covered clearing agency meeting its default resource obligations, given the risks that its size, operation, and importance pose to the U.S. securities markets.

ii. Combined or Separately Maintained Clearing or Guaranty Funds

Proposed Rule 17Ad–22(e)(4)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii) in combined or separately maintained clearing or guaranty funds.[158] The proposed rule makes clear that a covered clearing agency may choose to maintain a separate default fund for purposes of complying with proposed Rules 17Ad–22(e)(4)(i) through (iii).

This requirement would be similar to the requirement in Rule 17Ad–22(b)(3) requiring a security-based swap clearing agency to have policies and procedures reasonably designed to maintain financial resources generally or in separately maintained funds.[159] The Commission believes that this approach facilitates the operations of clearing agencies. For example, clearing agencies may maintain separate default funds for each product or asset type cleared, in order to more appropriately tailor risk management requirements or contain losses from a default to that fund.

iii. Testing the Sufficiency of Financial Resources

Proposed Rule 17Ad–22(e)(4)(vi) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum financial resource requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, by conducting a stress test of its total financial resources at least once each day using standard predetermined parameters and assumptions.[160] Registered clearing agencies are not subject to requirements for testing the sufficiency of their financial resources under existing Rule 17Ad–22.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and consider modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current market conditions. When the products cleared or markets served by a covered clearing agency display high volatility, become less liquid, or when the size or concentration of positions held by the entity's participants increases

[154] *See infra* Parts II.C and VII (discussing the determinations process under proposed Rule 17Ab2–2 and providing proposed rule text).

[155] *See supra* Part II.B.4.b.

[156] *See* proposed Rule 17Ad–22(e)(4)(iv), *infra* Part VII.

[157] *See generally* 12 U.S.C. 5461 (Congress finding, among other things, that enhancements to the regulation and supervision of systemically important FMUs and the conduct of systemically important PCS activities by financial institutions are necessary, under Title VIII, to provide consistency, to promote robust risk management and safety and soundness, to reduce systemic risks, and to support the stability of the broader financial system).

[158] *See* proposed Rule 17Ad–22(e)(4)(v), *infra* Part VII.

[159] Rule 17Ad–22(b)(3) currently also permits a security-based swap clearing agency to have policies and procedures reasonably designed to maintain financial resources generally or in separately maintained funds. *See* 17 CFR 240.17Ad–22(b)(3); *see also* Clearing Agency Standards Release, *supra* note 5, at 66233–236.

[160] *See* proposed Rule 17Ad–22(e)(4)(vi), *infra* Part VII.

significantly, the proposed rule would specifically require a covered clearing agency to have policies and procedures for conducting comprehensive analyses of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly. The Commission preliminarily believes that what constitutes ''high volatility'' and ''low liquidity'' would vary across asset classes that a covered clearing agency might clear. Accordingly, the Commission preliminarily believes that a clearing agency would need flexibility to address changing circumstances and is therefore not proposing to prescribe triggers for any particular circumstance.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for the reporting of the results of this analysis to the appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and to require the use of the results to evaluate the adequacy of and to adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures, in supporting compliance with the minimum financial resources requirements discussed above.

The Commission is also proposing to add Rule 17Ad–22(a)(18) to define ''stress testing'' to mean the estimation of credit and liquidity exposures that would result from the realization of extreme but plausible price changes or changes in other valuation inputs and assumptions.[161] The Commission preliminarily believes that stress testing is an important component of the proposed rules because stress testing may enable a covered clearing agency to be prepared for an extreme event that may not be anticipated or expected based solely on current market conditions or from a sample of historical data.

The Commission preliminarily believes that the requirements in proposed Rule 17Ad–22(e)(4)(vi) are appropriate for testing the sufficiency of the financial resources of covered clearing agencies because, in certain market conditions, such as periods of high volatility or diminished liquidity, existing stress scenarios, models, or underlying parameters may no longer be valid or appropriate. Based on its supervisory experience, the Commission believes that certain, but not all, covered clearing agencies adjusted their stress testing scenarios following the 2008 financial crisis to incorporate larger debt, equity, and credit market shocks similar to those experienced during the crisis. Accordingly, the Commission preliminarily believes that specific policies and procedures contemplating actions to be taken by all covered clearing agencies in such circumstances are necessary to ensure the safe functioning of the covered clearing agencies as required by the Exchange Act,[162] and that requiring periodic feedback and analysis on the strength of credit risk management policies and procedures would improve the reliability of those policies and procedures. The Commission also preliminarily believes that the rule would provide a covered clearing agency with the flexibility to use stress scenarios that are appropriately tailored to current market conditions and that can be revised over time as markets change and believes that such flexibility is appropriate to achieve the objectives of the Exchange Act.

iv. Annual Conforming Model Validation

Proposed Rule 17Ad–22(e)(4)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a conforming model validation for its credit risk models to be performed not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management policies and procedures.[163] The Commission preliminary believes that an annual cycle is appropriate for the reasons described in Part II.A.3. The Commission notes that other important reviews such as auditing of the financial statements of registered clearing agencies and their disclosure are required to occur on an annual basis as well.[164]

The Commission is proposing to add Rule 17Ad–22(a)(5) to define ''conforming model validation'' to mean an evaluation of the performance of each material risk management model used by a covered clearing agency, along with the related parameters and assumptions associated with such models.[165] Such model validation would apply to models that would include initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements. A conforming model validation would also require that the model validation be performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated so that credit risk models can be candidly assessed.[166] Generally, the Commission considers that a person is free from influence when that person does not perform functions associated with the clearing agency's models (except as part of the annual model validation) and does not report to a person who performs these functions. The Commission generally would not expect that it would be necessary for policies and procedures adopted pursuant to this proposed requirement to require the clearing agency to separate organizationally model review from model development or to maintain two separate quantitative teams.

The proposed rule differs from the existing requirement for security-based swap clearing agencies in Rule 17Ad–22(b)(4) by defining in explicit terms the requirements for a conforming model validation and by requiring it for credit risk models.[167] The proposed rule would also apply to any covered clearing agency, and not only security-based swap clearing agencies. The Commission preliminarily believes, because credit risk models play an important role in limiting systemic risk, that it is important to create a consistent, clear, and uniformly applied minimum standard for model validation across all covered clearing agencies.[168] The Commission also preliminarily believes that annual conforming model validation would provide unbiased feedback on the performance of such models and policies, and therefore could improve their reliability.

[161] *See* proposed Rule 17Ad–22(a)(18), *infra* Part VII.

[162] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[163] *See* proposed Rule 17Ad–22(e)(4)(vii), *infra* Part VII.

[164] *See* 17 CFR 240.17Ad–22(c)(2).

[165] *See* proposed Rule 17Ad–22(a)(5), *infra* Part VII.

[166] *See* Clearing Agency Standards Release, *supra* note 5, at 66238.

[167] Rule 17Ad–22(b)(4) requires a security-based swap clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. *See* 17 CFR 240.17Ad–22(b)(4); *see also* Clearing Agency Standards Release, *supra* note 5, at 66236–238.

In contrast to proposed Rules 17Ad–22(a)(5) and (e)(4)(vii), Rule 17Ad–22(b)(4) requires only a model validation for margin models and does not specify the general elements of a model validation.

[168] *See generally* Clearing Agency Standards Release, *supra* note 5, at 66238.

d. Proposed Rule 17Ad–22(e)(5): Collateral

Proposed Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and also require policies that set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its own or its participants' credit exposures.[169] The proposed rule includes requirements similar to those applicable to registered clearing agencies under Rule 17Ad–22(d)(3) but would, in addition, require a covered clearing agency's policies and procedures to set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its own or its participants' credit exposures.[170]

The Commission is proposing Rule 17Ad–22(e)(5) to require policies and procedures with respect to specific practices to be followed by a covered clearing agency when managing collateral to ensure the safeguarding of funds, consistent with the requirements under the Exchange Act discussed above.[171] In doing so, proposed Rule 17Ad–22(e)(5) would promote confidence that covered clearing agencies are able to meet their settlement obligations by reducing the likelihood that assets securing participant obligations to the covered clearing agency would be unavailable or insufficient when the covered clearing agency needs to draw on them. Specifically, such requirements recognize the role played by system-wide asset price deterioration in generating systemic risk and the vulnerability a covered clearing agency could face if posted collateral were concentrated in assets that subsequently experience such deterioration in price.[172] The Commission preliminarily believes the proposed rule is appropriate given the risks that its size, operation, and importance pose to the U.S. securities markets, thereby promoting stability in the national system for clearance and settlement by increasing the likelihood collateral holdings will function as designed when faced with stressed market conditions.

In addition, the Commission is proposing that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to include a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.[173] Rule 17Ad–22(d) does not impose a similar requirement on registered clearing agencies. The Commission preliminarily believes that the proposed approach is appropriate because of the importance of collateral haircuts and concentration limits to a covered clearing agency's risk management policies and procedures. Because of the role collateral plays in a default, a covered clearing agency needs assurance of its value in the event of liquidation, as well as the capacity to draw upon that collateral promptly. The Commission preliminarily believes, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, that it is important to require policies and procedures for a not-less-than-annual review of the sufficiency of its collateral haircuts and concentration limits.[174]

e. Proposed Rule 17Ad–22(e)(6): Margin

Generally, proposed Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.[175]

Rule 17Ad–22(b)(2) currently requires registered clearing agencies that provide CCP services to use risk-based models and parameters to set margin requirements, and to review such margin requirements and the risk-based models and parameters at least monthly,[176] and the proposed rule would impose substantially the same requirements.[177] Rule 17Ad–22(b)(4) also currently requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.

The Commission notes that proposed Rule 17Ad–22(e)(6) is different from these existing requirements under Rule 17Ad–22, as discussed below. The proposed requirements reflect more specific recognition by the Commission of the importance margin plays in risk management by covered clearing agencies. The Commission preliminarily believes that these requirements for a covered clearing agency to periodically verify and modify margin requirements in light of changing market conditions would be appropriate to mitigate the risks posed by a covered clearing agency to financial markets in periods of financial stress considering the risks that its size, operation, and importance pose to the U.S. securities markets.

i. Active Management of Model Risk

Proposed Rule 17Ad–22(e)(6)(i) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in a margin system that at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[178] The complexity and product risk

[169] *See* proposed Rule 17Ad–22(e)(5), *infra* Part VII.

[170] Registered clearing agencies are currently subject to requirements under Rule 17Ad–22(d)(3), which requires registered clearing agencies to hold assets in a manner that minimizes risk of loss or risk of delay in access to them and invest assets in instruments with minimal credit, market, and liquidity risk. *See* 17 CFR 240.17Ad–22(d)(3); *see also* Clearing Agency Standards Release, *supra* note 5, at 66247–48; *infra* Part II.B.13 (discussing proposed Rule 17Ad–22(e)(16)).

Similarly, the Commission preliminarily believes that appropriately conservative haircuts and concentration limits would require a covered clearing agency to value assets in a manner that minimizes risk of loss or risk of delay in access to them.

[171] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[172] *See, e.g.,* Mark Roe, Clearinghouse Overconfidence (Aug. 11, 2013), *available at http://ssrn.com/abstract=2224305* (discussing the risks posed to clearing agencies by asset price deterioration).

[173] *See* proposed Rule 17Ad–22(e)(5), *infra* Part VII.

[174] *See supra* Part II.A.3 (discussing the Commission's rationale for imposing varying frequencies of review under certain policies and procedures requirements of the proposed rules).

[175] *See* proposed Rule 17Ad–22(e)(6), *infra* Part VII.

[176] *See* 17 CFR 240.17Ad–22(b)(2).

[177] Similar to Rule 17Ad–22(b)(2), proposed Rule 17Ad–22(e)(6)(vi) would require a covered clearing agency to conduct on at least a monthly basis a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting. *See infra* Parts II.B.4.e.vi and VII.

[178] *See* proposed Rule 17Ad–22(e)(6)(i), *infra* Part VII.

characteristics of the cleared product and underlying instrument can influence the margin requirements necessary to manage the credit exposures posed by a covered clearing agency's participants. Additionally, the volume of trading may also influence the margin requirements necessary to manage the credit exposures proposed by a covered clearing agency's participants. The Commission preliminarily believes that expressly requiring policies and procedures regarding the active management of a covered clearing agency's margin system to account for those factors and differences would help ensure the effectiveness of a covered clearing agency's risk management practices.

ii. Collection of Margin

Proposed Rule 17Ad–22(e)(6)(ii) would require a covered clearing agency that provides CCP services to establish implement, maintain and enforce written policies and procedures reasonably designed to ensure that the margin system would mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily, and include the authority and operational capacity to make intraday margin calls in defined circumstances.[179] The Commission preliminarily believes that marking each participant's outstanding positions to current market prices is an important feature of an effective margin system because adverse price movements can rapidly increase a covered clearing agency's exposures to its participants. Rule 17Ad–22(b)(2) requires registered clearing agencies that provide CCP services to calculate margin requirements daily. The Commission preliminarily believes that requiring a covered clearing agency to have the authority and operational capacity to make intraday margin calls in defined circumstances will benefit covered clearing agencies by covering settlement risk created by intraday price movements. By being more specific with respect to its expectations for collecting sufficient margin and having other liquid resources at its disposal, the Commission expects that a covered clearing agency will be better able to organize its practices accordingly, to limit its exposures to potential losses from defaults by clearing members in normal market conditions considering the risks that its size, operation, and importance pose to the U.S. securities markets.[180]

iii. Ninety-Nine Percent Confidence Level

Proposed Rule 17Ad–22(e)(6)(iii) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.[181] The Commission is proposing to add Rule 17Ad–22(a)(14) to define ''potential future exposure'' to mean the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99% with respect to the estimated distribution of future exposure.[182] The Commission preliminarily believes that a 99% confidence level is an appropriately conservative setting that is also consistent with the international standard for bank capital requirements, which requires banks to measure market risks at a 99% confidence interval when determining regulatory capital requirements.[183]

The Commission preliminarily believes that, rather than establish specific criteria in advance, it is more appropriate to address liquidation periods separately with respect to each covered clearing agency through the Commission's supervisory process under Sections 17A and 19 of the Exchange Act,[184] so that the length of the liquidation period can be appropriately tailored to the characteristics of the products cleared by the covered clearing agency as financial markets evolve.

iv. Price Data Source

Proposed Rule 17Ad–22(e)(6)(iv) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.[185] The Commission preliminarily believes that a covered clearing agency should use reliable sources of timely price data because its margin system needs such data to operate with a high degree of accuracy and reliability, given the risks that the covered clearing agency's size, operation, and importance pose to the U.S. securities markets.[186] Based on its supervisory experience, the Commission preliminarily believes that reliable data sources may include the following features, among other things: (i) Provision of data by the data source that is accurate, complete, and timely; (ii) capability of the data source to provide broad data sets to the covered clearing agency; and (iii) limited need for manual intervention by the clearing agency. In some situations, price data may not be available or reliable, such as in instances where third party data providers experience lapses in service or where limited liquidity otherwise makes price discovery difficult. Establishing appropriate procedures and sound valuation models is a useful step a covered clearing agency can take to help protect itself in such situations. The Commission preliminarily believes, in selecting price data sources, a covered clearing agency should consider the likelihood of the data being provided under a variety of market conditions and not select price data sources based on their cost alone.

v. Method for Measuring Credit Exposure

Proposed Rule 17Ad–22(e)(6)(v) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. Measuring such portfolio effects means a covered clearing agency may take into account certain netting procedures or

[179] *See* proposed Rule 17Ad–22(e)(6)(ii), *infra* Part VII.

[180] *See* Clearing Agency Standards Release, *supra* note 5, at 66231.

[181] *See* proposed Rule 17Ad–22(e)(6)(iii), *infra* Part VII.

[182] *See* proposed Rule 17Ad–22(a)(14), *infra* Part VII.

[183] *See* Clearing Agency Standards Release, *supra* note 5, at 66226 (describing the history of usage for a 99% confidence interval). A 99% confidence level would represent one day of actual trading losses that exceeded the results predicted by the model (as revealed by backtesting) for every 100 days that trading occurred. *See id.* Requiring a covered clearing agency to have policies and procedures with a higher or lower confidence level than that currently used by its clearing members could potentially create incentives or disincentives for clearing members to clear based on the statistical confidence level alone.

[184] *See supra* Part I.A (discussing the regulatory framework under Section 17A of the Exchange Act); *supra* note 96 (describing the requirements in Section 19(b) of the Exchange Act).

[185] *See* proposed Rule 17Ad–22(e)(6)(iv), *infra* Part VII.

[186] *Cf.* PFMI Report, *supra* note 1, at 51 (discussing Principle 6, margin).

offsets through which credit exposure may be reduced in measuring credit exposure, including the use of portfolio margining procedures across products where applicable.[187] The Commission preliminarily believes that this proposed requirement that covered clearing agencies contemplate both product level and portfolio level effects when considering and measuring their credit exposure is appropriate, given that the method for measuring credit exposure will determine the accuracy of a covered clearing agency's measurements in practice.

vi. Backtesting and Sensitivity Analysis

Under proposed Rule 17Ad–22(e)(6)(vi), in addition to the requirement discussed above in relation to monitoring by management on an ongoing basis, a covered clearing agency that provides CCP services would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by conducting backtests at least once each day and conducting a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting at least monthly, and consider modifications to ensure the backtesting practices are appropriate for determining the adequacy of its margin resources.[188] The Commission preliminarily believes that, since margin positions must be calculated at least daily, policies and procedures should also provide for daily backtesting. The Commission preliminarily believes that requiring, on at least a monthly basis, a conforming sensitivity analysis of margin resources and parameters and assumptions for backtesting would appropriately balance cost concerns with the interest of assuring that risk margin methodologies continue to reflect current conditions. The Commission notes that, based on its supervisory experience, risk management committees of the board and similar management committees of registered clearing agencies commonly meet on a monthly basis, and therefore the proposed requirement of a monthly sensitivity analysis would be consistent with such meeting frequency.

Backtesting is a technique used to compare the potential losses forecasted by a model with the actual losses that participants incurred, and is intended to reveal the accuracy of models. Misspecified or miscalibrated models may lead to errors in decision making. The Commission is proposing to require policies and procedures that provide for backtesting the margin models used by covered clearing agencies to help uncover and address possible errors in model design, misapplication of models, or errors in the inputs to, and assumptions underlying, margin models. The Commission is also proposing to add Rule 17Ad–22(a)(1) to define ''backtesting'' to mean an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models.[189] Additionally, the Commission is proposing to add Rule 17Ad–22(a)(17) to define ''sensitivity analysis'' to mean an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs.[190] The Commission preliminarily understands that these terms and definitions are commonly accepted among, and employed by, market participants.[191]

The Commission is also proposing to add Rule 17Ad–22(a)(6) to define ''conforming sensitivity analysis'' to mean a sensitivity analysis that considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market conditions and actual and hypothetical portfolios of proprietary positions and, where applicable, customer positions. The Commission notes that ''sensitivity analysis'' is a commonly understood term among industry participants,[192] and the Commission intends for the proposed definition to ensure that the specified minimum requirements are met in performing sensitivity analyses. Under the proposed definition, a conforming sensitivity analysis, when performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, would consider the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency. Under the proposed definition, a conforming sensitivity analysis would also test the sensitivity of the model to stressed market conditions, including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.[193]

Under proposed Rule 17Ad–22(e)(6)(vi), the policies and procedures for model review, testing, and verification requirements would include policies and procedures for conducting a conforming sensitivity analysis more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by participants increases or decreases significantly.[194] The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to report the results of such conforming sensitivity analysis to appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and use these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures. The Commission preliminary believes that the requirement to report to appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, is important to ensure that such risk management requirements and compliance therewith are addressed at the most senior levels of the governance framework of the covered clearing agency, commensurate with the importance of said requirements.

By proposing the requirement for conducting a conforming sensitivity analysis, the Commission expects that feedback generated by these analyses would improve the performance of risk-based margin systems used by covered clearing agencies and therefore better ensure the safe functioning of covered clearing agencies. Additionally, the Commission preliminarily believes that conforming sensitivity analysis may help a covered clearing agency discover and address shortcomings in its margin models that would not otherwise be revealed through backtesting and is accordingly appropriate given the risks

[187] *See* proposed Rule 17Ad–22(e)(6)(v), *infra* Part VII.

[188] *See* proposed Rule 17Ad–22(e)(6)(vi), *infra* Part VII.

[189] *See* proposed Rule 17Ad–22(a)(1), *infra* Part VII.

[190] *See* proposed Rule 17Ad–22(a)(17), *infra* Part VII.

[191] *See, e.g.,* Alexander J. McNeil, Rüdiger Frey & Paul Embrechts, Quantitative Risk Management: Concepts, Techniques, and Tools, at 35 (Princeton Univ. Press, 2005) (defining ''factor-sensitivity measures'' as a change in portfolio value given a predetermined change in one of the underlying risk factors).

[192] *See id.*

[193] *See* proposed Rule 17Ad–22(a)(6), *infra* Part VII.

[194] *See* proposed Rule 17Ad–22(e)(6)(vi), *infra* Part VII.

that its size, operation, and importance pose to the U.S. securities markets.[195]

vii. Annual Conforming Model Validation

Rule 17Ad–22(b)(4) currently requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. Under proposed Rule 17Ad–22(e)(6)(vii), a covered clearing agency that provides CCP services would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to require not less than annually a conforming model validation of the covered clearing agency's margin system and related models.[196] As previously discussed, the model validation would be required to include initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements. Also, for a model validation to be considered a conforming model validation under the proposed rule, it would have to be performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated.[197]

The Commission preliminarily believes the proposed approach of requiring policies and procedures that subject a covered clearing agency's models to review by such parties would be relevant to ensuring the safe operation of covered clearing agencies and will help to ensure that covered clearing agencies have the opportunity to benefit from the views of a qualified person free from influence and incorporate alternative risk management methodologies into their models as appropriate. The Commission preliminarily believes this is important for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

f. Proposed Rule 17Ad–22(e)(7): Liquidity Risk

Proposed Rule 17Ad–22(e)(7) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it, by meeting, at a minimum, the ten requirements specified below.[198]

Liquidity risk describes the risk that an entity will be unable to meet financial obligations on time due to an inability to deliver funds or securities in the form required though it may possess sufficient financial resources in other forms. Although Rule 17Ad–22(d)(11) currently requires, among other things, that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to take timely action to contain liquidity pressures and to continue to meet obligations in the event of a participant default, the Commission does not currently have requirements for policies and procedures of registered clearing agencies regarding the management of liquidity risk with the level of specificity proposed in Rule 17Ad–22(e)(7). Given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, the proposed requirements would require a covered clearing agency to maintain sufficient liquidity resources to ensure they are prepared to meet their payment obligations in order to facilitate the prompt and accurate clearance and settlement of securities transactions.

i. Sufficient Liquid Resources

Proposed Rule 17Ad–22(e)(7)(i) would require that a covered clearing agency's policies and procedures be reasonably designed to ensure that it maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions. As noted above, maintaining sufficient liquidity resources helps ensure that a covered clearing agency is prepared to meet its payment obligations in order to facilitate the prompt and accurate clearance and settlement of securities transactions

ii. Qualifying Liquid Resources

Proposed Rule 17Ad–22(e)(7)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.[199] The Commission is also proposing to add Rule 17Ad–22(a)(15) to define ''qualifying liquid resources.'' [200] For any covered clearing agency, in each relevant currency, qualifying liquid resources would include three types of assets:

- Cash held either at the central bank of issue or at creditworthy commercial banks;[201]
- assets that are readily available and convertible into cash through either:
  - Prearranged funding arrangements without material adverse change limitations, such as committed lines of credit, foreign exchange swaps, and repurchase agreements, or
  - other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and
- other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank.[202]

[195] *Cf.* PFMI Report, *supra* note 1, at 56 (discussing Principle 6, margin).

[196] *See* proposed Rule 17Ad–22(e)(6)(vii), *infra* Part VII; *see also supra* Part II.B.4.c.iv and *infra* Part VII (defining ''conforming model validation'' under proposed Rule 17Ad–22(a)(5) and providing the definition text, respectively).

[197] *See supra* Part II.B.4.c.iv (describing a person who is free from influence in the context of the policy and procedure requirement for an annual conforming model validation addressing credit risk).

[198] *See* proposed Rule 17Ad–22(e)(7), *infra* Part VII; *see also infra* Parts II.B.4.f.i–x.

[199] *See* proposed Rule 17Ad–22(e)(7)(ii), *infra* Part VII. In other words, if payment obligations were denominated in U.S. dollars, the minimum liquidity resource requirement would refer to a U.S. dollar amount.

[200] *See* proposed Rule 17Ad–22(a)(15), *infra* Part VII.

[201] The Commission preliminarily believes that the creditworthiness of commercial banks should be considered by a covered clearing agency after considering its particular circumstances and those of its members and the markets which it services. Accordingly, in complying with the requirements of proposed Rule 17Ad–22(e)(7) and proposed Rule 17Ad–22(a)(15), a covered clearing agency's policies and procedures for determining whether a commercial bank is creditworthy may reflect such circumstances.

[202] *See id.* The Commission notes that such access to routine credit at a relevant central bank and the collateral required by such central bank to be posted to secure a loan may be determined at the

Continued

The Commission preliminarily believes that this requirement is appropriate, given the risks that its size, operation, and importance pose to the U.S. securities markets, and will help ensure that a covered clearing agency has sufficient liquid resources, as determined by stress testing, to effect settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios.[203] Furthermore, the Commission preliminarily believes this requirement is appropriate given the specific circumstances of the U.S. securities markets. U.S. securities markets are among the largest and most liquid in the world, and CCPs operating in the United States are also among the largest in the world.[204] The resulting peak liquidity demands of CCPs are therefore proportionately large on both an individual and an aggregate basis, and the ability of CCPs to satisfy a requirement limiting qualifying liquid resources to committed facilities could be constrained by the capacity of traditional liquidity sources in the U.S. banking sector in certain circumstances. Therefore, the Commission is proposing to include in the definition of qualifying liquid resources other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions.

For similar reasons, the Commission preliminarily believes it is appropriate to include in the definition of qualifying liquid resources assets that a central bank would permit a covered clearing agency to use as collateral, to the extent such covered clearing agency has access to routine credit at such central bank.[205] The Commission preliminarily notes that, although covered clearing agencies do not currently have access to routine credit at Federal Reserve Banks, potential registrants that could be determined to be covered clearing agencies in the future may be operating in a jurisdiction where access to routine credit is provided to the potential registrant by that jurisdiction's central bank.[206]

With regard to assets convertible into cash, the Commission preliminarily notes that the mere ownership of assets that a covered clearing agency may consider readily available and also may consider readily convertible into cash, based on factors such as the historical volume of trading in a particular market for such asset, may not be sufficient alone to make the assets count towards qualifying liquid resources unless one of the above-referenced prearranged funding arrangements is in place under which the covered clearing agency would receive cash in a timely manner. The prearranged funding arrangements would be in place to cover any shortfall. The Commission, however, preliminarily considers committed funding arrangements to be reasonably capable of being established by covered clearing agencies in the relevant commercial lending markets and other funding arrangements to be reasonably capable of being assessed for reliability by the boards of directors of covered clearing agencies following consideration of the relevant circumstances, and therefore preliminarily believes the standard to be sufficiently clear to allow for it to be interpreted and applied in practice by covered clearing agencies. Further, the Commission preliminarily notes that, in complying with proposed Rule 17Ad–22(e)(7), covered clearing agencies should consider the lower of the value of the assets capable of being pledged and the amount of the commitment (or the equivalent availability under a highly reliable prearranged facility) as the amount that counts towards qualifying liquid resources in the event there is any expected difference between the two.[207] This may occur, for example, where the terms of the arrangement provide for over-collateralization or where the covered clearing agency lacks sufficient qualifying assets to make full use of an otherwise qualifying liquidity facility.

In defining the proposed requirements for qualifying liquid resources, the Commission preliminarily believes that it would be appropriate to provide covered clearing agencies with the flexibility to use highly reliable funding arrangements in addition to committed arrangements for purposes of using assets other than cash to meet the proposed requirements of Rule 17Ad–22(e)(7).[208] The Commission preliminarily believes that limiting the funding arrangements that are included within the definition of qualifying liquid resources to committed funding arrangements may not be necessary or appropriate in determining liquidity requirements for a covered clearing agency operating in the U.S. securities markets and expanding the concept of qualifying liquid resources to include other highly reliable funding arrangements is necessary and appropriate to ensure the proper functioning of covered clearing agencies as required by the Exchange Act.

For similar reasons, the Commission preliminarily believes it is appropriate to include in the definition of qualifying liquid resources assets that a central bank would permit a covered clearing agency to use as collateral.[209] The Commission notes that, although routine discount window borrowing at a Federal Reserve Bank is currently not available to covered clearing agencies, this provision will provide covered clearing agencies with additional flexibility in meeting the liquidity requirements of proposed Rule 17Ad–22(e)(7), should routine credit at a Federal Reserve Bank become available in the future.[210]

discretion of the central bank, and accordingly the practical application of the definition of qualifying liquid resources would be subject to variation based on those decisions. The Commission preliminarily believes that inclusion of assets eligible for pledging to any central bank, as opposed to only to a Federal Reserve Bank, is appropriate because, in practice, a covered clearing agency may need access to liquid resources in currencies other than U.S. dollars.

[203] *Cf.* PFMI Report, *supra* note 1, at 60 (discussing Principle 7, liquidity risk).

[204] *See infra* notes 561–562 and accompanying text (discussing the volume of transactions processed by U.S. clearing agencies).

[205] *See* ICMA Eur. Repo Council, The Interconnectivity of Central and Commercial Bank Money in the Clearing and Settlement of the European Repo Market, at 10–11 (Sept. 2011) (indicating that access to central bank credit is important and may cause banks to use either central bank settlement services or cash settlement banking services of a commercial bank, depending on availability of, and the terms of, central bank credit).

[206] *See* Peter Allsopp, Bruce Summers & John Veale, The Evolution of Real-Time Gross Settlement: Access, Liquidity and Credit, and Pricing, at 15 (World Bank, Feb. 2009) (indicating that CCPs in the Eurozone have access to central bank settlement account services and routine credit).

[207] The Commission notes that, based on the types of assets that may be considered qualifying liquid resources, for purposes of complying with proposed Rule 17Ad–22(e)(7)(ii), factors that may be relevant for a covered clearing agency to take into account include (i) the portion of its default fund that is held as cash, (ii) the portion of its default fund that is held as securities, (iii) the portion of any excess default fund contributions held as cash that could be used by the covered clearing agency to meet liquidity needs, (iv) the portion of any excess default fund contributions held as securities that could be used by the covered clearing agency to meet liquidity needs, (v) the amount at any given time of securities or cash delivered by members that a covered clearing agency may be able to use to meet liquidity needs upon the default of a member, and (vi) the borrowing limits under any committed funding arrangement.

[208] *Cf.* PFMI Report, *supra* note 1, at 57 (discussing Principle 7, liquidity risk, at Key Consideration 5).

[209] The Commission also preliminarily notes that the term ''central bank'' in the proposed definition of ''qualifying liquid resources'' is not limited to a Federal Reserve Bank, and accordingly covered clearing agencies based in or operating outside of the United States that have access to routine credit at other central banks would be able to take that into consideration when assessing the amount of their qualifying liquid resources.

[210] *See infra* Part IV.C.3.a.iv(4) (discussing the relative cost of central bank credit). Section 806(b) of the Clearing Supervision Act states that the Board may authorize a Federal Reserve Bank to

iii. Access to Account Services at a Federal Reserve Bank or Other Relevant Central Bank

Proposed Rule 17Ad–22(e)(7)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it uses accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Clearing Supervision Act,[211] or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, in order to enhance its management of liquidity risk.[212] The Commission notes that the proposed rule would not require using Federal Reserve Bank or other relevant central bank account services; it would only require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to consider and determine when and in what circumstances it chooses to do so, when the services are available and when considered to be practical. The Commission preliminarily believes that covered clearing agencies should be encouraged to actively consider using Federal Reserve Bank or other central bank accounts and services, as this is a valuable new tool made available under the Clearing Supervision Act.[213] The Commission preliminarily believes, however, that it should also permit the use of commercial banks by covered clearing agencies holding cash as collateral or for other services related to clearance and settlement activity, even when comparable services are available from a central bank.

iv. Liquidity Providers

Proposed Rule 17Ad–22(e)(7)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks, and the capacity to perform as required under its commitments to provide liquidity.[214]

The Commission preliminarily intends for the term ''due diligence'' to have the same meaning as what this term is commonly understood to mean by market participants. Consequently, in order to comply with the requirements of proposed Rule 17Ad–22(e)(7) and to form a reasonable basis regarding a liquidity provider's understanding and management of liquidity risks and operational capacity, the Commission expects a covered clearing agency would ordinarily not rely on representations of the liquidity provider to this effect and instead conduct its own investigation into the liquidity provider's business. A covered clearing agency should consider implementing due diligence procedures that provide a sufficient basis for its belief, given its business and the nature of its liquidity providers. Procedures for purposes of forming a reasonable basis could include, for example, interviewing the liquidity provider's staff and reviewing both public and non-public documents that would allow the covered clearing agency to gather information about relevant factors, including but not limited to the strength of the liquidity provider's financial condition, its risk management capabilities, and its internal controls.

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(7)(iv) is appropriate because a covered clearing agency needs to soundly manage its relationships with liquidity providers given the risks posed to the U.S. securities markets by its size, operation, and importance. In addition, Proposed Rule 17Ad–22(e)(7)(iv) would reinforce proposed Rule 17Ad–22(e)(7)(ii) and the definition of qualifying liquid resources in proposed Rule 17Ad–22(a)(15), which contemplate potential reliance on liquidity providers where a covered clearing agency would seek to use assets other than cash for purposes of complying with proposed Rule 17Ad–22(e)(7)(ii) and would need to transact with a liquidity provider to convert such assets into cash. Should a committed or prearranged funding arrangement prove to be unreliable at the time a covered clearing agency needs to utilize it because of liquidity problems at the lender itself, this failure may trigger a liquidity problem at the covered clearing agency, which would raise systemic risk concerns for the U.S. securities markets. These types of problems at a liquidity provider, by indirectly affecting a covered clearing agency, could undermine the national system for the prompt and accurate clearance and settlement of securities transactions.

v. Maintenance and Annual Testing of Liquidity Provider Procedures and Operational Capacity

Proposed Rule 17Ad–22(e)(7)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency maintains and, on at least an annual basis,[215] tests with each liquidity provider, to the extent practicable, its procedures and operational capacity for accessing each type of relevant liquidity resource.[216]

In addition, proposed Rule 17Ad–22(e)(7)(v) would reinforce proposed Rule 17Ad–22(e)(7)(ii) and the definition of qualifying liquid resources in proposed Rule 17Ad–22(a)(15), which contemplate potential reliance on liquidity providers where a covered clearing agency would seek to use assets other than cash for purposes of complying with proposed Rule 17Ad–22(e)(7)(ii) and would need to transact with a liquidity provider to convert such assets into cash. If procedures or operational capacity for accessing liquidity under committed or prearranged funding arrangements fail to function as planned and in a timely manner, the covered clearing agency may fail to meet its payment obligation, which would raise systemic risk concerns for the U.S. markets and could undermine the national system for the prompt and accurate clearance and settlement of securities transactions. Proper preparation for a liquidity shortfall scenario could also promote members' confidence in the ability of a covered clearing agency to perform its obligations, which can mitigate the risk of contagion during stressed market conditions. The Commission preliminarily believes this is important for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

The Commission preliminarily believes that testing of access to liquidity resources could include efforts by a covered clearing agency to verify that a liquidity provider is able to provide the relevant liquidity resource in the manner intended under the terms of the funding arrangement and without

provide to a designated FMU discount and borrowing privileges only in unusual and exigent circumstances, subject to certain conditions. *See* 12 U.S.C. 5465(b).

[211] *See* 12 U.S.C. 5465(a).

[212] *See* proposed Rule 17Ad–22(e)(7)(iii), *infra* Part VII.

[213] *See* Clearing Agency Standards Release, *supra* note 5, at 66268–69 & n.535.

[214] *See* proposed Rule 17Ad–22(e)(7)(iv), *infra* Part VII.

[215] The Commission preliminary believes that an annual cycle is appropriate for the reasons described in Part II.A.3.

[216] *See* proposed Rule 17Ad–22(e)(7)(v), *infra* Part VII.

undue delay, such as, for example, promptly funding a draw on the covered clearing agency's credit facility. Testing procedures could include, for example, test draws funded by the liquidity provider or tests of electronic connectivity between the covered clearing agency and the liquidity provider. The Commission recognizes that testing with liquidity providers may not always be practicable in the absence of committed liquidity arrangements.

The Commission preliminarily believes the proposed requirement that testing of a covered clearing agency's access to liquidity be conducted at least annually with each liquidity provider to be a reasonable step to ensure the objectives of the Exchange Act are achieved in practice. The Commission understands such tests are routinely performed currently by certain registered clearing agencies but are subject to variation due, in part, to the absence of a regulatory requirement and the incremental time and attention needed to conduct the tests. The Commission preliminarily anticipates the effect of the proposed rule will be to require the development of more uniform liquidity testing practices by covered clearing agencies, and has accordingly proposed to allow covered clearing agencies to assess the practicability of such testing to provide them with reasonable flexibility to design the tests to suit the circumstances of the covered clearing agency and its particular liquidity arrangements.

vi. Testing the Sufficiency of Liquid Resources

Proposed Rule 17Ad–22(e)(7)(vi)(A) through (C) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement of proposed Rule 17Ad–22(e)(7)(i) by (A) conducting a stress test of its liquidity resources at least once each day using standard and predetermined parameters and assumptions; [217] (B) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the covered clearing agency's identified liquidity needs and resources in light of current and evolving market conditions at least once each month; [218] and (C) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently when products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by participants increases significantly, or in other circumstances described in the covered clearing agency's policies and procedures.[219] Proposed Rule 17Ad–22(e)(7)(vi)(D) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in reporting the results of the analyses performed under proposed Rule 17Ad–22(e)(7)(vi)(B) and (C) to appropriate decision makers, including the risk management committee or board of directors, at the covered clearing agency for use in evaluating the adequacy of and adjusting its liquidity risk management framework.

The Commission preliminarily believes that proposed Rules 17Ad–22(e)(7)(vi)(A) through (D) would require a covered clearing agency to take reasonable steps to ensure the adequacy of liquid resources in practice. Given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, in addition to the potential consequences to the U.S. financial system of a failure of a covered clearing agency, the Commission preliminarily believes that requiring a covered clearing agency to devote additional time and attention to testing the sufficiency of its liquid resources, relative to a registered clearing agency generally, is appropriate. The Commission preliminarily believes that the requirements in proposed Rule 17Ad–22(e)(7)(vi) are appropriate for testing the sufficiency of liquid resources of covered clearing agencies because, in certain market conditions, such as periods of high volatility or diminished liquidity, existing stress scenarios, models, or underlying parameters may no longer be valid or appropriate. For example, covered clearing agencies may have adjusted their financial resources models following the 2008 financial crisis to account for larger debt, equity, and credit market shocks than would have been contemplated by those models prior to the crisis. Accordingly, the Commission preliminarily believes that specific policies and procedures specifying actions to be taken by covered clearing agencies to maintain sufficient liquid resources would contribute to the safe functioning of the covered clearing agency as required by the Exchange Act,[220] and that requiring periodic feedback and analysis on the strength of liquidity risk management policies and procedures would improve the reliability of those policies and procedures. The Commission also preliminarily believes that covered clearing agencies should have the flexibility to use stress scenarios that are appropriately calibrated to the markets in which they operate and that they can be revised over time as those markets change. Proper preparation for a liquidity shortfall scenario could also promote a participant's confidence in the ability of a covered clearing agency to perform its obligations, which can mitigate the risk of undue disruption during stressed market conditions.

One of the appropriate methods of preparation by a covered clearing agency would be, in the Commission's preliminary view, the testing of the sufficiency of liquidity that it might need under certain extreme but plausible parameters and assumptions. The Commission preliminarily believes that conducting stress testing of liquidity would allow a covered clearing agency to understand its level of resilience and adjust its operations accordingly to address areas of inadequacy. The Commission preliminarily believes that by testing under extreme but plausible scenarios, covered clearing agencies, and in particular those designated systemically important, would be better prepared in the event that equivalent or similar scenarios actually occurred.

vii. Annual Conforming Model Validation

Proposed Rule 17Ad–22(e)(7)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in performing an annual or more frequent conforming model validation of its liquidity risk models.[221]

[217] The Commission preliminary believes that a daily cycle is appropriate for the reasons described in Part II.A.3.

[218] The Commission preliminary believes that a monthly cycle is appropriate for the reasons described in Part II.A.3.

[219] *See* proposed Rule 17Ad–22(e)(7)(vi), *infra* Part VII.

[220] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[221] *See* proposed Rules 17Ad–22(a)(5) and (e)(7)(vii), *infra* Part VII. The Commission notes that, in contrast to proposed Rules 17Ad–22(a)(5) and (e)(7)(vii), Rule 17Ad–22(b)(4) requires only a

The Commission preliminarily believes that such annual conforming model validation would provide feedback on the performance of such liquidity risk models conducted by a qualified person who is free from influence from the persons responsible for the development or operation of the liquidity risk model, as contemplated by the definition of ''conforming model validation'' in proposed Rule 17Ad–22(a)(5), and incorporate alternative liquidity risk management methodologies into their models as appropriate. Generally, the Commission preliminarily considers that a person is free from influence when that person does not perform functions associated with the clearing agency's models (except as part of the annual model validation) and does not report to a person who performs these functions. Preliminarily, the Commission would not expect policies and procedures adopted pursuant to this proposed requirement to require the clearing agency to detach model review from model development or to maintain two separate quantitative teams. By reacting to such feedback, a covered clearing agency may improve the functioning of its liquidity risk model. The Commission notes that misspecified or miscalibrated liquidity risk models may lead to errors in decision making. The Commission preliminarily believes that the proposed rule is appropriate following consideration of the Exchange Act requirements discussed above [222] and the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

viii. Address Liquidity Shortfalls and Seek To Avoid Unwinding Settlement

Proposed Rule 17Ad–22(e)(7)(viii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by its liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[223] The Commission preliminarily believes advance planning by a covered clearing agency with regard to liquidity shortfalls could further enhance the covered clearing agency's ability to perform its payment obligations without delay and therefore support the ability of the clearing agency's participants to function without disruption. Foreseeable liquidity shortfalls could include, for example, potential shortfalls that can be identified through testing a covered clearing agency's financial resources in a manner consistent with the policies and procedures requirements in proposed Rule 17Ad–22(e)(7)(vi). The Commission recognizes that foreseeable liquidity shortfalls could occur even when a covered clearing agency is in compliance with the proposed requirements of Rule 17Ad–22(e)(7), such as when, for example, the covered clearing agency is unable to obtain liquidity pursuant to a prearranged funding arrangements that are uncommitted. The Commission preliminarily believes the proposed requirement is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets and are consistent with the Exchange Act requirements discussed above.[224]

ix. Replenishment of Liquid Resources

Proposed Rule 17Ad–22(e)(7)(ix) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.[225] The Commission preliminarily believes a covered clearing agency should specifically contemplate and memorialize its expectations for replenishing its financial resources when they are depleted so that its ability to withstand repeated stress events, such as multiple market shocks or sequential defaults of multiple participants is clearly understood and reflected in its planning for such events. The Commission preliminarily believes that the proposed requirement is appropriate given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets and is consistent with the Exchange Act requirements discussed above.[226]

x. Feasibility Analysis for ''Cover Two''

Proposed Rule 17Ad–22(e)(7)(x) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it, at least once a year, evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides CCP services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.[227]

Rule 17Ad–22 does not currently provide specific requirements regarding the sizing and testing of liquid resources or what types of financial resources would qualify as liquid. However, the financial crisis of 2008 demonstrated the plausibility of the default of two large participants in a clearing agency over a brief period.[228] Accordingly, the Commission preliminarily believes that its proposed approach is appropriate, given the need for more stringent financial resource requirements for a covered clearing agency due to the risks that its size, operation, and importance pose to the U.S. securities markets, and is consistent with the Exchange Act requirements discussed above.[229] The Commission also believes that such financial resources must be robust enough to accommodate the risks that are particular to each market served and accordingly believes that a covered clearing agency should have the flexibility to determine that different standards are appropriate in different markets, given the variable nature and

model validation for margin models and does not specify the general elements of a model validation. *See supra* note 167 and accompanying text.

In addition, the Commission preliminary believes that an annual cycle is appropriate for the reasons described in Part II.A.3.

[222] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[223] *See* proposed Rule 17Ad–22(e)(7)(viii), *infra* Part VII.

[224] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[225] *See* proposed Rule 17Ad–22(e)(7)(ix), *infra* Part VII.

[226] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[227] *See* proposed Rule 17Ad–22(e)(7)(x), *infra* Part VII.

[228] *See* Clearing Agency Standards Release, *supra* note 5, at 66235–36 (noting that the financial crisis of 2008 demonstrated the plausibility of the default of two large participants in a clearing agency over a brief period).

[229] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

risks associated with the products cleared.[230]

The Commission also preliminarily believes that, with greater emphasis being placed on the role of CCPs in the financial system, the requirement in proposed Rule 17Ad–22(e)(7)(x) for CCPs to review and consider the feasibility of meeting a higher liquidity risk management standard is appropriate. While Rule 17Ad–22(e)(7)(x) would impose on certain covered clearing agencies' policies and procedures requirements to conduct an annual analysis of the feasibility of maintaining ''cover two'' for liquidity, such covered clearing agencies would not be mandated to adopt a ''cover two'' approach regarding liquidity risk management. The responsibility for such a determination would remain with the boards of directors of covered clearing agencies following a review of the information produced pursuant to proposed Rule 17Ad–22(e)(7)(x).

The Commission preliminarily believes that it may be appropriate for a covered clearing agency that provides CCP services to maintain liquidity coverage at levels higher than other clearing agencies due to the heightened need to ensure the safe operation of covered clearing agencies given their importance to the U.S. financial markets and the risks attributable to the products they clear, but also that covered clearing agencies not subject to a ''cover two'' requirement should have flexibility to evaluate the results of an annual feasibility study and to make their own determinations as to whether a ''cover two'' approach to liquidity risk management is necessary or appropriate. Furthermore, the Commission notes that if, following completion of a feasibility study as contemplated in proposed Rule 17Ad–22(e)(7)(x), a covered clearing agency makes a determination to move beyond ''cover one'' for liquidity that would be required under proposed Rule 17Ad–22(e)(7)(i), such covered clearing agency would not be limited to sizing its qualifying liquid resources to cover the default of its two largest participant families. In such case, the covered clearing agency could select a level of liquid resources exceeding ''cover one'' that it deems most appropriate to the management of liquidity risk, which could be either less than, equal to, or more than ''cover two.''

Based on its supervisory experience, the Commission also preliminarily believes that, in sizing its liquid resources to exceed ''cover one,'' a covered clearing agency may take into account a variety of factors, including, but not limited to, (i) the business model of the covered clearing agency, such as a utility model (which may be also referred to as an ''at cost'' model) versus a for-profit model; (ii) diversification of its members' business models as they impact the members' ability to supply liquidity to the covered clearing agency; (iii) concentration of membership of the covered clearing agency, as the breadth of the membership may affect the ability to draw liquidity from members; (iv) levels of usage of the covered clearing agency's services by members, as the concentration of demand on the covered clearing agency's services may bear upon potential liquidity needs; (v) the relative concentration of members' market share in the cleared products; (vi) the degree of alignment of interest between member ownership of the covered clearing agency and the provision of funding to the covered clearing agency; and (vii) the nature of, and risks associated with, the products cleared by the covered clearing agency.

g. Request for Comments

The Commission generally requests comments on all aspects of proposed Rules 17Ad–22(e)(4), (5), (6), and (7) and proposed Rules 17Ad–22(a)(5), (6), (14), (15), (17), (18), and (19). In particular, the Commission requests comments on the following issues:

- Has the Commission provided sufficient guidance for Rule 17Ad–22(e)(4) regarding the meaning of the requirement to cover credit exposures to each participant ''fully with a high degree of confidence''? Has the Commission provided sufficient guidance regarding the meaning of the requirement to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, ''in combined or separately maintained clearing or guaranty funds''? Has the Commission provided sufficient guidance regarding the use of ''high volatility'' and ''become less liquid''? Why or why not?
- Is the Commission's proposed requirement to cover credit exposures to each participant ''fully with a high degree of confidence'' in proposed Rule 17Ad–22(e)(4) appropriate? Why or why not?
- Should a covered clearing agency's policies and procedures provide for the measurement of credit exposures more frequently than once per day? Why or why not? If so, how frequently? What factors should be considered in determining the minimum frequency?
- Should the Commission require a covered clearing agency's policies and procedures to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks? Why or why not? Has the Commission provided sufficient guidance regarding what constitutes ''low credit, liquidity, and market risks''? Why or why not? If not, what additional guidance should the Commission consider providing?
- Should the Commission require a covered clearing agency's policies and procedures to set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure? Why or why not? Has the Commission provided sufficient guidance on what would constitute ''appropriately conservative haircuts and concentration limits''? Why or why not? Should the Commission adopt different standards? If so, what should those standards be? Please explain in detail.
- Are there any other requirements that should be included in proposed Rule 17Ad–22(e)(5) to facilitate policies and procedures that address collateral? Why or why not? Are there any requirements that should be removed? Why or why not? For instance, should the Commission require policies and procedures that avoid concentrated holdings of any particular kind of asset, such as those that would significantly impair the covered clearing agency's ability to liquidate such assets quickly without significant adverse price effects? Should the Commission require policies and procedures that avoid concentrated holdings under certain conditions?
- Has the Commission provided sufficient guidance for Rule 17Ad–22(e)(6) regarding ''margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market''? Has the Commission provided sufficient guidance regarding what a ''reliable'' source of timely price data is? Why or why not? Should the Commission use a different standard? If so, what should that standard be? Please explain in detail.
- Is the requirement in proposed Rule 17Ad–22(e)(6)(i) regarding policies and procedures reasonably designed to result in a margin system that at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market appropriate? Why or why not?
- Is the Commission's approach in proposed Rule 17Ad–22(e)(6)(iii),

[230] *See generally* Clearing Agency Standards Release, *supra* note 5, at 66234–36 (describing a ''cover two'' requirement for credit risk).

requiring a covered clearing agency's policies and procedures to calculate margin sufficient to cover its potential future exposure to participants, and the definition of ''potential future exposure'' in proposed Rule 17Ad–22(a)(14) to mean the ''maximum exposure estimated to occur at a future point in time with an established single-tailed confidence interval of at least 99% with respect to the estimated distribution of future exposure'' appropriate and sufficiently clear? Why or why not?

• Are there any other requirements that should be included in proposed Rule 17Ad–22(e)(6) to facilitate policies and procedures that address margin? Why or why not? For instance, should the Commission require policies and procedures that address minimum liquidation periods for products cleared by covered clearing agencies? Why or why not?

• Has the Commission provided sufficient guidance for Rule 17Ad–22(e)(7) regarding what constitutes the ''relevant currency'' in holding qualifying liquid resources? Has the Commission provided sufficient guidance regarding the ''due diligence'' with respect to liquidity providers? Has the Commission provided sufficient guidance regarding what constitutes ''foreseeable'' liquidity shortfalls? Why or why not?

• Has the Commission provided sufficient guidance regarding what constitutes ''regularly'' testing the sufficiency of liquid resources under proposed Rule 17Ad–22(e)(7)(vi)? Why or why not? How frequently should a covered clearing agency test the sufficiency of its liquid resources? Please explain.

• Does the set of minimum requirements for policies and procedures under proposed Rule 17Ad–22(e)(7) sufficiently address liquidity risks? Why or why not? Should the Commission adopt other requirements for addressing liquidity risk?

• Is the proposed definition of ''qualifying liquid resources'' under Rule 17Ad–22(a)(15) accurate, appropriate, and sufficiently clear given the requirements proposed? Why or why not? Should all types of assets be subject to prearranged funding arrangements? Should the proposed definition distinguish among them by asset, product type, or liquidity? Are there alternative definitions the Commission should consider?

• Is the meaning of the term ''due diligence'' under Rule 17Ad–22(7)(iv) sufficiently clear? Why or why not?

• Is the proposed definition of ''systemically important in multiple jurisdictions'' under Rule 17Ad–22(a)(19) accurate, appropriate, and sufficiently clear given the requirements proposed? Why or why not? Are there alternative definitions the Commission should consider? How should the Commission assess another regulator or jurisdiction's determination that a covered clearing agency is systemically important in multiple jurisdictions? Please explain.[231]

• Is the Commission's proposed approach to ''cover one'' and ''cover two'' with respect to credit risk appropriate? Should the Commission expand or contract the scope of covered clearing agencies subject to a ''cover two'' requirement beyond those systemically important in multiple jurisdictions or those involved in activities with a more complex risk profile? Why or why not? Is the ''cover two'' approach, in which the covered clearing agency must have policies and procedures requiring financial resources sufficient to cover the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions, appropriate? Should the Commission require policies and procedures that provide for financial resources in excess of ''cover two''? Why or why not? If so, what would be the potential costs and benefits?

• Is the Commission's proposed approach to ''cover one'' and ''cover two'' with respect to liquidity risk appropriate? Should the Commission require policies and procedures that would provide for maintaining qualifying liquid resources equal to ''cover two,'' rather than policies and procedures for a feasibility analysis with regard to ''cover two''? Why or why not?

• Should the Commission include more specific requirements for policies and procedures regarding stress testing that take into account, for example, relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, or a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions? Why or why not?

• Is the requirement to require policies and procedures for reporting the results of a conforming sensitivity analysis to the appropriate decision makers at the covered clearing agency appropriate? Why or why not? Has the Commission sufficiently described who the appropriate decision makers are? Please explain.

• Do any of the proposed rules for financial risk management differentiate between clearing agencies based on factors that should not be determinative, *i.e.* whether a clearing agency is covered or uncovered, whether a clearing agency is systemically important in multiple jurisdictions, involved in activities with a more complex risk profile, or neither, and whether the clearing agency provides CCP services for security-based swaps or other securities? Should the Commission consider other factors in determining which clearing agencies should be subject to the proposed requirements?

5. Proposed Rule 17Ad–22(e)(8): Settlement Finality

Proposed Rule 17Ad–22(e)(8) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.[232]

Rule 17Ad–22(d)(12) currently requires registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and to require that intraday or real-time finality be provided where necessary to reduce risks.[233] The Commission preliminarily believes that defining settlement finality with specific reference to the day on which the payment or obligation is due is appropriate because it better reflects the prevailing international convention and accordingly helps to ensure that covered clearing agencies can facilitate transactions globally.[234] Because of the similarity between proposed Rule 17Ad–22(e)(8) and Rule 17Ad–22(d)(12), the Commission anticipates that covered clearing agencies may need to make only limited changes to update

[231] For additional requests for comments relating to proposed Commission determinations under Rule 17Ab2–2, see Part II.C.4.

[232] *See* proposed Rule 17Ad–22(e)(8), *infra* Part VII.

[233] *See* 17 CFR 240.17Ad–22(d)(12); *see also* Clearing Agency Standards Release, *supra* note 5, at 66255–56. Rule 17Ad–22(d)(12) focuses on achieving settlement on the particular settlement date associated with the securities transaction or on an intraday or real-time basis (*i.e.,* delivery versus payment) where those additional steps are necessary to reduce risks. *See* Clearing Agency Standards Release, *supra* note 5, at 66256.

[234] *Cf.* PFMI Report, *supra* note 1, at 64.

their policies and procedures to comply with the proposed rule.[235]

As with Rule 17Ad–22(d)(12), the Commission preliminarily believes that proposed Rule 17Ad–22(e)(8) is appropriate for covered clearing agencies, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, for the following reasons. First, the Commission preliminarily believes that defining the point at which settlement is final may assist in the potential wind-down of a member in the event of insolvency because it provides the covered clearing agency with information regarding the member's open positions. As an example, clearly defining the point at which settlement is final might include establishing a cut-off point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a clearing member. Clearly defining the point at which settlement is final could also provide to clearing members the necessary guidance from the covered clearing agency to permit extensions for members with operating problems. For example, the covered clearing agency may establish rules governing the approval and duration of such extensions.

Second, the Commission preliminarily believes that a covered clearing agency's policies and procedures should require completing final settlement no later than the end of the day on which the payment or obligation is due and that practices creating material uncertainty regarding when final settlement will occur or permit the back-dating or ''as of'' dating of a transaction that settles after the end of the day on which the payment or obligation is due would not comply with this requirement. The Commission preliminarily believes that final settlement has the effect of reducing the buildup of exposures between clearing members and the clearing agency, and final settlement no later than the end of the day on which the payment or obligation is due limits these exposures to the change in price between valuation and the end of the day. Accordingly, deferring final settlement beyond the end of the day on which the payment or obligation is due would allow these exposures to increase in size, thereby creating the potential for credit and liquidity pressures for members and other market participants and potentially increasing systemic risk.

Third, the Commission preliminarily believes that a covered clearing agency's policies and procedures, where necessary and appropriate, should require intraday or real-time finality in order to reduce risk in circumstances where uncertainty regarding finality may impede the clearing agency's ability to facilitate prompt and accurate clearance and settlement, cause the clearing agency's members to fail to meet their obligations, or otherwise disrupt the securities markets. The Commission preliminarily believes that such efforts would be necessary and appropriate when, for example, the risks in question are material or when the opportunity to require intraday or real-time finality is available and it would be reasonable, whether in economic or other terms, to do so.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(8). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due, as in the proposed rule, or no later than the end of the settlement date, as in existing Rule 17Ad–22(d)(12) applicable to registered clearing agencies? Please explain.
- What changes, if any, would be created by the proposed requirements for settlement finality? Does the proposed rule affect certain, identifiable categories of market participants differently than others, such as smaller entities or entities with limited operations in the United States? If so, how?
- Are there operational, legal, or regulatory impediments to intraday or real-time settlement finality? Will the proposed standard make it harder for covered clearing agencies to conduct certain types of business for which intraday or real-time finality may be difficult? Are any additional rules or regulations needed to encourage intraday or real-time finality to reduce risks?
- Are there circumstances when the requirements of intraday, real-time, or end-of-day settlement finality proposed by the rule are not feasible or are not beneficial? If so, in what circumstances?

6. Proposed Rule 17Ad–22(e)(9): Money Settlements

Proposed Rule 17Ad–22(e)(9) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it considers conducting its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimizes and manages credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.[236] Rule 17Ad–22(e)(9) contains requirements similar to those applied to registered clearing agencies under Rule 17Ad–22(d)(5), but would additionally require a covered clearing agencies to have policies and procedures for conducting money settlement in central bank money.[237] Because this is the only requirement that differs between proposed Rule 17Ad–22(e)(9) and existing Rule 17Ad–22(d)(5), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures.[238]

As with Rule 17Ad–22(d)(5), the Commission is proposing Rule 17Ad–22(e)(9) to provide assurance that funds transfers are final when effected.[239] The Commission preliminarily believes that the proposed requirement for policies and procedures for conducting money settlement in central bank money would, in addition, help to further reduce the risk that financial obligations related to the activities of a covered clearing agency are not settled in a timely manner or discharged with finality because settlement in central bank money eliminates settlement risk within the jurisdiction of the central bank.[240]

The Commission notes that there are a number of arrangements that a covered

[235] *See supra* Part II.A.4.

[236] *See* proposed Rule 17Ad–22(e)(9), *infra* Part VII.

The Commission notes that, in some cases, for example, the use of central bank money may not be practical, as direct access to all central bank accounts and payment services may not be available to certain clearing agencies or members, and, for clearing agencies working under different currencies, certain central bank accounts may not be operational at the time money settlements occur.

[237] In full, Rule 17Ad–22(d)(5) requires registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements with its participants. *See* 17 CFR 240.17Ad–22(d)(5); *see also* Clearing Agency Standards Release, *supra* note 5, at 66249–50.

[238] *See supra* Part II.A.4 (noting the anticipated effect of the proposed rule) and *infra* Part IV.B.3.c (describing the current practices at registered clearing agencies regarding settlement).

[239] *See* proposed Rule 17Ad–22(e)(9), *infra* Part VII.

[240] *See* ICMA Eu. Repo Council, *supra* note 205, at 8–9 (noting that central bank money ''can be regarded as completely safe in the jurisdiction of the central bank'' and listing a number of advantages attributable to central bank money).

clearing agency could employ to meet the requirements under the proposed rule. For example, pursuant to the Clearing Supervision Act, designated clearing agencies may obtain access to account services at a Federal Reserve Bank.[241] The Commission preliminarily believes, however, that it may be appropriate for covered clearing agencies to use commercial banks for conducting money settlements even when comparable services are available from a central bank, and therefore the proposed rule would permit a covered clearing agency to decide for itself which service to use in those circumstances. If central bank account services are not available or used, then the covered clearing agency should consider establishing criteria for use of commercial banks to effect money settlements with its participants that address such commercial banks' regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability. In addition, a covered clearing agency also could seek to ensure that its legal agreements with such commercial settlement banks support such risk-reduction principles and commercial settlement bank criteria, including through provisions providing that funds transfers to the covered clearing agency are final when effected.

The proposed rule would also permit a covered clearing agency to use multiple settlement banks in order to monitor and manage concentration of payments among its commercial settlement banks. In those circumstances, policies and procedures would be required to consider the degree to which concentration of a covered clearing agency's exposure to a commercial settlement bank is affected or increased by multiple relationships with the settlement bank, including (i) where the settlement bank is also a participant in the covered clearing agency, or (ii) where the settlement bank provides back-up liquidity resources to the covered clearing agency.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(9). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency? Why or why not? Has the Commission provided sufficient guidance on what would be ''practical'' in this context? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency? Why or why not?
- Are there other requirements that the Commission should apply to money settlements, such as requiring policies and procedures with respect to the minimum number of banks that a covered clearing agency may use to effect money settlements with its participants in order to avoid reliance on a small number of such banks? Should the Commission require policies and procedures specifying the characteristics of financial institutions that may be used by clearing agencies for settlement purposes? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to establish and monitor adherence to criteria based on high standards for the covered clearing agency's settlement banks? For example, should the Commission require that criteria to consider the applicable regulatory and supervisory frameworks, creditworthiness, capitalization, access to liquidity, and operational reliability? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to monitor and manage the concentration of credit and liquidity exposures to its commercial settlement banks? Why or why not?
- Should rules for money settlements established by the Commission be uniform for all types of money settlements, or are there circumstances in which it would be appropriate for covered clearing agencies to accept a higher degree of money settlement risk, such as when transacting in certain product categories or with certain types of customers? Why or why not?

7. Proposed Rule 17Ad–22(e)(10): Physical Delivery Risks

Proposed Rule 17Ad–22(e)(10) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments and operational practices that identify, monitor, and manage the risk associated with such physical deliveries.[242]

The proposed requirement is similar to the requirement applicable to registered clearing agencies in Rule 17Ad–22(d)(15), but the proposed rule also requires that such standards be transparent at covered clearing agencies.[243] Considering the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, the Commission preliminarily believes that the proposed new requirement for transparent standards is appropriate. Physical delivery may require the involvement of multiple parties, including the clearing agency itself, its members, customers, custodians, and transfer agents, and failures to deliver physical instruments can threaten the integrity and smooth functioning of the financial system. By requiring policies and procedures to include transparent written standards at covered clearing agencies, the proposed rule helps to mitigate physical delivery risks.

The Commission preliminarily believes that the proposed requirement for a covered clearing agency to maintain transparent written standards that state its obligations with respect to physical deliveries would help to ensure that members and their customers have information that is likely to enhance their understanding of their rights and responsibilities with respect to using the clearance and settlement services of a covered clearing agency.[244] The Commission preliminarily believes that such information, when available to members and their customers through the covered clearing agency's policies and procedures, would promote a shared understanding regarding physical delivery practices between the covered clearing agency and its members. The requirement for policies and procedures with transparent written standards may further facilitate prompt and accurate

[241] *See* 12 U.S.C. 5465(a); *see also supra* Parts II.B.4.d and II.B.4.f.iii (discussing access to account services at a Federal Reserve Bank, or other relevant central bank, pursuant to proposed Rules 17Ad–22(e)(5) and (7), respectively).

[242] *See* proposed Rule 17Ad–22(e)(10), *infra* Part VII.

[243] Registered clearing agencies are currently subject to existing Rule 17Ad–22(d)(15), which requires them to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations. *See* 17 CFR 240.17Ad–22(d)(15); *see also* Clearing Agency Standards Release, *supra* note 5, at 66257–58.

[244] The Commission is proposing additional requirements regarding disclosures to participants and disclosure generally, pursuant to proposed Rules 17Ad–22(e)(1) (legal risk), (e)(2) (governance), and (e)(23) (disclosure of rules, key procedures, and market data). *See infra* Parts II.B.1, 2, and 20, respectively.

clearance and settlement and mitigate physical delivery risks.

The Commission acknowledges that practices regarding physical delivery vary based on the types of assets that a covered clearing agency settles.[245] A covered clearing agency would be required, however, to state clearly which asset classes it accepts for physical delivery and the procedures surrounding the delivery of each. The Commission notes that there are a number of arrangements that a covered clearing agency could employ pursuant to the requirements of the proposed rule. For example, if a covered clearing agency takes physical delivery of securities from its members in return for payments of cash, then it should inform its members of the extent of the clearing agency's obligations to make payment. The Commission envisions that one possible approach a covered clearing agency could take in fulfillment of the proposed requirement would be to employ policies and procedures that clearly state any obligations it incurs to members for losses incurred in the delivery process. In addition, its policies and procedures could clearly state rules or obligations regarding definitions for acceptable physical instruments, the location of delivery sites, rules for storage and warehouse operations, and the timing of delivery.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the risks that arise in connection with their obligations for physical deliveries.[246] The Commission notes that this is similar to the requirement for a registered clearing agency's policies and procedures to identify and manage the risks from its obligations in Rule 17Ad–22(d)(15).[247] As with Rule 17Ad–22(d)(15), the Commission believes that requiring a clearing agency's policies and procedures to identify, monitor, and manage these risks facilitates its ability to deal preemptively with potential issues with physical delivery, in line with Exchange Act requirements to facilitate prompt and accurate clearance and settlement and the safeguarding of assets.[248]

The Commission preliminarily notes that certain risks associated with physical deliveries could stem from operational limitations with respect to assuring receipt of and processing of physical deliveries. Other operational risks may relate to personnel, which can be mitigated by having policies and procedures designed to review and assess the qualifications of potential employees, including reference and background checks and employee training, among other things. Further operational risks include theft, loss, counterfeiting, and deterioration of or damage to assets.[249] Insurance coverage may be one way to mitigate such risk of theft, loss, counterfeiting, fraud, and damage to assets. Other appropriate methods to identify, monitor, and manage risks related to delivery and storage of physical assets may include ensuring records of physical assets received and held accurately reflect holdings and that employee duties for such recordkeeping for and holding of physical assets are separated.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(10). In addition, the Commission requests comments on the following specific issue:

- Should the Commission require a covered clearing agency's policies and procedures to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments? Why or why not? Are there physical delivery obligations that a covered clearing agency's policies and procedures should not be required to state through transparent written standards? If so, please explain.

8. Proposed Rule 17Ad–22(e)(11): Central Securities Depositories

Proposed Rule 17Ad–22(e)(11) would apply only to a covered clearing agency providing CSD services (hereinafter a ''covered CSD'' in this part).[250] Proposed Rule 17Ad–22(e)(11)(i) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities.[251] While Rule 17Ad–22(d)(10) similarly requires registered clearing agencies that provide CSD services to have policies and procedures reasonably designed to immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible,[252] proposed Rule 17Ad–22(e)(11) would also require a covered CSD to have policies and procedures that ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities. The Commission preliminarily believes these additional requirements are appropriate for covered CSDs given the risks that a covered CSD's size, operation, and importance pose to the U.S. securities markets.

Like existing Rule 17Ad–22(d)(10), proposed Rule 17Ad–22(e)(11)(i) would, among other things, require a covered CSD to have policies and procedures to maintain securities in an immobilized or dematerialized form for transfer by book entry.[253] The Commission

[245] The proposed rule would provide covered clearing agencies with flexibility to achieve clear and transparent standards but would necessarily require an approach that provides sufficient notice to its participants regarding the covered clearing agency's obligations. *See infra* Parts II.B.20 and VII (discussing a covered clearing agency's disclosure obligations pursuant to proposed Rule 17Ad–22(e)(23) and providing proposed rule text).

The Commission notes that CDS employing the contractual term ''physical delivery'' or similar language, which upon an event of default are settled by ''physical delivery'' of the instrument (as such terms are used in the agreement) to the protection seller by the protection buyer are not within the scope of this rule merely because of such contractual terminology where they are not delivered in paper form (but are delivered through book entry or electronic transfer).

[246] *See* proposed Rule 17Ad–22(e)(10), *infra* Part VII.

[247] *See supra* note 243.

[248] *See* 15 U.S.C. 78q–1(b)(3)(F).

[249] In addition, the Commission is proposing Rule 17Ad–22(e)(17) to establish minimum requirements for operational risk management. *See infra* Parts IV.C.3.a.xii and VII (further discussing the proposed requirements and providing proposed rule text).

[250] *See* proposed Rule 17Ad–22(a)(3), *infra* Part VII (defining ''central securities depository services''). In the United States, DTC is currently the only registered clearing agency that provides CSD services.

This definition is currently codified at 17 CFR 240.17Ad–22(a)(2). *See supra* note 61 (noting that 17 CFR 240.17Ad–22(a) is being revised to incorporate additional terms).

[251] *See* proposed Rule 17Ad–22(e)(11), *infra* Part VII.

[252] In full, existing Rule 17Ad–22(d)(10) requires registered clearing agencies that provide CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible. *See* 17 CFR 240.17Ad–22(d)(10); *see also* Clearing Agency Standards Release, *supra* note 5, at 66253–54.

[253] Immobilization refers to any circumstance where an investor does not receive a physical certificate upon the purchase of shares or is required to physically deliver a certificate upon the sale of shares. Dematerialization is the process of eliminating physical certificates as a record of security ownership.

The Commission notes that, while registered clearing agencies that provide CSD services are already subject to this requirement under Rule 17Ad–22(d)(10), the Commission is proposing Rule 17Ad–22(e)(10) as part of a comprehensive set of rules for regulating covered clearing agencies. Because Rule 17Ad–22(d)(10) already contains this requirement, however, the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with this requirement under the proposed rule. *See supra* Part II.A.4.

preliminarily believes this approach would continue to promote a reduction in securities transfer processing costs, as well as the risks associated with securities settlement and custody, such as destruction or theft, by removing the need to hold and transfer many, if not most, physical certificates.[254] In addition, the Commission preliminarily believes the requirement would continue to promote prompt and efficient settlement processes through the potential for increased automation and may also help reduce the risk of error and delays in securities processing. The Commission also preliminarily believes the proposed rule would, like Rule 17Ad–22(d)(10), further the objectives in Section 17A of the Exchange Act requiring the Commission to end the physical movement of securities certificates in connection with settlement among brokers and dealers.[255] Further, the Commission preliminarily believes that the proposed rule, by continuing to facilitate book-entry transfer, may also continue to facilitate the use of exchange-of-value settlement systems, which help to reduce settlement risk pursuant to proposed Rule 17Ad–22(e)(12).[256]

As with Rule 17Ad–22(d)(10), the Commission notes that the proposed requirement for policies and procedures to cover maintaining securities in an immobilized form is not intended to prohibit a covered CSD from holding physical securities certificates on behalf of its members for purposes other than to facilitate immobilization where such securities currently continue to exist in paper form. In this regard, the Commission believes it would be useful to describe three relevant features of the current U.S. market. First, in order for securities to be offered and sold publicly, the offer or sale of the securities generally must be registered with the Commission or subject to an exemption from registration.[257] Securities sold in an exempt transaction may be subject to restrictions. For example, securities acquired from the issuer in a transaction not involving any public offering are restricted securities,[258] are subject to restrictions on resale, often bear legends that discuss such restrictions, and often are in paper certificate form in current market practice. The restrictions on such securities may make more complex the immobilization or ultimate dematerialization of these paper certificates. For instance, registered CSDs in the United States currently do not provide book-entry transfer for all restricted securities.[259]

Second, U.S. law generally does not provide for a federal corporate law or corporate charter. Instead, states currently permit corporations to issue stock certificates to registered owners. While the market in the United States has made advances in immobilizing and dematerializing securities, no federal statute or regulation prohibits the issuance of paper certificates to registered owners of a class of securities registered under the Exchange Act or companies that file periodic reports with the Commission. Accordingly, the Commission's rules do not prohibit, and in some respects contemplate, the issuance of securities certificates.[260] As a result, some registered owners may hold securities in paper certificate form.

Third, some broker-dealers in the United States no longer operate vaults in which to hold securities certificates registered in the names of their customers where such customers seek a third-party to physically hold their certificates. In such cases, broker-dealers (without an in-house vault) may utilize the vault services of the CSD of which they are a participant in order to be able to offer such custody service to their customers.

The Commission also notes that the proposed rule is not intended to alter the following practices in the U.S. market. Proposed Rule 17Ad–22(e)(11) would not prohibit a covered CSD from providing custody-only services for purposes not intended to promote immobilization to facilitate street name transfer but solely to hold these securities for third parties. Likewise, proposed Rule 17Ad–22(e)(11) would not prohibit a covered CSD from holding American depositary shares in custody.[261]

In addition, the Commission preliminarily believes that the policies and procedures of a covered CSD should be required to ensure the integrity of securities issues and minimize and manage the risks associated with the safekeeping and transfer of securities, given the risks that a covered CSD's size, operation, and importance pose to the U.S. securities markets, for the following reasons. First, the preservation of the rights of issuers and holders of securities is necessary for the orderly functioning of the securities markets.[262] The integrity of a securities issue can be undermined, for instance, if a covered CSD does not prohibit overdrafts and debit balances in securities accounts, which can create unauthorized issuances of securities that undermine the integrity of the covered CSD's services. Second, minimizing and managing the risks associated with the safekeeping and transfer of securities promotes risk management policies and procedures that address custody risk.[263]

In addition, the Commission is proposing the requirements described below. Although Rule 17Ad–22(d)(10) does not include similar requirements, the Commission anticipates that, based on the current practices of registered CSDs in the United States, a registered CSD may need to make only limited changes to update its policies and procedures to comply with the below proposed requirements.[264]

[254] By concentrating the location of physical securities in a CSD, clearing agencies are able to achieve efficiencies in clearance and settlement by streamlining transfer. Virtually all mutual fund securities, government securities, options, and municipal bonds in the United States are dematerialized and most of the equity and corporate bonds in the U.S. market are either immobilized or dematerialized. While the U.S. markets have made great strides in achieving immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form imposes unnecessary risk and expense to the industry and to investors. *See* Exchange Act Release No. 34–49405 (Mar. 11, 2004), 69 FR 12922, 12933 (Mar. 18, 2004).

[255] *See* 15 U.S.C. 78q–1(e).

[256] *See infra* Parts II.B.9 (discussing proposed Rule 17Ad–22(e)(12) for exchange-of-value settlement systems) and IV.C.3.a.vi (noting that the economic effect of book-entry transfer in a delivery versus payment system is to allow securities to be credited to an account immediately upon debiting the account for the payment amount and that it thereby helps reduce trade failures).

[257] *See* 15 U.S.C. 77e.

[258] *See* 17 CFR 230.144(a)(3).

[259] *See* 17 CFR 230.144A; *see also* Exchange Act Release No. 34–59384 (Feb. 11, 2009), 74 FR 7941 (Feb. 20, 2009); DTC, Operational Arrangements, Secs. I.A.2 & I.B.5 (Jan. 2012), *available at http://www.dtcc.com/*.

[260] In the absence of a federal or state requirement, an issuer could limit its issuance of certain types of securities to book-entry only form through its own charter, bylaws, or policies.

[261] Issuers of American depositary receipts (''ADRs''), whether in programs sponsored or unsponsored by a foreign issuer, may hold the underlying shares of the foreign issuer (which may be in paper certificate form and are commonly referred to as American depositary shares) to which the ADRs relate in the ultimate custody of a covered CSD.

[262] The Commission is proposing additional requirements under Rule 17Ad–22(e)(11) to further address the integrity of securities issues. *See infra* Part II.B.8.a.

[263] The Commission is proposing additional requirements under Rule 17Ad–22(e)(11) to further address custody risk at covered CSDs. *See infra* Part II.B.8.c.

[264] *See infra* Parts IV.B.3.d.i (discussing the current practices of registered CSDs in the United States) and IV.C.3.a.vi (discussing the anticipated economic effect of the proposed rule).

a. Controls To Safeguard the Rights of Securities Issuers and Holders and Prevent the Unauthorized Creation or Deletion of Securities

Proposed Rule 17Ad–22(e)(11)(ii) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities.

The Commission preliminarily believes that the proposed requirement to safeguard the rights of issuers and holders is appropriate because, while issuers and holders may not be participants in a covered CSD, they access its services through covered CSD immobilization or dematerialization of securities and thus a failure to safeguard securities by the CSD may adversely affect issuers or holders, including for example by creating legal problems related to unauthorized issuance of securities, dilution of a holder's ownership interest or the holder's claim on the security as beneficial owner where holding indirectly through a member of the CSD.

As noted above, the preservation of the rights of securities issuers and holders is necessary for the orderly functioning of the securities markets. Accordingly, the Commission preliminarily believes the proposed rule is appropriate to help ensure that a covered clearing agency can verify that its records are accurate and provide a complete accounting of its securities issues.

b. Periodic and at Least Daily Reconciliation of Securities Maintained

Proposed Rule 17Ad–22(e)(11)(ii) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct periodic and at least daily reconciliation of securities issues it maintains.[265] The Commission preliminarily believes that the proposed requirement to reconcile on a daily basis securities maintained would (i) support the safeguarding of securities because, through such internal control procedures, accurate record-keeping is promoted and thereby safe, accurate, and effective clearing and settlement is also promoted, and (ii) further benefit issuers and holders, as discussed above, by potentially preventing unauthorized issuance of securities, dilution of a holder's positions, or the holder's claim on the security as beneficial owner where holding indirectly through a member of the CSD.

The Commission notes that CSDs in the United States currently do not provide registrar or transfer agent services to record name owners of securities. CSD services that facilitate book-entry transfer are limited to holding jumbo/global certificates in custody or, through sub-custodian relationships with the transfer agent for a particular issuer via the Fast Automated Securities Transfer (''FAST'') system, which is used to maintain jumbo/global record ownership position balances of the CSD's holdings in a particular issue.[266] In both cases, custody or sub-custody facilitates book-entry transfer for ultimate beneficial owners as the CSD credits and debits the accounts of its members, which then maintain records of ownership and send account statements to their customers that are the ultimate beneficial owners. Since the registrar maintaining the security holder list for an issuer is not the CSD, the daily reconciliation requirement applicable to a covered CSD reconciling CSD ownership positions (that facilitate book-entry transfer for ultimate beneficial owners) against the record of such CSD ownership positions on the security holder list could not be done solely in-house but would require the CSD to coordinate with the registrar maintaining the security holder list for each issue that has been immobilized.[267]

c. Protect Assets Against Custody Risk

Proposed Rule 17Ad–22(e)(11)(iii) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.[268] The Commission preliminarily believes the proposed requirement to address custody risk is appropriate because a covered CSD faces risks of negligence, misuse of assets, fraud, record-keeping or administrative failures, loss, destruction, damage, natural disaster, and theft or other crime regarding assets held in custody. The Commission preliminarily believes that the proposed rule would further support Section 17A(b)(3)(F) of the Exchange Act, which requires the rules of a clearing agency to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible.[269]

Such custody risk may be related to physical delivery risk, which proposed Rule 17Ad–22(e)(10) would require a covered clearing agency's policies and procedures to identify, monitor, and manage.[270] Operational risks may also be implicated, including those relating to personnel, which can be mitigated by having policies and procedures designed to review and assess the qualifications of potential employees, including reference and background checks and employee training, among other things. Additional operational risks include theft, loss, counterfeiting, and deterioration of or damage to assets.[271] Insurance coverage may be one way to mitigate such risk of theft, loss, counterfeiting, fraud, and damage to assets. Other appropriate methods to monitor and manage custody risks may include ensuring records of securities held in custody accurately reflect holdings and that employee duties for such recordkeeping for and holding of securities are separated.[272]

The Commission also preliminarily notes that increased dematerialization would not eliminate the applicability of the requirement to protect assets against custody risk. When held in electronic custody through accounting entries, such as through electronic sub-custody

[265] *See* proposed Rule 17Ad–22(e)(11), *infra* Part VII. The Commission preliminary believes that daily reconciliation is appropriate for the reasons described in Part II.A.3.

[266] For a description of DTC's rules relating to FAST, see Exchange Act Release Nos. 34–64191 (Apr. 5, 2011), 76 FR 20061 (Apr. 11, 2011); 34–61800 (Mar. 30, 2010), 75 FR 17196 (Apr. 5, 2010); 34–60196 (Jun. 30, 2009), 74 FR 33496 (Jul. 13, 2009); 34–46956 (Dec. 2, 2002), 67 FR 77115 (Dec. 16, 2002); 34–31941 (Mar. 3, 1993); 34–21401 (Oct. 16, 1984); 34–14997 (Jul. 26, 1978); and 34–13342 (Mar. 8, 1977).

[267] Commonly, the entity performing the registrar and transfer services for an issue would be the same. Both functions are functions that place an entity within the definition of ''transfer agent'' pursuant to Section 3(a)(25) of the Exchange Act and the related regulatory regime for transfer agents. *See* 15 U.S.C. 78c(a)(25).

[268] *See* proposed Rule 17Ad–22(e)(11), *infra* Part VII. For example, in the United States, additional safekeeping requirements may apply under state law. *See, e.g.,* N.Y. UCC Law 8–504 (requires securities intermediaries, including clearing corporations, to exercise due care in accordance with reasonable commercial standards to obtain and maintain the financial asset).

[269] *See* 15 U.S.C. 78q–1(b)(3)(F).

[270] *See supra* Part II.B.7 and *infra* Part VII (discussing the requirements under proposed Rule 17Ad–22(e)(10) and providing proposed rule text).

[271] The Commission is also proposing Rule 17Ad–22(e)(17) to establish minimum standards for operational risk management. *See infra* Parts II.B.14 and VII.

[272] The Commission is also proposing Rule 17Ad–22(e)(16) to establish minimum standards for custody and investment risk. *See infra* Parts II.B.13 and VII.

of the CSD global/jumbo record ownership position with a transfer agent via FAST, assets may nevertheless remain subject to operational risks and may be subject to variations of such risks, such as hacking or digital piracy, that are different from those risks faced with respect to paper certificates.

d. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(11). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered CSD's policies and procedures to maintain securities in an immobilized or dematerialized form for their transfer by book entry? Why or why not? Are there any circumstances under which this would be inappropriate? Please explain.
- Should the Commission require a covered CSD's policies and procedures to ensure the integrity of securities issues? Why or why not?
- Should the Commission require a covered CSD's policies and procedures to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates? Why or why not?
- Are there any other requirements that should be included in the proposed rule to promote sound practices at covered CSDs? For instance, should the Commission require a covered CSD's policies and procedures to include provisions to identify, measure, monitor, and manage its risks from other activities that it may perform? Should the Commission require a covered CSD's policies and procedures to employ a robust system that ensures segregation between the CSD's own assets and the securities of its participants and segregation among the securities of participants? Why or why not?

9. Proposed Rule 17Ad–22(e)(12): Exchange-of-Value Settlement Systems

Proposed Rule 17Ad–22(e)(12) would apply to transactions cleared by a covered clearing agency that involve the settlement of two linked obligations.[273] The proposed rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs.[274] The Commission preliminarily believes that the proposed rule is appropriate to help reduce the potential that delivery of a security is not appropriately matched with payment for the security, thereby impairing a covered clearing agency's ability to facilitate prompt and accurate clearance and settlement.

Rule 17Ad–22(d)(13) similarly requires that a registered clearing agency's policies and procedures be reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment (''DVP''),[275] though it does not specify that settlement should occur regardless of whether the clearing agency settles on a gross or net basis and when finality occurs. Because this is the only provision that differs between proposed Rule 17Ad–22(e)(12) and existing Rule 17Ad–22(d)(13), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures.[276]

The Commission notes that ensuring settlement finality only when settlement of the corresponding obligation is final—regardless of whether a covered clearing agency settles on a gross or net basis—may require corresponding policies and procedures that address legal, contractual, operational, and other risks.[277] Given the risks that the size, operation, and importance of covered clearing agencies pose to the U.S. securities markets, the Commission preliminarily believes that this requirement is appropriate for covered clearing agencies.

Market confidence, in addition to public confidence more generally, hinges in large part on the dependability and promptness of the clearing and settlement systems underlying a given market. If CCPs are unable to promptly and fully give to clearing members access to funds due, they and other market participants may lose confidence in the settlement process.[278]

As under Rule 17Ad–22(d)(13), a covered clearing agency can link securities transfers to funds transfers and mitigate principal risk in connection with settlement through DVP settlement mechanisms. DVP is achieved in the settlement process when the mechanisms facilitating settlement ensure that delivery occurs only if payment occurs.[279] DVP eliminates the risk that a party would lose some or its entire principal because securities were delivered without payments being confirmed. The Commission notes that DVP settlement mechanisms are prevalent among registered clearing agencies because they eliminate principal risk and reduce the settlement risk that arises in a securities transaction. A counterparty default absent a DVP settlement mechanism may cause substantial losses and liquidity pressures. Further, a settlement default could result in high replacement costs because the unrealized gain on an unsettled contract or the cost of replacing the original contract at market prices may change rapidly during periods of market stress.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(12). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to, if the covered clearing agency settles transactions that involve the settlement of two linked obligations, eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other? Should the Commission impose this policy and procedure requirement regardless of whether the covered clearing agency settles on a gross or net basis, as proposed? Should the Commission impose this policy and procedure requirement regardless of when finality occurs, as proposed? Why or why not?
- Does the proposed rule affect certain identifiable categories of covered clearing agencies differently than others, such as clearing agencies with more

[273] *See* proposed Rule 17Ad–22(e)(12), *infra* Part VII.

[274] *See id.*

[275] *See* 17 CFR 240.17Ad–22(d)(13); *see also* Clearing Agency Standards Release, *supra* note 5, at 66256.

[276] *See supra* Part II.A.4.

[277] *See supra* Parts II.B.1–3 and *infra* Parts II.B.14 and VII (discussing proposed rules establishing minimum standards for legal risk and governance arrangements, requiring a comprehensive risk management framework, requiring minimum standards for operational risk management, and providing proposed rule text in each case, respectively).

[278] *See* Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Speeding Up Settlement: The Next Frontier, Remarks before the Symposium on Risk Reduction in Payments, Clearance and Settlement Systems (Jan. 26, 1996), *available at http://www.sec.gov/news/speech/speecharchive/1996/spch071.txt.*

[279] *See* BIS, Delivery Versus Payment in Securities Settlement Systems (Sept. 1992), *available at http://www.bis.org/publ/cpss06.pdf.* Three different DVP models can be differentiated according to whether the securities and/or funds transfers are settled on a gross (trade-by-trade) basis or on a net basis. Proposed Rule 17Ad–22(e)(10), *supra* Part II.B.7 and *infra* Part VII, would establish minimum requirements for physical deliveries.

diversified post-trade services as compared to clearing agencies that specialize in fewer activities? If so, how? How should the proposed rule account for these differences?

• Are there operational or legal impediments to implementing the proposed rule? Would the proposed rule make it more difficult for covered clearing agencies to conduct certain types of business that may require a longer settlement cycle, for reasons outside of their control? Are any additional rules or regulations needed to support achievement of the proposed rule?

• Are there circumstances when ensuring that the settlement of an obligation is final if and only if the settlement of the corresponding obligation is final is not feasible or practicable? If so, when?

10. Proposed Rule 17Ad–22(e)(13): Participant-Default Rules and Procedures

Proposed Rule 17Ad–22(e)(13) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a participant default.[280] Because Rule 17Ad–22(d)(11) currently requires a registered clearing agency's policies and procedures to meet substantially the same requirements,[281] the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with the proposed rule.[282]

As with Rule 17Ad–22(d)(11), the Commission believes that proposed Rule 17Ad–22(e)(13) is appropriate given the importance of having established procedures in the event a covered clearing agency faces a member default. The proposed rule would continue to provide certainty and predictability to market participants about the measures a clearing agency will take in the event of a participant default as default procedures, among other things, are meant to reduce the likelihood that a default by one or more participants will disrupt the clearing agency's operations. By establishing, implementing, maintaining and enforcing such policies and procedures, a covered clearing agency should be in a better position to continue providing its services in a manner that promotes prompt and accurate clearance and settlement during times of market stress.[283] Accordingly, a covered clearing agency that has financial and operational triggers for default would need to ensure these are clearly defined.[284] In addition, where triggers are not automatic through the application of objective standards or thresholds, the discretion afforded a covered clearing agency to declare defaults would need to be clearly defined.[285] For example, a clear definition may include defining which person or group exercises discretionary authority in the event of default and providing specific examples of when the exercise of discretion is appropriate.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it can take timely action to contain losses and liquidity pressures and to continue meeting its obligations when due in the event of a member default.[286] Default procedures are meant to reduce the likelihood that a default by a member, or multiple members, will disrupt the covered clearing agency's operations. Based on its supervisory experience, the Commission preliminarily believes such policies and procedures would address, among other things, the following: (i) Accessing credit facilities, (ii) managing (which may include hedging open positions and funding collateral positions it is not prudent to close out immediately), transferring (such as through allocation or auction to other members) and/or closing out a defaulting member's positions; and (iii) transferring and/or liquidating applicable collateral. By employing policies and procedures that are designed to permit a covered clearing agency to take actions to contain losses and liquidity pressures it faces in the event of a participant default while continuing to meet its obligations, a covered clearing agency should be in a better position to continue providing its services in a manner that promotes accurate clearance and settlement during times of market stress.

A covered clearing agency should also have the operational capacity to comply with the proposed requirements to contain losses. The Commission preliminarily believes that the following measures would help promote such operational capacity: (i) Establishing training programs for employees involved in default matters to ensure policies are well implemented; (ii) developing a communications strategy for communicating with stakeholders, including the Commission, concerning defaults; and (iii) making sure the proper tools and resources (whether these are personnel or other) required are available to close out, transfer, or hedge open positions of a defaulting member promptly even in the face of rapid market movements.[287]

In addition, based on its supervisory experience, the Commission preliminarily believes that a covered clearing agency's default procedures would generally include the following: (i) The action that may be taken (*e.g.,* exercising mutualization of losses); (ii) who may take those actions (*e.g.,* the division of responsibilities when clearing agencies operate links to other clearing agencies); (iii) the scope of the actions that may be taken (*e.g.,* any limits on the total losses that would be mutualized); (iv) potential changes to the normal settlement practices, should these changes be necessary in extreme circumstances, to ensure timely settlement; (v) the management of transactions at different stages of processing; (vi) the sequencing of actions; (vii) the roles, obligations, and

[280] *See* proposed Rule 17Ad–22(e)(13), *infra* Part VII. The Commission is proposing Rule 17Ad–22(e)(13) as part of a comprehensive set of rules for regulating covered clearing agencies that is consistent with and comparable to other domestic and international standards for FMIs.

[281] Rule 17Ad–22(d)(11) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. *See* 17 CFR 240.17Ad–22(d)(11); *see also* Clearing Agency Standards Release, *supra* note 5, at 66254–55.

[282] *See supra* Part II.A.4.

[283] The Commission is also proposing Rule 17Ad–22(e)(23) to require disclosure of rules, key procedures, and market data to members, market participants, and in certain circumstances the public. *See infra* Parts II.B.20 and VII (discussing the proposed rule and providing rule text, respectively).

[284] An operational default may occur when a participant is not able to meet its obligations due to an operational problem, such as a failure in information technology systems. The Commission is proposing Rule 17Ad–22(e)(17) to establish minimum standards for operational risk management. *See infra* Parts II.B.14 and VII (discussing the proposed rule and providing rule text, respectively).

[285] In this regard, the Commission notes that policies and procedures regarding participant default must satisfy the requirement for legal certainty in proposed Rule 17Ad–22(e)(1). *See supra* Part II.B.1.

[286] *See* proposed Rule 17Ad–22(e)(13), *infra* Part VII. A clearing agency may be able to contain liquidity pressures it faces by taking actions to secure additional sources of liquidity or limiting transactions that potentially serve to drain liquidity resources.

[287] *See supra* note 284 and accompanying text. The Commission has also proposed Regulation Systems Compliance and Integrity (''Regulation SCI'') to establish requirements for operational capacity. *See infra* note 326 and accompanying text.

responsibilities of the various parties, including non-defaulting members; (viii) the mechanisms to address a covered clearing agency's obligations to non-defaulting members (*e.g.,* the process for clearing trades guaranteed by the covered clearing agency to which a defaulting member is a party); and (ix) the mechanisms to address the defaulting member's obligations to its customers (*e.g.,* the process for dealing with a defaulting member's accounts).

In addition, proposed Rule 17Ad–22(e)(13) would include the requirements described below, for which no comparable requirements under Rule 17Ad–22(d) are applicable to registered clearing agencies. The Commission preliminarily believes the proposed requirements are appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

a. Address Allocation of Credit Losses

Proposed Rule 17Ad–22(e)(13)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address the allocation of credit losses it may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers.[288]

The Commission preliminarily believes that this requirement is appropriate because requiring that policies and procedures address key aspects of the allocation of credit losses would provide certainty and predictability about the measures available to a covered clearing agency in the event of a default. Such certainty and predictability would facilitate the orderly handling of member defaults and would enable members to understand their obligations to the covered clearing agency in extreme circumstances. In some instances, managing a member default may involve hedging open positions, funding collateral so that the positions can be closed out over time, or both. A covered clearing agency may also decide to auction or allocate open positions to its participants. To the extent possible, the Commission believes a covered clearing agency would allow non-defaulting members to continue to manage their positions in the ordinary course. By addressing the allocation of credit losses, the covered clearing agency would have policies and procedures intended to address the resolution of a member default where its collateral and other financial resources are insufficient to cover credit losses.

b. Describe Replenishment of Financial Resources

Proposed Rule 17Ad–22(e)(13)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process to replenish any financial resources it may use following a member default or other event in which use of such resources is contemplated.[289]

The Commission preliminarily believes this requirement is appropriate because the absence of procedures to replenish resources may undermine a covered clearing agency's ability to contain losses and liquidity pressures. The Commission also preliminarily believes that a covered clearing agency's rules and procedures to draw on financial resources will support the proposed rule's other requirements to contain losses and liquidity pressures. Such procedures commonly specify the order of use of different types of resources, including (i) assets provided by the defaulting member (such as margin or other collateral), (ii) the guaranty fund of the covered clearing agency, (iii) capital calls on members, and (iv) credit facilities. In addition, the Commission preliminarily believes a covered clearing agency could satisfy the proposed requirement by having policies and procedures that describe (i) how resources that have been depleted as a result of a member default would be replenished over time and (ii) what burdens a non-defaulting member may bear.

c. Test Default Procedures Annually and Following Material Changes

Proposed Rule 17Ad–22(e)(13)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require its members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close out procedures. The proposed rule would also require policies and procedures providing for such testing and review to occur at least annually and following material changes thereto.[290] The Commission preliminarily expects that covered clearing agencies would make efforts to secure the participation of all stakeholders in such testing and review of default procedures but recognizes that covered clearing agencies may have limited ability to require said participation by all such stakeholders, and therefore the proposed rule requires such participation by other stakeholders only when practicable.

The Commission preliminarily believes that including members and other stakeholders in such testing will help to ensure that procedures will be practical and effective in the face of an actual default. In addition to the relevant employees, members, and other stakeholders that would be involved in testing default procedures, a covered clearing agency may determine, as appropriate, to include members of its board of directors or similar governing body, and to invite linked clearing agencies, significant indirect participants, providers of credit facilities, and other service providers to participate. The Commission preliminarily believes requiring member and, where practicable, stakeholder participation in periodic testing is appropriate because successful default management will require coordination among these parties, particularly during periods of market stress.

d. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(13). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations? Should the proposed rule include minimum requirements, as proposed? Why or why not?
- Should the Commission require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require its members and, when practicable, other stakeholders to participate in the testing and review of its default procedures? Why or why not? Is it appropriate for stakeholders other than a covered clearing agency's participants to participate in the testing and review of its default procedures? Why or why not? Should the Commission require policies and procedures that would require stakeholders to be included in testing unless a determination is made by the

[288] *See* proposed Rule 17Ad–22(e)(13), *infra* Part VII.

[289] *See* proposed Rule 17Ad–22(e)(13), *infra* Part VII.

[290] *See* proposed Rule 17Ad–22(e)(13), *infra* Part VII. The Commission preliminary believes that an annual testing cycle is appropriate for the reasons described in Part II.A.3.

covered clearing agency that it would be impracticable to do so?

• Should the Commission require policies and procedures regarding specific default procedures for covered clearing agencies, or should they have discretion to create their own default procedures consistent with the proposed rule? If the latter, how much flexibility should a covered clearing agency have in its policies and procedures regarding the time it takes to manage a default and liquidate positions?

11. Proposed Rule 17Ad–22(e)(14): Segregation and Portability

Proposed Rule 17Ad–22(e)(14) would apply to a covered clearing agency that is either a security-based swap clearing agency or a complex risk profile clearing agency.[291] The proposed rule would require such a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a member's customers and the collateral provided to the covered clearing agency with respect to those positions, and effectively protect such positions and related collateral from the default or insolvency of that member.[292] The Commission notes that security-based swap clearing agencies are currently not subject to rules regarding segregation and portability under existing Rule 17Ad–22.

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(14) is appropriate because it facilitates the protection of customer collateral and positions by requiring a covered clearing agency's policies and procedures to prescribe means for holding or accounting for them separately from the assets of the clearing agency member providing services to the customer.

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(14) should apply only to security-based swap clearing agencies and complex risk profile clearing agencies because existing rules applicable to broker-dealers address customer security positions and funds in cash securities and listed option markets, thereby promoting segregation and portability and protecting customer positions and funds.[293] The Commission considered certain international standards, which recognize that cash market CCPs operate in legal regimes that achieve protection of customer assets by alternate means, in proposing Rule 17Ad–22(e)(14).[294]

[291] *See* proposed Rule 17Ad–22(e)(14), *infra* Part VII.

[292] *See id.*

[293] Exchange Act Rule 15c3–3 requires broker-dealers that maintain custody of customer securities and cash (a ''carrying broker-dealer'') to take two primary steps to safeguard these assets. The steps are designed to protect customers by segregating their securities and cash from the broker-dealer's proprietary business activities. If the broker-dealer fails financially, the securities and cash should be readily available to be returned to customers. In addition, if the failed broker-dealer is liquidated in a formal proceeding under the Securities Investor Protection Act of 1970, the securities and cash would be isolated and readily identifiable as ''customer property'' and, consequently, available to be distributed to customers ahead of other creditors.

The first step required by Rule 15c3–3 is that a carrying broker must maintain physical possession or control of all fully paid and excess margin securities of their customers. *See* 17 CFR 240.15c3–3. Physical possession or control means the broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third party to secure an obligation of the broker-dealer. Permissible locations include a bank, as defined in section 3(a)(6) of the Exchange Act, and a clearing agency. As described herein, holding jumbo/global positions in the record name and custody of a clearing agency is a fundamental part of current U.S. market structure in which many holders hold indirectly through ''street name.''

The second step is that a carrying broker-dealer must maintain a reserve of cash or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers, including cash obtained from the use of customer securities. The account must be titled ''Special Reserve Bank Account for the Exclusive Benefit of Customers.'' The amount of net cash owed to customers is computed pursuant to a formula set forth in Exhibit A to Rule 15c3–3. Under the customer reserve formula, the broker-dealer adds up customer credit items (*e.g.* cash in customer securities accounts and cash obtained through the use of customer margin securities) and then subtracts from that amount customer debit items (*e.g.* margin loans). If credit items exceed debit items, the net amount must be on deposit in the customer reserve account in the form of cash and/or qualified securities. A broker-dealer cannot make a withdrawal from the customer reserve account until the next computation and then even only if the computation shows that the reserve requirement has decreased. The broker-dealer must make a deposit into the customer reserve account if the computation shows an increase in the reserve requirement. *See* 17 CFR 240.15c3–3.

In addition, records of customer positions are subject to broker-dealer recordkeeping rules. Exchange Act Rules 17a–3 and 17a–4 require records be kept for certain periods of time, such as three or six year periods depending upon the type of record. *See* 17 CFR 240.17a–3, 17a–4.

See also 15 U.S.C. 78c–5 (providing for segregation with respect to security-based swaps pursuant to Section 3E of the Exchange Act); Exchange Act Release No. 34–68071 (Oct. 18, 2012), 77 FR 70213, (Nov. 23, 2012) (proposing Rule 18a–4 under the Exchange Act for segregation with respect to security-based swaps). The Commission has also granted conditional relief under Sections 3E(b), (d), and (e) of the Exchange Act to, among others, clearing entities dually registered with the Commission and the CFTC as registered clearing agencies and DCOs, respectively. *See* Exchange Act Release No. 34–68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012).

[294] International standards recognize that regimes providing the same degree of protection as segregation and portability of customer positions at a CCP include the following features, in the event of a participant failure: (a) The customer positions can be identified timely, (b) customers will be protected by an investor protection scheme designed to move customer accounts from the failed participant to another participant in a timely manner, and (c) customer assets can be restored. *See* PFMI Report, *supra* note 1, at 83 (discussing Principle 14, Explanatory Note 3.14.6). The Commission preliminarily believes that the customer protections existing under the Commission's regulatory regime for broker-dealers include each of these three features and that limiting the application of proposed Rule 17Ad–22(e)(14) in the manner described above is appropriate.

The Commission also notes that, separately, it has proposed Rule 18a–4 to apply customer protection rules to security-based swap dealers and major security-based swap participants. The approach in proposed Rule 18a–4 was modeled on the customer protection scheme under Rule 15c3–3 for broker-dealers. *See* Exchange Act Release No. 34–68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012).

The Commission further notes that customer security positions and funds in cash securities and listed options markets are further protected under the Securities Investor Protection Act of 1970 (''SIPA'').[295]

In addition, in so limiting the scope of proposed Rule 17Ad–22(e)(14), the Commission intends to avoid requiring changes to the existing structure of cash securities and listed options markets in the United States where registered clearing agencies that provide CSD or CCP services play a central role. Transactions in the U.S. cash security and listed options markets are characterized by the following features: (i) Customers of members generally do not have an account at a clearing agency;[296] and (ii) the clearing agency is not able to identify which participants' customers beneficially own the street name positions registered in the record name of the clearing agency (or its nominee) and the clearing agency has no recourse to funds of customers of members. Therefore, in part because neither portability nor segregation could occur as a practical matter under the

[295] *See* 15 U.S.C. 78eee *et seq.* Pursuant to SIPA, when a broker-dealer that is a member of the Securities Investor Protection Corporation (''SIPC'') fails and customer assets are missing, SIPC seeks to return customer cash and securities, and supplements the distribution of the remaining customer assets at the broker-dealer with SIPC reserve funds of up to $500,000 per customer, including a maximum of $250,000 for cash claims.

[296] A customer of a member also would not have an account at the clearing agency where holding in record name (rather than through street name ownership). This is the case even where such record name owner-customer does not receive a paper security certificate but holds in book-entry form through the direct registration system, as direct registration system accounts are maintained by a transfer agent and not by the clearing agency. *See* Exchange Act Release No. 34–63320 (Nov. 16, 2010), 75 FR 71473, 71474 (Nov. 23, 2010) (discussing the ability of registered owners to hold their assets on the records of transfer agents in book-entry form through the direct registration system).

current cash securities and listed options markets structure, the Commission preliminarily believes that Proposed Rule 17Ad–22(e)(14) should apply only to a covered clearing agency that is either a security-based swap clearing agency or a complex risk profile clearing agency.

The Commission notes that segregation can be achieved either through an omnibus account structure, as is common in the U.S. securities markets today, or an individual account structure. An omnibus account structure, where all collateral belonging to all customers of a particular member is commingled and held in a single account segregated from that of the member, might not be as operationally intensive as an individual account structure. Omnibus accounts may expose a customer to ''fellow-customer risk'' (*i.e.* the risk that another customer of the same member will default) in the event of a loss that exceeds the amount of available collateral posted by the fellow customer who has defaulted and the available resources of the member, in which case the remaining commingled collateral of the member's non-defaulting customers may be exposed to the loss. Fellow-customer risk is of particular concern because customers may have limited ability to monitor or to manage the risk of their fellow customers. To mitigate this risk, omnibus account structures can be designed in a manner that operationally commingles collateral related to customer positions while protecting customers legally on an individual basis.[297] This may require a covered clearing agency to rely on the records of its members or maintain its own books reflecting customer-level interest in the customer's portion of collateral.

An omnibus account structure may be more efficient when porting positions and collateral for a group of customers subject to a defaulting member (where there has been no customer default or where customer collateral is legally protected on an individual basis). Omnibus accounts may also foster portability depending on whether the covered clearing agency collects margin on a gross or net basis. Margin calculated on a gross basis to support individual customer portfolios may result in less efficient netting with respect to members; however, it may eliminate the possibility of under-margined customer positions when ported. As a result, a clearing agency may be able to port in bulk or piecemeal the positions of a customer of a member that has defaulted. When margin is collected on a net basis, there may be a risk that full portability cannot be achieved if under-margining means that porting will depend on the ability and willingness of customers to provide additional collateral where transferee members are unwilling to accept the porting to them of under-margined positions.

Alternatively, an individual account structure may also provide a high degree of protection from the default of another customer of a member, as a customer's collateral is intended to be used to cover losses associated solely with the default of that customer. In the event of a member failure (whether or not due to a customer default), clear and reliable identification of a customer's collateral may promote portability of an individual customer's positions and collateral or, alternatively, expedite their return to the customer. Maintaining individual accounts, however, can be operationally and resource intensive for a covered clearing agency and could impact the overall efficiency of its clearing operations. An individual account structure may also impact margin collection practices at a covered clearing agency, as the individual account structure may be inconsistent with net collection of margin because it may be impractical for the covered clearing agency to allocate the net margin to individual customers rather than among omnibus accounts.

The Commission preliminarily notes that a covered clearing agency subject to the proposed rule would be required to structure its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting member's customers will be effectively transferred to one or more other members. The Commission also preliminarily notes that the following methods may assist a covered clearing agency in achieving portability: (i) Identifying positions that belong to customers; (ii) identifying and asserting rights to related collateral held by or through the covered clearing agency; (iii) identifying potential members to accept the positions and collateral; (iv) disclosing relevant information to such members so that they can evaluate the counterparty credit and market risk associated with the customers and positions, respectively; (v) transferring positions and related collateral to one or more members; and (vi) carrying out default management procedures in an orderly manner.

Finally, where a covered clearing agency's policies and procedures facilitating portability permit a transfer of specific positions and collateral that is not performed with the consent of the member to whom they are transferred, the Commission preliminarily believes that a covered clearing agency could satisfy this requirement by having policies and procedures that set out the circumstances where this may occur. In addition, the Commission preliminarily notes that the portability requirement does not apply only upon default of a member; a covered clearing agency should have policies and procedures that facilitate porting in the normal course of business, such as when a customer ends its relationship with a member to start a new relationship with a different member, or as a result of other events, such as a merger involving the member.[298]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(14). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to enable the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to effectively protect the positions of a participant's customers and related collateral from the default or insolvency of that participant? Why or why not?
- Does the proposed rule affect certain identifiable categories of covered clearing agencies differently than others in ways not discussed in this proposing release? If so, how? Should the requirements under the proposed rule apply to certain identifiable categories of covered clearing agencies in addition to security-based swap and complex risk profile clearing agencies, as proposed? Please explain.

12. Proposed Rule 17Ad–22(e)(15): General Business Risk

Proposed Rule 17Ad–22(e)(15) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general

[297] *See, e.g.,* Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336 (Feb. 7, 2012) (CFTC adopting rules imposing on DCOs legal segregation with operational commingling (''LSOC'') for cleared swaps).

[298] In this regard, the Commission notes that policies and procedures regarding segregation and portability must satisfy the requirement for legal certainty in proposed Rule 17Ad–22(e)(1). *See supra* Part II.B.1.

business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize.[299] Registered clearing agencies are not subject to rules regarding general business risk under existing Rule 17Ad–22, but the Commission preliminarily believes the proposed rule is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

Proposed Rule 17Ad–22(e)(15) is designed to help mitigate the potential impairment of a covered clearing agency's status as a going concern resulting from general business losses, such as a decline in revenues or an increase in expenses resulting in expenses that exceed revenues and a loss that must be charged against the covered clearing agency's capital.[300] The Commission preliminarily believes that proposed Rule 17Ad–22(e)(15) is appropriate because it would help to mitigate the risk of a disruption in clearance and settlement services that might result from general business losses. The Commission preliminarily believes that such impairment could be caused by a variety of business factors, including poor execution of business strategy, negative cash flows, or unexpected and/or excessively large operating expenses. The Commission preliminarily believes that general business losses should be considered separately in the covered clearing agency's risk management policies and procedures to promote effective and efficient measuring, monitoring, and management of general business risk. The risk of general business losses may require a firm to take into account past loss events and financial projections, events distinct from the risks that arise from member default, credit losses, or liquidity shortfalls.[301] Proposed Rule 17Ad–22(e)(15) would require a covered clearing agency to establish implement, maintain and enforce written policies and procedures reasonably designed to address the management of general business risk and the development of a business risk profile to address these concerns.[302]

In addition, the Commission is proposing the requirements described below. Registered clearing agencies are not subject to similar rules under Rule 17Ad–22, but the Commission preliminarily believes the proposed requirements are appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets and are consistent with the Exchange Act requirements discussed above.[303]

a. Determining Liquid Net Assets for Recovery and an Orderly Wind-Down

Proposed Rule 17Ad–22(e)(15)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[304] The Commission preliminarily believes that plans for orderly recovery and wind-down are critical to maintain functioning U.S. securities markets, particularly in times of market stress. Because of the reliance of securities markets, market participants, and investors on the safe, sound, and efficient operations of covered clearing agencies, the Commission believes that a disorderly failure of a covered clearing agency would have systemic consequences. Accordingly, the Commission is proposing to require liquid net assets funded by equity to ensure that the covered clearing agency can continue operations and services as a going concern in the event of general business losses. Equity allows a covered clearing agency to absorb losses on an ongoing basis and should therefore be permanently available for this purpose. The specific amount of liquid net assets funded by equity that a covered clearing agency should hold is discussed in more detail below.

b. Requirements for Liquid Net Assets

Proposed Rule 17Ad–22(e)(15)(ii) would require a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under proposed Rule 17Ad–22(e)(3)(ii).[305] A clearing agency's policies and procedures would require these liquid net assets to be held in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in proposed Rules 17Ad–22(e)(4)(i) through (iii) and the liquidity risk standard in proposed Rules 17Ad–22(e)(7)(i) and (ii).[306]

The Commission preliminarily believes that the requirements for a covered clearing agency's policies and procedures regarding liquid net assets are necessary to ensure that a covered clearing agency's general business risk management is sufficiently robust to facilitate either its orderly recovery or wind-down. The Commission is proposing these requirements to ensure that a covered clearing agency's policies and procedures clearly define what liquid net assets are sufficient under Rule 17Ad–22(e)(15) and to require a covered clearing agency to maintain, pursuant to its policies and procedures, liquid net assets appropriate to cover general business risk in addition to those resources appropriate for managing participant default, credit losses, or liquidity shortfalls. Based on its supervisory experience, the Commission preliminarily believes that a covered clearing agency could satisfy this requirement by having policies and procedures that limit appropriate liquid net assets to cash or cash equivalents because these types of assets would best facilitate continued operations if a clearing agency experienced general business losses.[307] Further, the

[299] *See* proposed Rule 17Ad–22(e)(15), *infra* Part VII.

[300] General business risk is the risk of potential losses arising from the covered clearing agency's administration and operation as a business enterprise. Such losses are not related to member default under proposed Rule 17Ad–22(e)(13) nor covered by the financial resources required for credit and liquidity risk management under proposed Rules 17Ad–22(e)(4) and (7). *See supra* Parts II.B.4.c, II.B.4.f, and II.B.10 and *infra* Part VII (proposing rules for managing credit risk, liquidity risk, and participant default, and providing proposed rule text, respectively).

[301] *See id.*

[302] *See* proposed Rule 17Ad–22(e)(15), *infra* Part VII.

[303] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[304] *See* proposed Rule 17Ad–22(e)(15)(i), *infra* Part VII.

[305] *See* proposed Rule 17Ad–22(e)(15)(ii), *infra* Part VII; *see also supra* Part II.B.3.b (discussing recovery and wind-down plans under proposed Rule 17Ad–22(e)(3)(ii)).

[306] *See supra* Parts II.B.4.c and f and *infra* Part VII (discussing requirements under proposed Rules 17Ad–22(e)(4) and (e)(7), respectively, and providing proposed rule text).

[307] Regarding marketable securities that may be included as cash equivalents within liquid net assets, the Commission has not proposed to require such assets to be readily available and convertible

Commission preliminarily believes that a covered clearing agency could satisfy this requirement by having policies and procedures that fund liquid net assets by common stock, disclosed reserves, or other retained earnings in order to ensure that a covered clearing agency has a permanent source of capital from which to draw in order to continue as a going concern in the case of general business losses for at least a six month period or in accord with a determination of the board of directors of the covered clearing agency.[308] Assets funded by debt or other less permanent sources of capital would not achieve this result and in some circumstances could further complicate the resolution process of a covered clearing agency.

The Commission also preliminarily believes that a backward-looking calculation of operating expenses based on the income statement for the most recently ended fiscal year would not be the type of policy and procedure sufficient to comply with the proposed requirements regarding current operating expense.[309] While reviewing past losses and past levels of operating expense may be a useful reference point, the Commission envisions that one possible approach a covered clearing agency could take in fulfillment of the proposed requirement would be to consider projected operating expense expected over some time period, as well as potential changes to the business environment of the covered clearing agency over that time period. Based on its supervisory experience, the Commission also believes that the following factors may materially affect current operating expenses, as compared to operating expense experienced in the past, that a covered clearing agency may need to take into account and therefore are likely to be important to the covered clearing agency's forward-looking projections: (i) Expectations regarding expansion of its business including as a result of offering new services or clearing and settling new types of securities, (ii) expectations regarding contraction of its business including due to reduction in or loss of certain types of clearing and settlement activity or clearing members, (iii) potential risk of any large one-time or non-recurring types of losses, and (iv) the degree to which expected future losses may be covered by insurance or an indemnity provided by a third-party unaffiliated with the covered clearing agency.

The proposed rule also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for monitoring its business operations and reducing the likelihood of losses, which the Commission believes furthers the requirements of the Exchange Act discussed above.[310]

Because of the integral role that liquid net assets play in supporting the recovery or orderly wind-down of a covered clearing agency in the event of a business loss, the Commission is proposing requirements for a clearing agency's policies and procedures to require liquid net assets, funded by equity, equal to the greater of six months of operating expenses or an amount determined by the board of directors to be sufficient to facilitate an orderly recovery or wind-down of critical operations and services. The Commission preliminarily believes this is appropriate because liquid net assets allow the covered clearing agency to continue operations as a going concern by acting as a cushion while the covered clearing agency is in recovery or wind-down.

c. Plan for Raising Additional Equity

Proposed Rule 17Ad–22(e)(15)(iii) would further require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required by the proposed rule as discussed above.[311]

As noted above, because of the reliance of securities markets, market participants, and investors on the safe, sound, and efficient operations of covered clearing agencies, a disorderly failure of a covered clearing agency would have systemic consequences. The proposed rule requires a covered clearing agency to maintain a viable plan to raise additional equity in the event that its liquid net assets funded by equity fall close to or below the amount required by the proposed rule.[312] The Commission preliminarily believes that the proposed rule is necessary to facilitate ongoing management of a covered clearing agency's general business risk and to provide a covered clearing agency with a mechanism for maintaining or replenishing appropriate levels of equity following business losses.

d. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(15). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to identify, monitor, and manage the covered clearing agency's general business risk? Why or why not? Are there other requirements that the Commission should include in proposed Rule 17Ad–22(e)(15) to address the general business risk management at covered clearing agencies?
- Is the proposed requirement for a covered clearing agency's policies and procedures to hold liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency appropriate? Why or why not? Under the proposed requirement for policies and procedures, is six months of operating expenses appropriate? Should the Commission adopt a different standard, such as three, nine, or twelve

into cash through certain funding arrangements as it has proposed under Rule 17Ad–22(e)(7)(ii) (which incorporates proposed Rule 17Ad–22(a)(15) defining ''qualifying liquid resources''). The Commission preliminarily believes the amount of liquidity needed to cover participant defaults in the context of proposed Rule 17Ad–22(e)(7) may be significantly greater than the amount of liquidity needed to cover general business losses, and it is therefore appropriate to permit the use of such assets in the context of proposed Rule 17Ad–22(e)(7)(ii), in order to provide greater flexibility to covered clearing agencies regarding liquidity risk management.

[308] The Commission preliminarily believes it is appropriate to apply the limitation that liquid net assets be funded by equity in proposed Rule 17Ad–22(e)(15) but has not proposed such limitation in Rule 17Ad–22(e)(4) (regarding financial resources required to manage credit risk) or Rule 17Ad–22(e)(7)(ii) (regarding qualifying liquid resources in relevant currencies required to manage liquidity risk) because equity allows a covered clearing agency to absorb losses on an ongoing basis so that it can continue operations as a going concern. *Cf.* PFMI Report, *supra* note 1, at 90 & n.137.

In addition, the Commission preliminarily believes a covered clearing agency may exclude depreciation and amortization expenses from its calculation of current operating expenses because depreciation and amortization expenses are non-cash expenses and accordingly would not have an effect on a covered clearing agency's cash flow, which might affect its ability to continue operations as a going concern.

[309] *See id.* at 90.

[310] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[311] *See* proposed Rule 17Ad–22(e)(15)(ii), *infra* Part VII.

[312] *See* proposed Rule 17Ad–22(e)(15)(iii), *infra* Part VII.

months? Please explain in detail why using an alternative standard would be appropriate.

• Should the Commission require a covered clearing agency's policies and procedures to hold liquid net assets in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in Rule 17Ad–22(b)(3)? Under the credit risk standard in proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable? Under the liquidity risk standard in proposed Rules 17Ad–22(e)(7)(i) and (ii), as applicable? Why or why not? Has the Commission provided sufficient guidance regarding what constitutes ''liquid net assets''? Why or why not?

• Should a covered clearing agency be required to provide notice to the Commission at any time before its liquid net assets reach the minimum required amount? If so, at what amount should the requirement apply, *e.g.* at 110% of the minimum, 120% of the minimum, or some other amount? [313]

• Regarding securities that are cash equivalents and therefore liquid net assets, should the Commission establish requirements for policies and procedures that discount the value of these securities compared to their fair value?

13. Proposed Rule 17Ad–22(e)(16): Custody and Investment Risks

Proposed Rule 17Ad–22(e)(16) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets and minimize the risk of loss and delay in access to these assets.[314] It also requires a clearing agency to invest its own and its participants' assets in instruments with minimal credit, market, and liquidity risks.[315] Rule 17Ad–22(d)(3) currently requires similar policies and procedures of registered clearing agencies, but the proposed rule would further require a covered clearing agency to have policies and procedures designed to safeguard its own and its participants' assets.[316] The Commission preliminarily believes this additional specificity is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets. Because this is the only element of Rule 17Ad–22(e)(16) that differs from Rule 17Ad–22(d)(3), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with the proposed rule.[317]

Custody risk is the risk of loss on assets held in custody in the event of a custodian's (or subcustodian's) insolvency, negligence, fraud, or poor administration. Investment risk is the risk of loss faced by a clearing agency when it invests its own or its participants' assets. In each case, the risk is the likelihood that assets securing participant obligations to the covered clearing agency or otherwise needed for the clearing agency to meet its own obligations would be unavailable or insufficient when the covered clearing agency needs to draw on them. Failure by a clearing agency to hold assets in instruments with minimal credit, market, and liquidity risk may limit the clearing agency's ability to retrieve these assets promptly. That, in turn, can cause the clearing agency to fail to meet its settlement obligations to its participants or cause the clearing agency's participants to fail to meet their obligations. Accordingly, as under Rule 17Ad–22(d)(3), the Commission believes it is appropriate to continue to limit such risks to ensure the proper functioning of a covered clearing agency pursuant to Section 17A of the Exchange Act.[318] The Commission also preliminarily believes that requiring a covered clearing agency to have policies and procedures that safeguard its own and its participants' assets further supports this objective.

Under existing Rule 17Ad–22(d)(3), the members of a registered clearing agency typically deposit securities with the clearing agency, or the clearing agency holds assets that secure the participants' obligations to it and may invest these assets. In such circumstances, the clearing agency is exposed to custody and investment risk. The Commission is aware that, currently, clearing agencies ordinarily seek to minimize the risk of loss or delay in access by holding assets that are highly liquid (*e.g.,* cash, U.S. Treasury securities, or securities issued by a U.S. government agency) and by using only supervised and regulated entities such as banks to act as custodians for the assets and to facilitate settlement. Steps are also ordinarily taken to ensure assets held in custody are protected against claims of a custodian's creditors through trust accounts or other equivalent arrangements. In addition, the use of individual custodians is subject to periodic assessment across several risk criteria and should remain within acceptable concentration limits.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(16). In addition, the Commission requests comments on the following specific issues:

• Should the Commission require a covered clearing agency's policies and procedures to invest its own and its participants' assets in instruments with minimal credit, market, and liquidity risks? Why or why not?

• Should the Commission require a covered clearing agency's policies and procedures to minimize the risk of loss and delay in access to its own and its participants' assets? Why or why not?

• Has the Commission provided sufficient guidance regarding what instruments have ''minimal credit, market, and liquidity risks''? Should the Commission further specify what kinds of assets would be appropriate under the proposed requirement, such as investments that are secured by, or are claims on, high-quality obligors and investments that allow for timely liquidation with little, if any, adverse price effect? Why or why not?

• Should covered clearing agencies ever be permitted to hold assets in instruments that do not have minimal credit, market, and liquidity risk? If so, why and under what circumstances? What type of measures should covered clearing agencies have in place to minimize the risk of loss from delays in accessing these assets? Should the proposed rule specify any such requirements? Should the Commission develop more specific criteria regarding how covered clearing agencies may hold or invest assets?

[313] *See, e.g.,* Commission Delegated Regulation No. 152/2013 of 19 December 2012, 2013 O.J. (L 52), at art. 1(3) (European Union requiring that, if the required amount of capital held by a CCP is lower than 110% of the capital requirements or lower than 110% of £7.5 million (the ''notification threshold''), the CCP shall immediately notify the competent authority and keep it updated at least weekly, until the amount of capital held by the CCP returns above the notification threshold).

[314] *See* proposed Rule 17Ad–22(e)(16), *infra* Part VII.

[315] *See id.*

[316] Registered clearing agencies are currently subject to existing Rule 17Ad–22(d)(3), which requires them to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them, and invest assets in instruments with minimal credit, market, and liquidity risks. *See* 17 CFR 240.17Ad–22(d)(3); *see also* Clearing Agency Standards Release, *supra* note 5, at 66247–48.

[317] *See supra* Part II.A.4.

[318] The Commission preliminarily believes, however, that it should not indirectly prohibit the use of commercial banks by covered clearing agencies holding cash as collateral or for other services related to clearance and settlement activity when comparable services are available from a central bank.

14. Proposed Rule 17Ad–22(e)(17): Operational Risk Management

Proposed Rule 17Ad–22(e)(17) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risk.[319] Operational risk involves, among other things, the likelihood that deficiencies in information systems or internal controls, human errors or misconduct, management failures, unauthorized intrusions into corporate or production systems, or disruptions from external events such as natural disasters, would adversely affect the functioning of a clearing agency. Proposed Rule 17Ad–22(e)(17)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls.[320] Proposed Rule 17Ad–22(e)(17)(ii) would require the covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.[321] Proposed Rule 17Ad–22(e)(17)(iii) further requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a business continuity plan that addresses events posing a significant risk of disrupting operations.[322] Rule 17Ad–22(d)(4) currently requires a registered clearing agency to have policies and procedures that are substantially similar to those in proposed Rules 17Ad–22(e)(17)(i) through (iii).[323] Although proposed Rules 17Ad–22(e)(17)(i) through (iii) differ from Rule 17Ad–22(d)(4) in contemplating both internal and external operational risks, a high degree of security and operational reliability for systems, and, in the context of business continuity plans, events posing a significant risk of disrupting operations, the Commission preliminarily believes that a covered clearing agency may need to make only limited changes to update its policies and procedures. The Commission preliminarily believes these requirements are appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

As with Rule 17Ad–22(d)(4), the Commission preliminarily believes that the requirements in proposed Rule 17Ad–22(e)(17)(i) through (iii) should help covered clearing agencies and its participants continue to address and manage risks posed by potential operational deficiencies. Specifically, to help limit disruptions that may impede the proper functioning of a covered clearing agency, the Commission preliminarily believes it is imperative that covered clearing agencies review their operations for potential weaknesses and develop appropriate systems, controls, and procedures to address weaknesses the proposed rule seeks to mitigate.

The Commission intends for proposed Rule 17Ad–22(e)(17) to supplement the existing guidance provided by the Commission in its Automation Review Policy (''ARP'') statements[324] and the Interagency White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.[325] The Commission also preliminarily believes that the proposed rules are consistent with the Commission's objectives in proposed Regulation SCI.[326]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rules 17Ad–22(e)(17). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to manage its operational risks by establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations? Why or why not? Has the Commission provided sufficient guidance on what an event ''posing a significant risk of disrupting operations'' would be?
- Should the Commission's proposal require a specific methodology to identify and mitigate operational risk? If so, what is the methodology and why should this methodology be imposed?
- Is the Commission's proposed approach with respect to ensuring that systems have a high degree of security, resiliency, and operational reliability appropriate and sufficiently clear? Why or why not?
- Are there any other requirements that should be included in the rule to facilitate policies and procedures for operational risk management? Why or why not?
- Should the Commission adopt additional policies and procedures requirements for business continuity planning? If so, please explain in detail.

15. Proposed Rule 17Ad–22(e)(18): Access and Participation Requirements

Proposed Rule 17Ad–22(e)(18) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly

[319] *See* proposed Rule 17Ad–22(e)(17), *infra* Part VII.

[320] *See* proposed Rule 17Ad–22(e)(17)(i), *infra* Part VII.

[321] *See* proposed Rule 17Ad–22(e)(17)(ii), *infra* Part VII. By requiring ''adequate, scalable capacity,'' the Commission preliminarily believes that a covered clearing agency should have operational systems that can be extended or expanded based on its anticipated business needs.

[322] *See* proposed Rule 17Ad–22(e)(17)(iii), *infra* Part VII.

[323] Rule 17Ad–22(d)(4) requires a registered clearing agency to establish policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures. It also requires registered clearing agencies to establish policies and procedures reasonably designed to implement systems that are reliable and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. *See* 17 CFR 240.17Ad–22(d)(4); *see also* Clearing Agency Standards Release, *supra* note 5, at 66248–49.

[324] *See* Automated Systems of Self-Regulatory Organizations, Exchange Act Release No. 34–27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) (''ARP I''); Automated Systems of Self-Regulatory Organizations (II), Exchange Act Release No. 34–29815 (May 9, 1991), 56 FR 22489 (May 15, 1991) (''ARP II'').

Generally, the guidance in ARP I and ARP II provides for the following activities by clearing agencies: (1) Performing periodic risk assessments of its automated data processing (''ADP'') systems and facilities; (2) providing for the selection of the clearing agency's independent auditors by non-management directors and authorizing such non-management directors to review the nature, scope, and results of all audit work performed; (3) having an adequately staffed and competent internal audit department; (4) furnishing annually to participants audited financial statements and an opinion from an independent public accountant as to the clearing agency's system of internal control—including unaudited quarterly financial statements also should be provided to participants upon request; and (5) developing and maintaining plans to assure the safeguarding of securities and funds, the integrity of the ADP system, and recovery of securities, funds, or data under a variety of loss or destruction scenarios.

[325] *See* Exchange Act Release No. 34–47638 (Apr. 7, 2003), 68 FR 17809 (Apr. 11, 2003), *available at http://www.sec.gov/news/studies/34-47638.htm.*

[326] Proposed Rule 17Ad–22(e)(17) would not conflict with the Commission's proposed Regulation SCI, should the Commission determine at a later date to adopt those rules as proposed. Proposed Regulation SCI would, however, subject all covered clearing agencies to certain requirements, including requirements for operational risk management and business continuity planning, in addition to those that appear in this proposal. *See* Exchange Act Release No. 34–69077 (Mar. 8, 2013), 78 FR 18083, 18091–141 (Mar. 25, 2013).

disclosed criteria for participation,[327] which permit fair and open access by direct and, where relevant, indirect participants and other FMUs.[328]

In addition to the requirements described above,[329] Section 17A of the Exchange Act requires registered clearing agencies to have rules not designed to permit unfair discrimination in the admission of participants.[330] The Commission has historically used its authority to help ensure fair access and participation requirements.[331] In this regard, the Commission notes that Rules 17Ad–22(b)(5) through (7) impose requirements regarding access and participation for the policies and procedures of registered clearing agencies that provide CCP services.[332] Similarly, Rule 17Ad–22(d)(2) requires a registered clearing agency to establish policies and procedures for access and participation that require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the CCP and have procedures in place to monitor that participation requirements are met on an ongoing basis.[333]

Appropriate minimum operational, legal, and capital requirements for membership that are maintained and enforced through the supervisory practices of a clearing agency help to ensure all members will be reasonably capable of meeting their various obligations to the clearing agency in stressed market conditions and upon member default. Member defaults challenge the safe functioning of a clearing agency by creating credit and liquidity risks, which impede a clearing agency's ability to settle securities transactions in a timely manner. Ensuring that clearing members meet objective levels of operational and financial soundness helps to counterbalance the potential for cascading effects on other participants and limit the potential of a systemic disruption in the U.S. securities markets. Fair and open access to all parties meeting the objective criteria for participation similarly helps to ensure wide participation and thereby increase beneficial risk mitigating effects.

Accordingly, the Commission preliminarily believes Rule 17Ad–22(e)(18) is appropriate because it would promote membership standards at covered clearing agencies that are likely to limit the potential for member defaults and, as a result, losses to non-defaulting members in the event of a member default. The proposed rule has similar requirements to those applied to registered clearing agencies under Rule 17Ad–22(d)(2) but would also explicitly require a covered clearing agency's policies and procedures to establish publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other FMUs, and also require that the criteria be risk-based, in addition to objective.[334] The Commission preliminarily believes the requirement that policies and procedures for publicly disclosed criteria for participation that specify fair and open access by both direct and indirect participants and other FMUs is appropriate because of the size and reach of covered clearing agencies, which are likely to transact or link with many participants, both direct and indirect, as well as other FMUs. The Commission also preliminarily believes that the requirement for risk-based criteria helps protect investors and facilitates prompt and accurate clearance and settlement by helping to ensure that covered clearing agencies accept participants that are less prone to default.

In addition, the Commission is proposing a requirement that covered clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency and to monitor compliance with participation requirements on an ongoing basis. Rule 17Ad–22(d)(2)(i) and (ii) also require a registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have procedures in place to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency and to monitor that participation requirements are met on an ongoing basis.[335] Because these other requirements in proposed Rule 17Ad–22(e)(18) are the same as those for registered clearing agencies more generally under existing Rule 17Ad–22(d)(2), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures.[336] As with Rule 17Ad–22(d)(2), the Commission believes these requirements are appropriate because they would further support membership standards at covered clearing agencies that are likely to limit the potential for member defaults and, as a result, losses to non-defaulting members in the event of a member default.

Request for Comments. The Commission generally requests comments on all aspects of proposed

[327] The Commission notes that, in contrast to other requirements in Rule 17Ad–22(e) where ''transparent'' is used and permits disclosure ''where appropriate'' pursuant to Rule 17Ad–22(a)(20), the requirement here for policies and procedures designed to ensure ''publicly disclosed'' criteria for participation would require policies and procedures requiring such disclosure.

[328] *See* proposed Rule 17Ad–22(e)(18), *infra* Part VII.

[329] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[330] *See* 15 U.S.C. 78q–1(b)(3)(F).

[331] *See, e.g.,* 17 CFR 240.17Ad–22(b)(5) through (7), (d)(2); Clearing Agency Standards Release, *supra* note 5, at 66238–43, 66246–47 (adopting minimum access and participation requirements for registered clearing agencies); Exchange Act Release No. 34–16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) (outlining staff guidance establishing minimum standards for participation and fair access necessary for registration as a clearing agency).

[332] *See* 17 CFR 240.17Ad–22(b)(5) through (7); Clearing Agency Standards Release, *supra* note 5, at 66238–43. The Commission notes that covered clearing agencies providing CCP services would remain subject to the requirements under Rule 17Ad–22(b), in addition to the requirements under proposed Rule 17Ad–22(e)(18).

[333] Rule 17Ad–22(d)(2) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; (ii) have procedures in place to monitor that participation requirements are met on an ongoing basis; (iii) have participation requirements that are objective and publicly disclosed, and permit fair and open access. *See* 17 CFR 240.17Ad–22(d)(2); *see also* Clearing Agency Standards Release, *supra* note 5, at 66246–47.

The Commission notes that the elements of Rule 17Ad–22(d)(2)(i), regarding policies and procedures requiring participants to have financial resources and robust operational capacity to meet obligations arising from participation are also reflected in other proposed rules, including Rules 17Ad–22(e)(4) and (17). *See supra* Parts II.B.4.c (requiring under proposed Rule 17Ad–22(e)(4) policies and procedures for testing the sufficiency of financial resources) and II.B.14 (requiring under proposed Rule 17Ad–22(e)(17) policies and procedures for operational risk management).

[334] The Commission is proposing Rule 17Ad–22(e)(18) as part of a comprehensive set of rules for regulating covered clearing agencies that is consistent with and comparable to other domestic and international standards for FMIs. Because of the similarity between the existing requirement in Rule 17Ad–22(d)(2)(iii) and these requirements under proposed Rule 17Ad–22(e)(18), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with these requirements under the proposed rule. *See supra* Part II.A.4.

[335] *See supra* note 333 and accompanying text.

[336] *See supra* Part II.A.4 (noting the anticipated effect of the proposed rule) and *infra* Part IV.B.3.c (describing the current practices at registered clearing agencies regarding settlement).

Rule 17Ad–22(e)(18). In addition, the Commission requests comments on the following specific issues:

• Should the Commission require a covered clearing agency's policies and procedures to monitor compliance with its participation requirements on an ongoing basis? Why or why not? Would a more specific monitoring requirement be appropriate? For example, should this requirement specify a frequency of review? Why or why not? If so, what would be the appropriate frequency of review? Please explain.

• Would it be appropriate for the Commission to require a covered clearing agency's policies and procedures to provide for different categories of participation? If so, please explain in detail what these different categories would be and why they would be appropriate.

16. Proposed Rule 17Ad–22(e)(19): Tiered Participation Agreements

Proposed Rule 17Ad–22(e)(19) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants in the covered clearing agency to access the covered clearing agency's payment, clearing, or settlement facilities (hereinafter ''tiered participation arrangements'').[337] The Commission preliminarily believes the proposed rule is appropriate due to the associated dependencies and risk exposures that tiered participation arrangements create, as discussed above. Such risks, including credit, liquidity, and operational risks, can undermine the operations of a covered clearing agency and pose risks to the operations of a clearing agency's participants, both direct and indirect, and to the broader securities markets as well.

Registered clearing agencies are currently not subject to rules regarding tiered participation arrangements under existing Rule 17Ad–22. The Commission preliminarily believes the proposed rule is appropriate for covered clearing agencies, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, and is consistent with the requirements of the Exchange Act discussed above.[338]

The Commission has previously noted that, in situations where direct access to clearing agencies is limited by reasonable participation standards, firms that do not meet these standards may still be able to access clearing agencies through correspondent clearing arrangements with direct participants.[339] Such a process would involve the non-participant entering into a correspondent clearing arrangement with a participant so that the transaction may be submitted by the participant to the clearing agency. The dependencies and risk exposures, including credit, liquidity, and operational risks, inherent in tiered participation arrangements present risks to a clearing agency and its functioning, in addition to the direct participant. A covered clearing agency with direct participants that clear transactions on behalf of indirect participants with large values or volumes faces the risk of default by both the indirect participant itself and the direct participant through which those transactions are routed. Accordingly the Commission is proposing Rule 17Ad–22(e)(19) to promote the ongoing management of risks associated with such tiered participation arrangements.

In addition, the Commission is proposing to require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review the material risks to the covered clearing agency arising from such tiered participation arrangements.[340] The Commission preliminarily believes the proposed requirement is appropriate due to the ongoing dependencies and risk exposures that tiered arrangements present to the operation of a covered clearing agency and to the operation of a covered clearing agency's participants. Registered clearing agencies are currently not subject to a similar requirement under existing Rule 17Ad–22, and that the proposed rule is appropriate for covered clearing agencies, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, and is consistent with the requirements of the Exchange Act discussed above.[341]

The operational, financial, and other interconnections between direct and indirect participants to tiered participation arrangements are subject to market forces and can therefore change over time. Because direct and indirect participants collectively contribute to the operational and financial stability of a covered clearing agency, the Commission preliminarily believes that the requirement to regularly review a covered clearing agency's tiered participation arrangements supports the Exchange Act requirements that clearing agencies be able to facilitate prompt and accurate clearance and settlement, protect investors and the public interest, and ensure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible.[342]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(19). In addition, the Commission requests comments on the following specific issues:

• Should the Commission require a covered clearing agency's policies and procedures to identify, monitor and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities? Why or why not?

• Has the Commission provided sufficient guidance regarding who would be ''indirect participants'' and ''direct participants''? Why or why not?

17. Proposed Rule 17Ad–22(e)(20): Links

Proposed Rule 17Ad–22(e)(20) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link with one or more other clearing agencies, FMUs, or trading markets.[343] Rule 17Ad–22(d)(7) requires registered clearing agencies to have policies and

[337] *See* proposed Rule 17Ad–22(e)(19), *infra* Part VII. Because proposed Rule 17Ad–22(e)(19) only addresses the situation where a covered clearing agency relies on direct participants, the proposed rule does not apply to a broker-dealer that is a member of a CSD and maintains accounts for retail customers.

[338] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[339] *See* Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65882 (Oct. 26, 2010) (proposing ownership limitations and governance requirements for security-based swap clearing agencies, security-based swap execution facilities, and national securities exchanges with respect to security-based swaps under Regulation MC).

[340] *See* proposed Rule 17Ad–22(e)(19), *infra* Part VII.

[341] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[342] *See* 15 U.S.C 78q–1(b)(3)(A).

[343] *See* proposed Rule 17Ad–22(e)(20), *infra* Part VII.

procedures for evaluating the potential sources of risks that can arise from links.[344] For the purposes of Rule 17Ad–22(e)(20), however, the Commission would further define ''link'' in proposed Rule 17Ad–22(a)(10) to mean any set of contractual and operational arrangements between a covered clearing agency and one or more other clearing agencies, FMUs, or trading venues that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding its services to additional instruments and participants, or for any other purposes material to their business.[345] The Commission preliminarily believes this expanded and more prescriptive approach to defining a link is appropriate for covered clearing agencies given their size, global operation, and importance to the U.S. securities markets.

In addition to the requirements discussed above,[346] Section 17A of the Exchange Act directs the Commission to facilitate the establishment of linked or coordinated facilities for clearance and settlement.[347] Links between clearing agencies, FMUs, and trading markets develop in several circumstances for different reasons. A CCP may establish a link with another CCP to enable a participant in the first CCP to clear trades with a participant in the second CCP. Similarly, a CSD may establish a link with another CSD to enable its participants to access services provided by the other CSD. Clearing agencies may also generally establish links with trade repositories and trading markets to fulfill regulatory obligations.

Accordingly, the Commission is proposing Rule 17Ad–22(e)(20) to ensure that covered clearing agencies identify and assess the potential sources of risk arising from a link arrangement and incorporate that analysis into its risk management policies and procedures. In certain cases, the creation of a link may raise risks similar to those raised by tiered participation arrangements and participant requirements, discussed above: Namely, the interconnections between the clearing agency and the other entity may increase the risks to the clearing agency stemming from, among other things, the risks of participant default, credit losses, or liquidity shortfalls arising through the linked entity rather than the clearing agency's own operations.[348] The range of implicated risks is broad; a clearing agency that operates links may increase its exposure to legal, operational, custody, settlement, credit, and liquidity risk depending on the nature and extent of the link involved.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(20) and 17Ad–22(a)(10). In addition, the Commission requests comments on the following specific issue:

- Should the Commission require a covered clearing agency's policies and procedures to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, FMUs, or trading markets? Why or why not?
- Is the definition of ''link'' in proposed Rule 17Ad–22(a)(10) appropriate and sufficiently clear in light of the proposed requirements? Why or why not? Is there an alternative definition that the Commission should consider?

18. Proposed Rule 17Ad–22(e)(21): Efficiency and Effectiveness

Proposed Rule 17Ad–22(e)(21) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it is efficient and effective in meeting the requirements of its participants and the markets it serves.[349] Rule 17Ad–22(d)(6) similarly requires registered clearing agencies to have policies and procedures designed to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.[350]

Proposed Rule 17Ad–22(e)(21) would further require a covered clearing agency's management to regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared, settled, or recorded; and (iv) use of technology and communication procedures.[351] The Commission preliminarily believes this requirement for regular review is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, global operation, and importance pose to the U.S. securities markets.[352]

For purposes of the proposed rule, efficiency refers generally to the efficient use of resources by a clearing agency to perform its functions, and effectiveness refers to its ability to meet its intended goals and objectives. A covered clearing agency that operates inefficiently or functions ineffectively may distort financial activity and market structure, increasing not only the risks borne by its members, but also the risks of indirect participants, such as the customers of participants or other buyers and sellers of securities. If a covered clearing agency is inefficient, a participant may choose not to trade or may choose to settle bilaterally, which could potentially result in greater risks to the U.S. financial system than would otherwise occur in the presence of a more efficiently functioning covered clearing agency.

In addition to the requirements discussed above,[353] Section 17A of the Exchange Act requires that registered clearing agencies have rules designed to promote the prompt and accurate clearance and settlement of securities transactions,[354] following a finding by Congress that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.[355] The

[344] Rule 17Ad–22(d)(7) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis. *See* 17 CFR 240.17Ad–22(d)(7); *see also* Clearing Agency Standards Release, *supra* note 5, at 66250–51.

[345] *See* proposed Rule 17Ad–22(a)(10), *infra* Part VII.

[346] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[347] *See* 15 U.S.C. 78q–1(a)(2)(A)(ii); *see also* 15 U.S.C. 78q–1(a)(1)(D) (Congress finding that the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors).

[348] *See supra* Parts II.B.15 and 16 (discussing the access and participation requirements in proposed Rule 17Ad–22(e)(18) and requirements for tiered participation arrangements in proposed Rule 17Ad–22(e)(19)).

[349] *See* proposed Rule 17Ad–22(e)(21), *infra* Part VII.

[350] Rule 17Ad–22(d)(6) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations. *See* 17 CFR 240.17Ad–22(d)(6); *see also* Clearing Agency Standards Release, *supra* note 5, at 66250.

[351] *See* proposed Rule 17Ad–22(e)(21), *infra* Part VII.

[352] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[353] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[354] *See* 15 U.S.C. 78q–1(b)(3)(F).

[355] *See* 15 U.S.C. 78q–1(a)(1)(B); *see also* 15 U.S.C. 78q–1(a)(1)(C) (Congress finding that new

Commission preliminarily believes that proposed Rule 17Ad–22(e)(21) is appropriate because a covered clearing agency must be designed and operated to meet the needs of its participants and the markets it serves, while remaining sufficiently flexible to respond to changing demand and new technologies.

The Commission is also proposing to require that a covered clearing agency regularly review the items identified in Rule 17Ad–22(e)(21)(i) through (iv) because the Commission preliminarily believes that they are reflective of key aspects of a clearing agency's business necessary for efficient and effective operation. Moreover, because technology, sound practices, market forces, and the number and characteristics of participants may change over time, the Commission preliminarily believes that measures of efficiency and effectiveness must be subject to policies and procedures for regular review.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(21). In addition, the Commission requests comments on the following specific issues:

- Has the Commission provided sufficient guidance on what policies and procedures would be necessary to ensure that a covered clearing agency is ''efficient and effective'' in meeting the requirements of the proposed rule? Why or why not?
- Is the proposed requirement for a covered clearing agency's policies and procedures to regularly review the following aspects of its business and operations appropriate: Clearing and settlement arrangements; operating structure, including risk management policies, procedures, and systems; the scope of products cleared, settled, or recorded; and the use of technology and communication procedures? Why or why not? Should the Commission require that other aspects of a covered clearing agency's business and operations be subject to regular review?

19. Proposed Rule 17Ad–22(e)(22): Communication Procedures and Standards

Proposed Rule 17Ad–22(e)(22) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.[356] No comparable requirement exists for registered clearing agencies under Rule 17Ad–22(d). The Commission preliminarily believes this proposed requirement is appropriate for covered clearing agencies given a covered clearing agency's size and global operation. The Commission understands that covered clearing agencies currently use the relevant internationally accepted communication procedures and standards,[357] so the Commission expects only limited changes may be necessary to satisfy the requirements of the proposed rule.

The ability of participants to communicate with a covered clearing agency in a timely, reliable, and accurate manner is important to achieving prompt and accurate clearance and settlement. The Commission preliminarily believes that requiring policies and procedures in line with internationally accepted communication procedures and standards is appropriate for a covered clearing agency for two reasons. First, internationally accepted communication procedures and standards, because they are widely accepted and adopted standards, reduce the likelihood of errors and technical complexity in the clearance and settlement process, thereby reducing risks and costs, improving efficiency, and reducing barriers to entry. Such procedures and standards would include standardized protocols for exchanging messages and reference data for identifying financial instruments and counterparties.

Second, internationally accepted communication procedures and standards ensure effective communication with direct and indirect participants, which the Commission preliminarily believes is important for covered clearing agencies, given the global nature of their businesses. Securities markets in the United States are among the largest and most actively traded in the world, with direct and indirect participants from numerous other countries that necessitate the development and use of internationally accepted communication procedures and standards. Accordingly, the Commission preliminarily believes that covered clearing agencies are likely to be engaged in transactions across borders, where standardized communications protocols and mechanisms are essential to ensure prompt and accurate clearance and settlement.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(22). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement? Why or why not?
- Is the Commission's assumption that covered clearing agencies are already using internationally accepted communication procedures correct? Why or why not?
- Has the Commission provided sufficient guidance on what ''relevant internationally accepted communication procedures and standards'' would be appropriate under the proposed policies and procedures requirement? Why or why not?

20. Proposed Rule 17Ad–22(e)(23): Disclosure of Rules, Key Procedures, and Market Data

Proposed Rule 17Ad–22(e)(23) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for the specific disclosures enumerated in the rule, as discussed below.[358] The proposed rule would require such policies and procedures to specifically require a covered clearing agency to (i) publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they

data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement).

[356] *See* proposed Rule 17Ad–22(e)(22), *infra* Part VII.

[357] *See generally* Finacle, Messaging Standards in Financial Industry, (Infosys Thought Paper, 2012), *available at http://www.infosys.com/finacle/solutions/thought-papers/Documents/messaging-standards-financial-industry.pdf* (describing messaging standards such as SWIFT, FIX, and Fpml).

[358] *See* proposed Rule 17Ad–22(e)(23), *infra* Part VII; *see also* Parts II.B.20.a and b (discussing the specific disclosures enumerated in the proposed rule).

The Commission is proposing Rule 17Ad–22(e)(23) as part of a comprehensive set of rules for regulating covered clearing agencies that is consistent with and comparable to other domestic and international standards for FMIs.

The Commission notes that Rule 17Ad–22(c)(2) currently requires a registered clearing agency, within 60 days after the end of its fiscal year, to post on its Web site its annual audited financial statements. *See* 17 CFR 240.17Ad–22(c)(2); *see also* Clearing Agency Standards Release, *supra* note 5, at 66244.

incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction volume and values.[359] As with public disclosures contemplated under proposed Rule 17Ad–22(a)(20), a covered clearing agency could comply with the proposed requirement by posting the relevant documentation to its Web site. The Commission preliminarily believes the proposed rule is appropriate to promote continued transparency at covered clearing agencies and thereby continue to facilitate prompt and accurate clearance and settlement.

Rule 17Ad–22(d)(9) currently requires registered clearing agencies to have policies and procedures to facilitate disclosures similar to proposed Rule 17Ad–22(e)(23)(ii), but does not require policies and procedures similar to proposed Rules 17Ad–22(e)(23)(i) and (iii). The Commission preliminarily believes these additional requirements are appropriate for a covered clearing agency given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets because these disclosures provide the relevant authorities with information that further facilitates supervision of the covered clearing agency, including information that may allow the relevant authorities to better assess the covered clearing agency's observance of risk management requirements and better identify possible risks posed by the covered clearing agency, and provide relevant stakeholders with information regarding risks associated with participation in a covered clearing agency.

In addition to the Exchange Act requirements described above,[360] Section 17A of the Exchange Act requires registered clearing agencies to have rules designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[361] The Commission preliminarily believes that requiring a covered clearing agency to have policies and procedures reasonably designed to disclose sufficient information so that participants can identify risks and costs associated with using the covered clearing agency would allow participants to make informed decisions about the use of the covered clearing agency and to take appropriate actions to mitigate their risks and to better understand the costs associated with their use of the covered clearing agency. Similarly, the Commission preliminarily believes that requiring a covered clearing agency to publicly disclose relevant basic data on transaction volume and values would allow regulators, market participants, and market observers to make informed decisions about the activities of the covered clearing agency and to take appropriate action, if necessary, in response.

Pursuant to existing Commission regulations, changes to the rules of an SRO, including clearing agencies, are required to be available on the SRO's Web site and are published by the Commission.[362] The Commission's proposed rule is designed to promote understanding among market participants of the policies and procedures of covered clearing agencies, and the Commission believes the proposed rule is consistent with existing requirements for SROs. Continued and improved understanding of the risks and costs associated with using a covered clearing agency's services should promote confidence generally in the covered clearing agency's ability to set and manage appropriately risks and costs, such as margin requirements, restrictions on or limitations of the covered clearing agency's obligations, and conditions used by the covered clearing agency to test the adequacy of its financial resources. The Commission preliminarily believes these requirements are especially important for covered clearing agencies given their size and importance.

The Commission notes that these policies and procedures requirements are intended in part to codify disclosure practices currently undertaken by some registered clearing agencies on an elective basis.[363]

Below is a discussion of the specific disclosures required under the proposed rule, which are not similarly required of registered clearing agencies under Rule 17Ad–22(d)(9). The Commission preliminarily believes that these additions to a covered clearing agency's disclosure practices are important to ensure clearing members and the public have access to up-to-date information about the covered clearing agency's activities, policies, and procedures, which would promote confidence in its operations and thereby contribute to the prompt and accurate clearance and settlement of securities transactions.[364]

a. Comprehensive Public Disclosure

Proposed Rule 17Ad–22(e)(23)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management, accurate in all material respects at the time of publication, including (i) a general background of the covered clearing agency, including its function and the market it serves, basic data and performance statistics on its services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability, and a description of its general organization, legal and regulatory framework, and system design and operations; (ii) a standard-by-standard summary narrative for each applicable standard set forth in proposed Rules 17Ad–22(e)(1) through (22) with sufficient detail and context to enable the reader to understand its approach to controlling the risks and addressing the requirements in each standard; (iii) a summary of material changes since the last update of the disclosure; and (iv) an executive summary of the key points regarding each.[365] The Commission is proposing to require that the comprehensive public disclosure

[359] In full, Rule 17Ad–22(d)(9) requires registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services. *See* 17 CFR 240.17Ad–22(d)(9); *see also* Clearing Agency Standards Release, *supra* note 5, at 66252–53.

[360] *See* notes 54–56 and accompanying text; *see also* Parts I.A and B (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[361] *See* 15 U.S.C. 78q–1(b)(3)(F).

[362] *See* 17 CFR 240.19b–4(l) (requiring an SRO to post each proposed rule change, and any amendments thereto, on its Web site within two business days of filing with the Commission); 17 CFR 240.19b–4(i) (requiring SROs to retain for public inspection and copying all filings made pursuant to this section and all correspondence and other communications reduced to writing, including comment letters, to and from such SRO concerning any such filing).

[363] *See, e.g.,* DTC, Assessment of Compliance With Recommendations for Securities Settlement Systems (Dec. 2011), *available at http://dtcc.com/legal/policy-and-compliance.aspx.*

[364] As noted above, the Commission preliminarily believes that the proposed requirement for a comprehensive public disclosure is consistent with the requirements of the Exchange Act, Rule 19b–4, and the current practices of some clearing agencies that would be covered clearing agencies. *See supra* notes 362–363 and accompanying text; *see also* Part IV.B.3.i (discussing the current practices of registered clearing agencies with respect to transparency and disclosure).

[365] *See* proposed Rule 17Ad–22(e)(23)(iv), *infra* Part VI.

provide basic data and performance statistics, such as statistics on the covered clearing agency's operational reliability so that the relevant stakeholders and the general public have data regarding, for example, performance targets for systems and the actual performance of systems over specified periods and targets for recovery. The Commission is also proposing to require that the comprehensive public disclosure include a standard-by-standard summary narrative to elicit a summary discussion of a covered clearing agency's implementation of policies and procedures requirements that would need to be established, implemented, maintained and enforced by a covered clearing agency in response to proposed Rules 17Ad–22(e)(1) through (23). In addition, the Commission is proposing to require a summary of material changes and would expect that a covered clearing agency should consider its particular circumstances, such as, for example, changes in the scope of services provided by the covered clearing agency, in satisfying this requirement.

The Commission preliminarily believes that disclosure of the above required information will provide participants with the information necessary to, at a minimum, identify and evaluate the risks and costs associated with use of the covered clearing agency, thereby promoting transparency and enhancing competition and market discipline. The Commission preliminarily believes it would also provide other stakeholders, including regulators and the public, with information that facilitates informed oversight and decision-making regarding covered clearing agencies.

b. Updates to the Comprehensive Public Disclosure

Proposed Rule 17Ad–22(e)(23)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the comprehensive public disclosure required under proposed Rule 17Ad–22(e)(23)(iv) is updated not less than every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary, to ensure statements previously provided remain accurate in all material respects.[366] The Commission preliminarily believes that ensuring statements previously provided remain accurate would require a covered clearing agency's comprehensive public disclosure to provide statements that would provide a market participant with an accurate representation of the risks and costs of participating in the covered clearing agency.

The Commission preliminarily believes that this requirement would help provide participants, regulators, other stakeholders, and the public with disclosures that are current, accurate, and comprehensive, thereby promoting transparency and enhancing competition and market discipline. The Commission preliminarily believes it would also provide other stakeholders, including regulators and the public, with timely information that facilitates informed oversight and decision-making regarding covered clearing agencies, thereby promoting the clearing agency obligations required under Section 17A of the Exchange Act.[367]

c. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(23). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to maintain clear and comprehensive rules and procedures that provide for the specific disclosures proposed under Rule 17Ad–22(e)(23)? Why or why not? Are there rules and procedures that should not be fully disclosed to participants? Please explain in detail what such rules and procedures would be and why they should not be disclosed to participants.
- In imposing certain minimum requirements for policies and procedures regarding the comprehensive public disclosure, has the Commission provided sufficient guidance regarding what elements must appear in the disclosure? Should different elements appear? Should the Commission require policies and procedures to update the comprehensive public disclosure every two years, as proposed? Should the Commission require policies and procedures to update the comprehensive public disclosure more frequently following changes to its system or the environment in which it operates to the extent necessary to ensure the statements provided remain accurate in all material respects? Why or why not?
- Are certain ways that covered clearing agencies communicate information to market participants more effective than others? For example, does including information in a covered clearing agency's rulebook or published interpretive materials provide adequate notice of the risks and costs of being a participant to persons that are not currently participants in the covered clearing agency? Why or why not?
- Should the types of information that a covered clearing agency discloses under the proposed rule be generally available to the public? Should any categories of the information required to be disclosed under the proposed rule be restricted to certain parties only, such as clearing members or the Commission itself? Why or why not?
- Should the Commission require covered clearing agencies to make public disclosures of information contained in their audited financial statements that would provide a discussion and analysis of the covered clearing agency's financial condition, in particular with respect to liquidity, capital resources, and results of operations, similar to the Management's Discussion and Analysis of Financial Condition and Results of Operations disclosure required under Items 303(a)(1) through (3) of Regulation S–K?
- Should the Commission require that policies and procedures pursuant to proposed Rule 17Ad–22(e)(23) specify a certain form for the disclosures (*e.g.,* using tagged or structured data)? Why or why not? What form should the proposed disclosures take? Please explain.

C. Proposed Rule 17Ab2–2

The Commission is proposing Rule 17Ab2–2 to establish procedures for the Commission to make determinations affecting covered clearing agencies.[368] Under the proposed rule, the Commission would make determinations in three cases, as discussed below. In each case, under proposed Rule 17Ab2–2(d), the Commission would publish notice of its intention to consider such determinations, together with a brief statement of the grounds under consideration, and provide at least a 30-day public comment period prior to any determination.[369] The Commission may provide the clearing agency subject to the proposed determination opportunity for hearing regarding the proposed determination. Under proposed Rule 17Ab2–2(e), notice of determinations in each case would be given by prompt publication thereof, together with a

[366] *See* proposed Rule 17Ad–22(e)(23)(v), *infra* Part VI.

[367] *See* 15 U.S.C. 78q–1(b)(3)(F).

[368] *See* proposed Rule 17Ab2–2, *infra* Part VII.

[369] *See* proposed Rule 17Ab2–2(d), *infra* Part VII.

statement of written reasons supporting the determination.[370]

The Commission notes that under proposed Rule 17Ad–22(e), five active registered clearing agencies would meet the definition of a covered clearing agency without action under proposed Rule 17Ab2–2 by the Commission.[371] Because the two dormant registered clearing agencies would not meet the definition of a covered clearing agency, if they elected to begin providing clearance and settlement services, they could potentially be subject to a determination under Rule 17Ab2–2.[372] In addition, the Commission notes that it would consider, upon receiving an application for registration as a clearing agency, either making a determination regarding a registrant's status as a covered clearing agency as part of the registration process, if the Commission believes the clearing agency already meets the definition of a covered clearing agency, or after registration, if the Commission determines that the clearing agency does not meet the definition of a covered clearing agency upon registration but does so at a later date, as either market conditions or the characteristics of the clearing agency itself change, pursuant to proposed Rule 17Ab2–2.[373]

1. Determination That a Registered Clearing Agency Is a Covered Clearing Agency

Under proposed Rule 17Ab2–2(a), the Commission may, if it deems appropriate, upon application by any registered clearing agency or member thereof, or on its own initiative, determine whether a registered clearing agency should be considered a covered clearing agency.[374] In determining whether a registered clearing agency should be considered a covered clearing agency, the Commission may consider characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults or other such factors as it deems appropriate in the circumstances. The Commission preliminarily believes it should reserve the right to make a determination on its own initiative in the event that it independently determines that a registered clearing agency meets the definition of a covered clearing agency, as either market conditions or the characteristics of the clearing agency itself change. The Commission preliminarily believes that the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults are two factors that indicate a registered clearing agency may raise systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).[375]

The Commission preliminarily believes that proposed Rule 17Ab2–2(a) would provide the Commission with the flexibility necessary to achieve the goals of Section 17A of the Exchange Act,[376] Title VII of the Dodd-Frank Act,[377] and the Clearing Supervision Act,[378] given the ever-changing nature of the U.S. securities markets, including the nature and character of participants in the market and the products required to be cleared and settled in practice. The Commission preliminarily believes that Rule 17Ab2–2(a) is necessary to ensure that a registered clearing agency not otherwise meeting the definition of either a designated clearing agency or a complex risk profile clearing agency can nonetheless be subject to the requirements for covered clearing agencies in proposed Rule 17Ad–22(e) upon a determination made by the Commission. The Commission preliminarily believes this is necessary to ensure that the Commission is appropriately able to respond to registered clearing agencies that raise systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).

2. Determination That a Covered Clearing Agency Is Systemically Important in Multiple Jurisdictions

Under proposed Rule 17Ab2–2(b), the Commission may, if it deems appropriate, upon application by any clearing agency or member thereof, or on its own initiative, determine whether a covered clearing agency meets the definition of ''systemically important in multiple jurisdictions.'' [379] In determining whether a covered clearing agency is systemically important in multiple jurisdictions, the Commission may consider (i) whether the covered clearing agency is a designated clearing agency; (ii) whether the clearing agency has been determined to be systemically important by one or more jurisdictions other than the United States through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system; [380] or (iii) such other factors as the Commission may deem appropriate in the circumstances.

The Commission preliminarily believes that it should propose the procedures set forth in Rule 17Ab2–2(b) for designating a covered clearing agency as systemically important in multiple jurisdictions. Accordingly, the Commission is proposing Rule 17Ab2–2(b) to provide procedures for determining when a clearing agency has become systemically important in multiple jurisdictions. In this regard, the Commission preliminarily believes that proposed Rule 17Ab2–2(b)(ii) is consistent with Section 804(a)(2)(D) of the Clearing Supervision Act.[381] The Commission is also proposing that it may consider additional factors in determining whether a covered clearing agency is systemically important in multiple jurisdictions, in addition to whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of multiple jurisdictions' financial systems. Such analysis could include whether foreign regulatory authorities have designated the covered clearing agency as systemically important and whether any findings were made in anticipation of that designation.

[370] *See* proposed Rule 17Ab2–2(e), *infra* Part VII.

[371] *See supra* notes 82–87 and accompanying text. As noted, the CFTC has been designated the supervisory agency for two registered clearing agencies, CME and ICE, which have been designated as systemically important by the FSOC pursuant to the Clearing Supervision Act, and accordingly they would not be covered clearing agencies under proposed Rules 17Ad–22(e) and 17Ab2–2.

[372] *See supra* note 88 and accompanying text.

[373] *See supra* note 9 and accompanying text (discussing the requirements for registration as a clearing agency pursuant to Section 17A of the Exchange Act).

[374] *See* proposed Rule 17Ab2–2(a), *infra* Part VII.

[375] *See* Clearing Agency Standards Release, *supra* note 5, at 66234 n.162 (describing the risks that arise from financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults).

[376] *See supra* Part I.A.

[377] *See supra* Part I.B.1.

[378] *See supra* Part I.B.2.

[379] *See* proposed Rule 17Ab2–2(b), *infra* Part VII.

[380] The Commission notes that this provision of proposed Rule 17Ab2–2(b) parallels the definition of systemic importance in Section 803(9) of the Clearing Supervision Act, which states that systemic importance means a situation where the failure of or a disruption to the functioning of an FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. *See* 12 U.S.C. 5462(9).

[381] *See* 12 U.S.C. 5463(a)(2)(D) (listing, as one of the systemic importance criteria for the FSOC to consider, the effect that the failure of or a disruption to the FMU or PCS activity would have on critical markets, financial institutions, or the broader financial system).

3. Determination That a Clearing Agency Has a More Complex Risk Profile

Under proposed Rule 17Ab2–2(c), the Commission may, if it deems appropriate, determine whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile.[382] In determining whether a clearing agency's activity has a more complex risk profile, the Commission may consider (i) characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults; and (ii) such other characteristics as it deems appropriate in the circumstances. The Commission preliminarily believes that the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults are two factors that indicate a registered clearing agency raises systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).[383]

The Commission preliminarily believes that proposed Rule 17Ab2–2(c) would provide the Commission with the flexibility necessary to achieve the goals of Section 17A of the Exchange Act,[384] Title VII of the Dodd-Frank Act,[385] and the Clearing Supervision Act,[386] given the dynamic nature of the U.S. securities markets, including the nature and character of participants in the market and the products required to be cleared and settled in practice, by permitting the Commission to determine that certain registered clearing agencies are complex risk profile clearing agencies. The Commission also preliminarily believes that activities involving a more complex risk profile, because they may involve the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults, implicate systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).[387]

4. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ab2–2. In addition, the Commission requests comments on the following specific issues:

- Should the Commission establish procedures for making determinations affecting covered clearing agencies? Why or why not?
- In determining whether a clearing agency should be considered a covered clearing agency, should the Commission consider characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults, as proposed? Why or why not? Are there particular other characteristics that the Commission should consider? If so, please explain the relevance of those characteristics in detail.
- Does the proposed rule sufficiently describe the types of factors that would be considered when the Commission considers a determination that a registered clearing agency is a covered clearing agency? What factors should be considered?
- Should the Commission, if it deems appropriate, determine whether a covered clearing agency is systemically important in multiple jurisdictions? Why or why not? If not, what alternative approach should the Commission use to assess whether a covered clearing agency is systemically important in multiple jurisdictions? For instance, what weight should the Commission give to determinations by other jurisdictions or regulators regarding the systemic importance in multiple jurisdictions of a covered clearing agency? Is it appropriate for the Commission to assess whether such determination was made through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system, as proposed? Please explain. Are there particular other factors that the Commission should consider? If so, please explain the relevance of those characteristics in detail.
- Does the proposed rule sufficiently describe the types of factors that would be considered when the Commission considers a determination that a covered clearing agency is systemically important in multiple jurisdictions? What factors should be considered?
- In determining whether any of the activities of a clearing agency providing CCP services have a more complex risk profile, should the Commission consider characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults, as proposed? Why or why not? Are there particular other characteristics that the Commission should consider? If so, please explain the relevance of those characteristics in detail.
- Does the proposed rule sufficiently describe the types of factors that would be considered when the Commission considers a determination that a clearing agency is a complex risk profile clearing agency? What factors should be considered?
- Does the proposed process for determinations under Rule 17Ab2–2 conflict with the PFMI Report's use of ''systemic importance in multiple jurisdictions'' and ''more complex risk profile'' activities? If so, please explain.

D. Proposed Rule 17Ad–22(f)

The Commission is proposing Rule 17Ad–22(f) to codify its special enforcement authority over designated clearing agencies for which the Commission acts as the supervisory agency, pursuant to the Clearing Supervision Act. Under Section 807(c) of the Clearing Supervision Act, for purposes of enforcing the provisions of the Clearing Supervision Act, a designated clearing agency is subject to, and the Commission has authority under, the provisions of subsections (b) through (n) of Section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if a designated clearing agency were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.[388]

Request for Comments. The Commission requests comment on proposed Rule 17Ad–22(f), including whether the proposed rule is clear and consistent with the requirements of the Exchange Act and the Clearing Supervision Act.

E. Proposed Amendment to Rule 17Ad–22(d)

To facilitate consistency with proposed Rule 17Ad–22(e), the Commission is proposing to amend Rule 17Ad–22(d). Rule 17Ad–22(d) sets forth certain minimum requirements for the operation and governance of registered

[382] *See* proposed Rule 17Ab2–2(c), *infra* Part VII.

[383] *See supra* note 375 and accompanying text.

[384] *See supra* Part I.A.

[385] *See supra* Part I.B.1.

[386] *See supra* Part I.B.2.

[387] *See supra* note 375 and accompanying text.

[388] *See* 12 U.S.C. 5466(c); *see also* 12 U.S.C. 1818 (relevant provisions under the Federal Deposit Insurance Act).

clearing agencies.[389] The first paragraph of Rule 17Ad–22(d) currently provides that a registered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to fulfill the requirements of Rule 17Ad–22(d), as applicable. The Commission is proposing to amend this first paragraph of Rule 17Ad–22(d) to state that Rule 17Ad–22(d) applies to registered clearing agencies other than covered clearing agencies.[390] As a result, the proposed amendment would limit the applicability of Rule 17Ad–22(d) to CME and ICE, as systemically important FMUs for which the CFTC is the supervisory agency under the Clearing Supervision Act,[391] the two registered but dormant clearing agencies,[392] and any clearing agency registered with the Commission in the future that is not one of the following: A designated clearing agency, a complex risk profile clearing agency, or a clearing agency that the Commission has otherwise determined to be a covered clearing agency pursuant to proposed Rule 17Ab2–2.[393]

Request for Comments. The Commission requests comment on the proposed amendment to Rule 17Ad–22(d), including whether the proposed amendment is clear and consistent with the requirements of the Exchange Act, the Clearing Supervision Act, and proposed Rule 17Ad–22(e) thereunder.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [394] imposes certain requirements on federal agencies in connection with the conducting or sponsoring of any ''collection of information.'' [395] More specifically, 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. Additionally, 44 U.S.C. 3507(a)(1)(D) provides that before adopting (or revising) a collection of information requirement, an agency must, among other things, publish a notice in the **Federal Register** stating that the agency has submitted the proposed collection of information to the Office of Management and Budget (''OMB'') and setting forth certain required information, including (1) a title for the collection of information; (2) a summary of the collection information; (3) a brief description of the need for the information and the proposed use of the information; (4) a description of the likely respondents and proposed frequency of response to the collection of information; (5) an estimate of the paperwork burden that shall result from the collection of information; and (6) notice that comments may be submitted to the agency and director of OMB.[396]

Certain provisions of the proposed rules would impose new ''collection of information'' requirements within the meaning of the PRA. Accordingly, the Commission has submitted the information to the OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. A title and control number already exists for Rule 17Ad–22 adopted in October 2012 (OMB Control No. 3235–0695 for ''Clearing Agency Standards for Operation and Governance''). Because the Commission is proposing to revise the collection of information under this proposed rulemaking for amendments to Rule 17Ad–22, the Commission will use OMB Control No. 3235–0695 for the collections of information for proposed Rule 17Ad–22(e).

Additionally, proposed Rule 17Ab2–2 would contain a new collection of information requirement for PRA purposes. The title of the new collection of information under this proposed rulemaking is Determinations Affecting Covered Clearing Agencies (a proposed new collection of information).

A. Overview and Organization

The Commission preliminarily believes information that would be required to be collected by virtue of written policies and procedure requirements contained in this proposed rulemaking reflects to a degree existing practices at covered clearing agencies.[397] In certain instances, however, the proposed requirements would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to comply with this proposed rulemaking.

With regard to proposed Rule 17Ad–22(e), given that several provisions of the proposed rule are intended to be consistent with Rule 17Ad–22, the Commission preliminarily believes that covered clearing agencies currently in compliance with the requirements of existing Rule 17Ad–22 may already have some written rules and procedures similar to those in proposed Rule 17Ad–22(e). Accordingly, when covered clearing agencies review and update their policies and procedures in order to come into compliance with proposed Rule 17Ad–22(e), the Commission preliminarily believes that the PRA burden would vary across the requirements of proposed Rule 17Ad–22(e), based on the complexities of the requirements under each paragraph of the proposed rule and the extent to which covered clearing agencies currently comply with the proposed requirements under their existing policies and procedures.[398]

The portions of proposed Rule 17Ad–22(e) for which the PRA burden is preliminarily expected to be higher are the provisions contemplating requirements not addressed in Rule 17Ad–22, as discussed in Part II.A.4. Because these proposed requirements may not reflect established practices of covered clearing agencies or reflect the normal course of their activities, the PRA burden for these proposed rules may entail both initial one-time burdens to create new written policies and procedures and ongoing burdens. The expected PRA burden for the proposed rules is discussed in detail below.[399]

In addition to the collection of information requirements imposed under proposed Rule 17Ad–22(e), proposed Rule 17Ab2–2 also would contain collection of information requirements for PRA purposes. Proposed Rule 17Ab2–2 establishes a process for making determinations regarding whether or not a clearing agency would be a covered clearing agency and whether a covered clearing agency is either involved in activities with a more complex risk profile or systemically important in multiple jurisdictions.[400] The expected PRA burden for proposed Rule 17Ab2–2 is discussed below.

[389] *See* 17 CFR 240.17Ad–22(d); *see also* Clearing Agency Standards Release, *supra* note 5, at 66244–58.

[390] *See* proposed amendment to Rule 17Ad–22(d), *infra* Part VII.

[391] *See supra* notes 84–87 and accompanying text.

[392] *See supra* note 88 and accompanying text (discussing SCCP and BSECC).

[393] *See supra* Part II.A.1 (further discussing the scope of the proposed rules).

[394] 44 U.S.C. 3501 *et seq.*

[395] *See* 44 U.S.C. 3502(3).

[396] *See* 44 U.S.C. 3507(a)(1)(D); *see also* 5 CFR 1320.5(a)(1)(iv).

[397] *See infra* Part IV.B.3 (describing current practices at registered clearing agencies).

[398] For a discussion of the differences between Rule 17Ad–22(d) and proposed Rule 17Ad–22(e), see Parts II.B.1–20.

[399] *See infra* Parts III.D.6 (estimated burdens under proposed Rule 17Ad–22(e)(15)) and 7 (estimated burdens under proposed Rule 17Ad–22(e)(19)).

[400] *See infra* Part II.C (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part VII (proposed text of Rule 17Ab2–2).

B. Summary of Collection of Information and Proposed Use of Information for Proposed Rule 17Ad–22(e)[401] *and Proposed Rule 17Ab2–2*

1. Proposed Rules 17Ad–22(e)(1) Through (3): General Organization

a. Proposed Rule 17Ad–22(e)(1)

Proposed Rule 17Ad–22(e)(1) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[402] The purpose of this collection of information is to reduce the legal risks involved in the clearance and settlement process and to ensure that a covered clearing agency's policies and procedures do not cause legal uncertainty among participants due to a lack of clarity, completeness, or conflicts with applicable laws and judicial precedent.

b. Proposed Rule 17Ad–22(e)(2)

Proposed Rule 17Ad–22(e)(2) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements of Section 17A of the Exchange Act, and the objectives of owners and participants. Proposed Rule 17Ad–22(e)(2) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements reasonably designed to establish that the covered clearing agency's board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[403]

The purpose of this collection of information is to promote boards of directors that are composed of qualified members and that exercise oversight of the covered clearing agency's management, while also prioritizing the safety and efficiency of the covered clearing agency and supporting the public interest.

c. Proposed Rule 17Ad–22(e)(3)

Proposed Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency. Under the proposed rule, risk management policies, procedures, and systems must provide for the identifying, measuring, monitoring, and managing of risks that arise in or are borne by the covered clearing agency. Such policies and procedures must be subject to review on a specified periodic basis and be approved by the board of directors annually. The proposed rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for plans for the recovery and orderly wind-down of the covered clearing agency in the event of credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish that risk management and internal audit personnel have sufficient resources, authority, and independence from management. The proposed rule would further require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish that risk management and internal audit personnel have a direct reporting line to, and are overseen by, a risk management committee and an audit committee of the board of directors, respectively. The proposed rule would also require policies and procedures providing for an independent audit committee.[404]

The purpose of this collection of information is to enhance a covered clearing agency's ability to identify, monitor, and manage the risks clearing agencies face, including by subjecting the relevant policies and procedures to regular review, and to facilitate an orderly recovery and wind-down process in the event that a covered clearing agency is unable to continue operating as a going concern.

2. Proposed Rules 17Ad–22(e)(4) Through (7): Financial Risk Management

a. Proposed Rule 17Ad–22(e)(4)

Proposed Rule 17Ad–22(e)(4) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to each participant and those exposures arising from payment, clearing, and settlement processes. Proposed Rule 17Ad–22(e)(4)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to cover its credit exposure to each member fully with a high degree of confidence. To the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), a covered clearing agency that provides CCP services would also have to establish, implement, maintain, and enforce written policies and procedures to meet either the ''cover one'' requirement under proposed Rule 17Ad–22(e)(4)(iii) or, if it is a complex risk profile clearing agency or systemically important in multiple jurisdictions, the ''cover two'' requirement under proposed Rule 17Ad–22(e)(4)(ii).

Proposed Rule 17Ad–22(e)(4)(iv) would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures by including prefunded financial resources and excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating financial resources available to meet the requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable.[405]

Proposed Rule 17Ad–22(e)(4)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, in combined or separately maintained clearing or guaranty funds, and to test the sufficiency of its total financial resources by conducting a stress test of total financial resources once each day

[401] Proposed Rule 17Ad–22(e) would require covered clearing agencies to establish, implement, maintain and enforce certain written policies and procedures that would be used, among other things, in connection with staff examinations.

[402] *See supra* Part II.B.1 (discussing proposed Rule 17Ad–22(e)(1)) and *infra* Part VII (providing the proposed rule text).

[403] *See supra* Part II.B.2 (discussing proposed Rule 17Ad–22(e)(2)) and *infra* Part VII (providing the proposed rule text).

[404] *See supra* Part II.B.3 (discussing proposed Rule 17Ad–22(e)(3)) and *infra* Part VII (providing the proposed rule text).

[405] *See supra* Part II.B.4.c (discussing proposed Rule 17Ad–22(e)(4)) and *infra* Part VII (providing the proposed rule text).

using standard predetermined parameters and assumptions.

Proposed Rule 17Ad–22(e)(4)(vi) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum financial resource requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, by conducting stress tests and other comprehensive analyses. Specifically, those would include conducting a stress test of its total financial resources once each day using standard predetermined parameters and assumptions. It would also include conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure that they are appropriate for determining the covered clearing agency's required level of default protection in light of current market conditions. It would also include conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by its participants increases significantly. It would also include reporting the results of this analysis to appropriate decision makers, including its risk management committee or board of directors, and to use these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management policies and procedures, in supporting compliance with the minimum financial resources requirements discussed above.

Finally, proposed Rule 17Ad–22(e)(4)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency to perform a conforming model validation for its credit risk models at least annually, or more frequently if dictated by the covered clearing agency's risk management policies and procedures established under proposed Rule 17Ad–22(e)(3).[406]

[406] *See id.*

b. Proposed Rule 17Ad–22(e)(5)

Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks. It also would require policies that set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure and would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a not-less-than-annual review of the sufficiency of its collateral haircut and concentration limits.[407]

c. Proposed Rule 17Ad–22(e)(6)

Proposed Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system. The proposed rule would require such margin system to consider, and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. Furthermore, under the proposed rule the margin system would mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily, and include the authority and operational capacity to make intraday margin calls in defined circumstances. The proposed rule also requires policies and procedures with respect to the following: The calculation of margin sufficient to cover a covered clearing agency's potential future exposure to participants in the interval between the last margin collection and close out of positions following a participant default; the use of reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable; and the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[408]

[407] *See supra* Part II.B.4.d (discussing proposed Rule 17Ad–22(e)(5)) and *infra* Part VII (providing the proposed rule text).

[408] *See supra* Part II.B.4.e (discussing proposed Rule 17Ad–22(e)(6)) and *infra* Part VII (providing the proposed rule text).

In addition to requiring policies and procedures with respect to a risk-based margin system, proposed Rule 17Ad–22(e)(6) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify risk-based margin systems by conducting backtests at least once each day and, at least monthly, a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting, and consider modifications to ensure the backtesting practices are appropriate for determining the adequacy of its margin resources. Such review, testing, and verification would include conducting a conforming sensitivity analysis more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by participants increase or decrease significantly. The proposed rule would also require a covered clearing agency providing CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to report the results of such conforming sensitivity analysis to appropriate decision makers, including its risk management committee or board of directors, and use these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures. Finally, under such policies and procedures, a not less than annual conforming model validation would be required for the covered clearing agency's margin system and related models.[409]

d. Proposed Rule 17Ad–22(e)(7)

Proposed Rule 17Ad–22(e)(7) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis and its use of intraday liquidity. Under the proposed rule, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources in all relevant currencies to effect same-day and,

[409] *See id.*

where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions. Under such policies and procedures, use of access to accounts and services at a Federal Reserve Bank, pursuant to Section 806 of the Clearing Supervision Act,[410] or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, would be required.[411]

For the purposes of meeting such liquid resource requirements, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the holding of qualifying liquid resources in each relevant currency for which clearing activities are performed, limited to (i) cash at the central bank of issue or at creditworthy commercial banks; (ii) assets that are readily available and convertible into cash through prearranged funding arrangements without material adverse change provisions, such as committed lines of credit, committed foreign exchange swaps, committed repurchase agreements, and other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors, following an annual review conducted for this purpose; and (iii) other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, provided that the covered clearing agency had access to routine credit at the central bank.

With respect to a covered clearing agency's sources of liquidity, the proposed rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to undertake due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks, and the capacity to perform as required under its commitments to provide liquidity. Furthermore, under such policies and procedures, on at least an annual basis, a covered clearing agency would be required to maintain and test with each liquidity provider to the extent practicable the covered clearing agency's procedures and operational capacity for accessing each type of liquidity resource by conducting stress testing of its liquidity resources using standard and predetermined parameters and assumptions at least once each day. Additionally, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by (i) conducting a stress test of its liquidity resources using standard and predetermined parameters and assumptions at least once each day; and (ii) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate in light of current and evolving market conditions at least once a month and more frequently when products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by participants increase significantly.[412]

Under such policies and procedures required by the proposed rule, stress test results must be reported to appropriate decision makers, including the risk management committee or board of directors, at the covered clearing agency for use in evaluating the adequacy of and adjusting its liquidity risk management policies and procedures. A covered clearing agency would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to perform an annual conforming model validation of its liquidity risk models and would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by its liquid resources and to seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. Additionally, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures that describe the covered clearing agency's process to replenish any liquid resources that may be employed during a stress event.[413]

Finally, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency to undertake an analysis at least once a year that evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides central counterparty services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.

The purpose of this information collection is to enable a covered clearing agency to be able to effectively identify and limit exposures to participants, to maintain sufficient collateral or margin, and to satisfy all of its settlement obligations in the event of a participant default.

3. Proposed Rules 17Ad–22(e)(8) Through (10): Settlement

a. Proposed Rule 17Ad–22(e)(8)

Proposed Rule 17Ad–22(e)(8) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, either intraday or in real time.[414]

b. Proposed Rule 17Ad–22(e)(9)

Proposed Rule 17Ad–22(e)(9) would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have the covered clearing agency conduct its money settlements in central bank money, where available and determined to be

[410] 12 U.S.C. 5465(a).

[411] *See supra* Part II.B.4.f (discussing proposed Rule 17Ad–22(e)(7)) and *infra* Part VII (providing the proposed rule text).

[412] *See id.*

[413] *See id.*

[414] *See supra* Part II.B.5 (discussing proposed Rule 17Ad–22(e)(8)) and *infra* Part VII (providing the proposed rule text).

practical by the board of directors of the covered clearing agency, and minimize and manage credit and liquidity risk arising from the clearing agency's money settlements in commercial bank money where central bank money is not used.[415]

c. Proposed Rule 17Ad–22(e)(10)

Proposed Rule 17Ad–22(e)(10) would require a covered clearing agency to establish, implement, maintain and enforce written policies reasonably designed to set forth transparent written standards regarding a clearing agency's obligations with respect to the delivery of physical instruments, as well as operational practices that identify, monitor, and manage the risk associated with such physical deliveries.[416]

The purpose of this information collection is to promote consistent standards of timing and reliability in the settlement process, promote reliability in a covered clearing agency's settlement operations, and to provide a covered clearing agency's participants with information necessary to evaluate the risks and costs associated with participation in the covered clearing agency.

4. Proposed Rules 17Ad–22(e)(11) Through (12): CSDs and Exchange-of-Value Settlement Systems

The purpose of this collection of information is to reduce securities transfer processing costs and risks associated with securities settlement and custody, increase the speed and efficiency of the settlement process, and eliminate risk in transactions with linked obligations.

a. Proposed Rule 17Ad–22(e)(11)

Proposed Rule 17Ad–22(e)(11) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities. A covered CSD would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct periodic and at least daily reconciliation of securities issues that the CSD maintains. Additionally, the proposed rule would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities, as well as protect assets against custody risk.[417]

b. Proposed Rule 17Ad–22(e)(12)

Proposed Rule 17Ad–22(e)(12) would require a covered clearing agency that settles transactions involving the settlement of two linked obligations to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, irrespective of whether the covered clearing agency settles on a gross or net basis and when finality occurs.[418]

5. Proposed Rules 17Ad–22(e)(13) Through (14): Default Management

The purpose of this collection of information is to facilitate the functioning of a covered clearing agency in the event that a participant fails to meet its obligations, as well as limit the extent to which a participant's failure can spread to other participants or the covered clearing agency itself, and to ensure the safe and effective holding and transfer of customers' positions and collateral in the event of a participant's default or insolvency.

a. Proposed Rule 17Ad–22(e)(13)

Proposed Rule 17Ad–22(e)(13) would require covered clearing agencies providing CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that a covered clearing agency subject to this rule has sufficient authority and operational capability to contain losses and liquidity demands in a timely fashion and continue to meet its own obligations. The proposed rule would also require that a covered clearing agency subject to the rule establish, implement, maintain and enforce written policies and procedures reasonably designed to address the allocation of credit losses it may face if its collateral or other resources are insufficient to fully cover its credit exposures, describe the process whereby the clearing agency would replenish any financial resources it may use following a default or other event in which the use of such resources is contemplated, and require participants and other stakeholders, to the extent applicable, to participate in the testing and review of its default procedures, including any close out procedures. Under such policies and procedures, the testing and review must occur at least annually and following any material changes thereto.[419]

b. Proposed Rule 17Ad–22(e)(14)

Proposed Rule 17Ad–22(e)(14) would require a covered clearing agency that provides CCP services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a participant's customers and collateral and effectively protect such positions and collateral from the default or insolvency of that participant.[420]

6. Proposed Rules 17Ad–22(e)(15) Through (17): General Business and Operational Risk Management

The purpose of this collection of information is to mitigate the potential impairment of a covered clearing agency as a result of a decline in revenues or increase in expenses, to limit disruptions that may impede the proper functioning of a covered clearing agency, and to improve the ability of a covered clearing agency to meet its settlement obligations.

a. Proposed Rule 17Ad–22(e)(15)

Proposed Rule 17Ad–22(e)(15) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if losses materialize. Covered clearing agencies would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon the general risk profile of that clearing agency and the

[415] *See supra* Part II.B.6 (discussing proposed Rule 17Ad–22(e)(9)) and *infra* Part VII (providing the proposed rule text).

[416] *See supra* Part II.B.7 (discussing proposed Rule 17Ad–22(e)(10)) and *infra* Part VII (providing the proposed rule text).

[417] *See supra* Part II.B.8 (discussing proposed Rule 17Ad–22(e)(11)) and *infra* Part VII (providing the proposed rule text).

[418] *See supra* Part II.B.9 (discussing proposed Rule 17Ad–22(e)(12)) and *infra* Part VII (providing the proposed rule text).

[419] *See supra* Part II.B.10 (discussing proposed Rule 17Ad–22(e)(13)) and *infra* Part VII (providing the proposed rule text).

[420] *See supra* Part II.B.11 (discussing proposed Rule 17Ad–22(e)(14)) and *infra* Part VII (providing the proposed rule text).

length of time necessary to achieve recovery or orderly wind-down. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold liquid net assets funded by equity in an amount equal to the greater of either six months of current operating expenses or the amount determined by the agency's board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services. Under such policies and procedures, these resources are to be held in addition to resources held to cover participant default or other risks and must be of high quality and sufficiently liquid. Furthermore, under such policies and procedures, a covered clearing agency would be required to maintain a viable plan for raising additional equity in the event that its equity falls close to, or below, the required amount, and the plan would be required to be approved by the board of directors and updated at least annually.[421]

b. Proposed Rule 17Ad–22(e)(16)

Proposed Rule 17Ad–22(e)(16) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard its own assets, as well as the assets of its participants, and to minimize the risk of loss and delay in access to such assets. A covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to invest such assets in instruments with minimal credit, market and liquidity risks.[422]

c. Proposed Rule 17Ad–22(e)(17)

Proposed Rule 17Ad–22(e)(17) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage operational risk. A covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. A covered clearing agency would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain a business continuity plan that addresses events posing a significant risk of disrupting operations.[423]

7. Proposed Rules 17Ad–22(e)(18) Through (20): Access

The purpose of the collection of information is to enable a covered clearing agency to ensure that only entities with sufficient financial and operational capacity are direct participants in the covered clearing agency while ensuring that all qualified persons can access a covered clearing agency's services; to enable a covered clearing agency to monitor that participation requirements are met on an ongoing basis and to identify a participant experiencing financial difficulties before the participant fails to meet its settlement obligations; and to enable a covered clearing agency to identify and manage risks posed by non-member entities.

a. Proposed Rule 17Ad–22(e)(18)

Proposed Rule 17Ad–22(e)(18) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other FMUs, and require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. A covered clearing agency would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to monitor compliance with such participation requirements on an ongoing basis.[424]

b. Proposed Rule 17Ad–22(e)(19)

Proposed Rule 17Ad–22(e)(19) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants rely on services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.[425]

c. Proposed Rule 17Ad–22(e)(20)

Proposed Rule 17Ad–22(e)(20) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link with one or more other clearing agencies, FMUs, or trading markets.[426]

8. Proposed Rules 17Ad–22(e)(21) Through (22): Efficiency

The purpose of this collection of information is to ensure that the services provided by a covered clearing agency do not become inefficient and to promote the sound operation of a covered clearing agency. The collection of information is also intended to ensure the prompt and accurate clearance and settlement of securities transactions by enabling participants to communicate with a clearing agency in a timely, reliable, and accurate manner.

a. Proposed Rule 17Ad–22(e)(21)

Proposed Rule 17Ad–22(e)(21) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency to be efficient and effective in meeting the requirements of its participants and the markets it serves. Additionally, the rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have the management of a covered clearing agency regularly review the efficiency and effectiveness of the covered clearing agency's (i) clearing and settlement arrangement; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared, settled, or recorded; and (iv) use of technology and communications procedures.[427]

[421] *See supra* Part II.B.12 (discussing proposed Rule 17Ad–22(e)(15)) and *infra* Part VII (providing the proposed rule text).

[422] *See supra* Part II.B.13 (discussing proposed Rule 17Ad–22(e)(16)) and *infra* Part VII (providing the proposed rule text).

[423] *See supra* Part II.B.14 (discussing proposed Rule 17Ad–22(e)(17)) and *infra* Part VII (providing the proposed rule text).

[424] *See supra* Part II.B.15 (discussing proposed Rule 17Ad–22(e)(18)) and *infra* Part VII (providing the proposed rule text).

[425] *See supra* Part II.B.16 (discussing proposed Rule 17Ad–22(e)(19)) and *infra* Part VII (providing the proposed rule text).

[426] *See supra* Part II.B.17 (discussing proposed Rule 17Ad–22(e)(20)) and *infra* Part VII (providing the proposed rule text).

[427] *See supra* Part II.B.18 (discussing proposed Rule 17Ad–22(e)(21)) and *infra* Part VII (providing the proposed rule text).

b. Proposed Rule 17Ad–22(e)(22)

Proposed Rule 17Ad–22(e)(22) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to use, or at a minimum, accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.[428]

9. Proposed Rule 17Ad–22(e)(23): Disclosure

Proposed Rule 17Ad–22(e)(23) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for (i) publicly disclosing all relevant rules and material procedures, including key aspects of default rules and procedures; (ii) providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs incurred by participating in a covered clearing agency; and (iii) publicly disclosing relevant basic data on transaction volume and values. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management that is accurate in all material respects at the time of publication and to update this public disclosure every two years, or more frequently following changes to the clearing agency's system or the environment in which it operates to the extent necessary to ensure that previous statements remain accurate in all material respects.[429] The purpose of the collection of information is to ensure that participants, as well as prospective participants, are provided with a complete picture of the covered clearing agency's operations and risk mitigation procedures in order to be able to fully and clearly understand the risks and responsibilities of participation in a clearing agency.

10. Proposed Rule 17Ab2–2

Proposed Rule 17Ab2–2 establishes a process for making determinations regarding whether a clearing agency is a covered clearing agency and whether a covered clearing agency is either involved in activities with a more complex risk profile or systemically important in multiple jurisdictions.[430] Each of these determinations may be initiated by a registered clearing agency, a member of the clearing agency, or upon the Commission's own initiative.[431] In each case, under proposed Rule 17Ab2–2(d), the Commission would publish notice of its intention to consider such determinations, together with a brief statement of the grounds under consideration, and provide at least a 30-day public comment period prior to any determination. Under proposed Rule 17Ab2–2(e), notice of determinations in each case would be given prompt publication by the Commission, together with a statement of written reasons supporting the determination.

C. Respondents

The Commission estimates that the majority of the proposed requirements under proposed Rule 17Ad–22(e) would apply to five registered clearing agencies. The proposed requirements in proposed Rules 17Ad–22(e)(1) through (23) would impose a PRA burden on covered clearing agencies. A covered clearing agency is defined under proposed Rule 17Ad–22(a)(7) as any designated clearing agency, clearing agency involved in activities with a more complex risk profile for which the CFTC is not the supervisory agency as defined in Section 803(8) of the Clearing Supervision Act, or a clearing agency determined by the Commission to be a covered clearing agency pursuant to proposed Rule 17Ab2–2.[432] A designated clearing agency is defined under proposed Rule 17Ad–22(a)(8) as a registered clearing agency that has been designated systemically important by the FSOC.[433] The FSOC has designated six registered clearing agencies as systemically important.[434] The Commission is the supervisory agency with respect to four of these designated clearing agencies, and the CFTC is the supervisory agency for the remaining two.[435] Accordingly, proposed Rule 17Ad–22(e) would apply to the four designated clearing agencies for which the Commission is the supervisory agency.[436]

In addition to the four designated clearing agencies for which the Commission is the supervisory agency, a fifth clearing agency would also be subject to the proposed rules as a complex risk profile clearing agency that provides CCP services for security-based swaps for which the CFTC is not the supervisory agency under the Clearing Supervision Act.[437]

While the proposed rules would be applicable to the five registered clearing agencies currently captured by the definition of covered clearing agency, the Commission estimates that two additional entities may seek to register with the Commission and that one of these entities may seek to register in order to provide CCP services for security-based swaps. Upon registration, these two entities may be deemed covered clearing agencies and would be subject to proposed Rule 17Ad–22(e).

The number of covered clearing agencies subject to proposed Rule 17Ad–22(e) could increase if the FSOC designates additional clearing agencies as systemically important.[438] Additionally, the Commission could determine additional clearing agencies to be covered clearing agencies under proposed Rule 17Ab2–2,[439] subjecting them to the provisions of proposed Rule 17Ad–22(e). While the number of clearing agencies subject to proposed Rule 17Ad–22(e) could increase, the Commission is not able to predict whether the FSOC will exercise its authority in the future to designate additional clearing entities as systemically important FMUs or whether the Commission will determine additional clearing agencies to be covered clearing agencies. As a result, for the purposes of the PRA analysis, the Commission is preliminarily estimating that there would be seven respondents for a majority of the proposed requirements under proposed Rule

[428] *See supra* Part II.B.19 (discussing proposed Rule 17Ad–22(e)(22)) and *infra* Part VII (providing the proposed rule text).

[429] *See supra* Part II.B.20 (discussing proposed Rule 17Ad–22(e)(23)) and *infra* Part VII (providing the proposed rule text).

[430] *See infra* Part II.C (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part VII (proposed text of Rule 17Ab2–2).

[431] *See* proposed Rule 17Ab2–2(a), *infra* Part VII.

[432] *See* proposed Rule 17Ad–22(a)(7), *infra* Part VII; *see also supra* Part II.A.1 (describing the scope of proposed Rule 17Ad–22(e) and defining ''covered clearing agency'').

[433] *See* proposed Rule 17Ad–22(a)(8), *infra* Part VII; *see also supra* Part II.A.1 (describing the scope of proposed Rule 17Ad–22(e) and defining ''designated clearing agency''); *supra* Part I.B.2 (describing designation as systemically important by the FSOC under the Clearing Supervision Act).

[434] *See supra* note 38 and accompanying text.

[435] *See supra* note 41 and accompanying text.

[436] *See supra* notes 82, 84–87, and accompanying text.

[437] *See supra* note 83 and accompanying text.

[438] *See supra* Part I.B.2, in particular notes 27–28, 38–41, and accompanying text.

[439] *See supra* Part II.C (discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part VII (proposed text of Rule 17Ab2–2).

17Ad–22(e). With regard to proposed Rule 17Ad–22(e)(6), the number of respondents would be six because the proposed rule would apply to covered clearing agencies that provide CCP services. With regard to proposed Rule 17Ad–22(e)(11), the number of respondents would be one because the proposed rule would apply to covered clearing agencies that provide CSD services. With regard to proposed Rule 17Ad–22(e)(14), the number of respondents would be two because the proposed rule would apply to covered clearing agencies that provide CCP services for security-based swaps.

With regard to proposed Rule 17Ab2–2, the Commission preliminarily estimates for purposes of the PRA analysis that two registered clearing agencies or their members on their behalf will apply for a Commission determination, or may be subject to a Commission-initiated determination, regarding whether the registered clearing agency is a covered clearing agency, whether a registered clearing agency is involved in activities with a more complex risk profile, or whether a covered clearing agency is systemically important in multiple jurisdictions.

D. Total Annual Reporting and Recordkeeping Burden for Proposed Rule 17Ad–22(e)

The Commission preliminarily believes that the potential PRA burden imposed by the requirements under proposed Rule 17Ad–22(e) will vary depending on the requirement in question because registered clearing agencies are subject to existing requirements under Rule 17Ad–22 that, in some cases, are similar to those in proposed Rule 17Ad–22(e), as discussed in Part II.

First, because proposed Rules 17Ad–22(e)(1), (8) through (10), (12), (14),[440] (16), and (22)[441] contain requirements that are either substantially similar to those under existing Rule 17Ad–22 or have current practices that the Commission understands largely conform with the proposed rules, the Commission preliminarily believes that covered clearing agencies may need to make only limited changes to update their policies and procedures to satisfy these proposed requirements. In these cases, as an example, a covered clearing agency may need to conduct a review of the proposed rule against its existing policies and procedures to confirm that it satisfies the proposed requirements.[442]

Second, because proposed Rules 17Ad–22(e)(2), (3), (5), (11), (13), (17), (18), (20), and (21) contain provisions that are similar to those under existing Rule 17Ad–22 but would impose additional requirements that do not appear in existing Rule 17Ad–22, the Commission preliminarily believes that covered clearing agencies may need to make changes to update their policies and procedures to satisfy the proposed requirements. In these cases, as an example, a covered clearing agency may need to review and amend its existing rule book, policies, and procedures but may not need to develop, design, or implement new operations and practices to satisfy the proposed requirements.

Third, for proposed Rules 17Ad–22(e)(4), (6), (7), (15), (19), and (23), for which no similar existing requirements under Rule 17Ad–22 have been identified,[443] the Commission preliminarily believes that covered clearing agencies may need to make more extensive changes to their policies and procedures (or implement new policies and procedures), and may need to take other steps to satisfy the proposed requirements. In these cases, the PRA burden would be greater since a covered clearing agency may need to, as an example, develop, design, and implement new operations and practices. With respect to these provisions, the PRA burden may be greater since these proposed requirements may not reflect established practices of covered clearing agencies or reflect the normal course of their activities, and the PRA burden for these proposed rules may therefore entail initial one-time burdens to create new written policies and procedures and ongoing burdens, including burdens associated with disclosure requirements.

The Commission requests comment regarding the accuracy of the estimates discussed below.

1. Proposed Rules 17Ad–22(e)(1) Through (3): General Organization

a. Proposed Rule 17Ad–22(e)(1)

Proposed Rule 17Ad–22(e)(1) contains substantially the same requirements as Rule 17Ad–22(d)(1).[444] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. The PRA burden imposed by the proposed rules would therefore be minimal and would likely be limited to the review of current policies and procedures and updating existing policies and procedures where appropriate in order to ensure compliance with the proposed rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(1),[445] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 56 hours to review and update existing policies and procedures.[446]

Proposed Rule 17Ad–22(e)(1) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the

[440] In the case of proposed Rule 17Ad–22(e)(14), the Commission preliminarily believes that the current practices of covered clearing agencies already largely conform to the proposed requirement, and accordingly believes that covered clearing agencies may need to make only limited changes to update their policies and procedures pursuant to the proposed rule. *See infra* note 508 and accompanying text; *see also infra* Parts IV.B.3.e.ii and IV.C.3.a.ix (discussing the current practices at registered clearing agencies regarding segregation and portability and the anticipated economic effect of the proposed rule, respectively).

[441] In the case of proposed Rule 17Ad–22(e)(22), the Commission preliminarily believes that the current practices of covered clearing agencies already largely conform to the proposed requirement, and accordingly believes that covered clearing agencies may need to make only limited changes to update their policies and procedures pursuant to the proposed rule. *See supra* Part II.B.19 (discussing the requirements under the proposed rule) and *infra* Parts IV.B.3.h.ii and IV.C.3.a.xv (discussing the current practices at registered clearing agencies regarding communication procedures and standards and the anticipated economic effect of the proposed rule, respectively).

[442] In this regard, the Commission notes that its estimates for the initial one-time and ongoing burdens for proposed Rules 17Ad–22(e)(8) through (10) and (12) are the same across each of the proposed rules because the Commission preliminarily believes that the burdens associated with each would primarily constitute a review of the covered clearing agency's policies and procedures to confirm that those policies and procedures satisfy the proposed requirement.

[443] In the case of Rule 17Ad–22(e)(23), registered clearing agencies are subject to existing requirements for disclosure under existing Rule 17Ad–22, but new requirements under the proposed rule would impose greater burdens relative to other proposed rules that have similar requirements to those under existing Rule 17Ad–22. *See supra* Part II.B.20 (discussing the requirements under proposed Rule 17Ad–22(e)(23) and their relationship to requirements under existing Rule 17Ad–22(d)(9)).

[444] *See* 17 CFR 240.17Ad–22(d)(1); proposed Rule 17Ad–22(e)(1), *infra* Part VII; *see also supra* Part II.B.1 (discussing the requirements under the proposed rule).

[445] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[446] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours)) = 8 hours × 7 respondent clearing agencies = 56 hours.

proposed rule.[447] Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[448] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(1) would impose an aggregate annual burden on respondent clearing agencies of 21 hours.[449]

b. Proposed Rule 17Ad–22(e)(2)

Proposed Rule 17Ad–22(e)(2) contains some provisions that are similar to Rule 17Ad–22(d)(8), but also adds additional requirements that do not appear in existing Rule 17Ad–22.[450] As a result, a respondent clearing agency is required to have some written rules, policies, and procedures substantially similar to the requirements that would be imposed under proposed Rule 17Ad–22(e)(2) and would need to establish and implement a limited number of new policies and procedures. The PRA burden imposed by the proposed rule would therefore be associated with reviewing current policies and procedures and updating those policies and procedures or establishing new policies and procedures, where appropriate, in order to ensure compliance with the proposed rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(8),[451] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 154 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[452]

Proposed Rule 17Ad–22(e)(2) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[453] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(2) would impose an aggregate annual burden on respondent clearing agencies of 28 hours.[454]

c. Proposed Rule 17Ad–22(e)(3)

Proposed Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a sound risk management framework.[455] Under Rule 17Ad–22(d), registered clearing agencies are required to have policies and procedures to manage certain risks faced by these entities,[456] but the proposed rule would require a comprehensive framework for risk management that would require risk management policies and procedures be designed holistically, be consistent with each other, and work effectively together. Accordingly, the proposed rule may impose a PRA burden that would require respondent clearing agencies to update current policies and procedures in order to develop a more comprehensive framework that would include a periodic review thereof and a plan for orderly recovery and wind-down of the covered clearing agency. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 399 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[457]

Proposed Rule 17Ad–22(e)(3) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule and activities related to preparing documents facilitating a periodic review of the risk management framework. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[458] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(3) would impose an aggregate annual burden on respondent clearing agencies of 343 hours.[459] The Commission notes that the estimated ongoing burden for Proposed Rule 17Ad–22(e)(3) is similar to the initial one-time burden because the proposed rule includes a specific requirement that policies and procedures for comprehensive risk management include review on a specified periodic basis and approval by the board of directors annually.

2. Proposed Rules 17Ad–22(e)(4) Through (7): Financial Risk Management

a. Proposed Rule 17Ad–22(e)(4)

The Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(4) would be more significant, as changes to existing policies and procedures would involve more than adjustments and may require a respondent clearing agency to make substantial changes to its policies and procedures.[460] In addition, proposed Rule 17Ad–22(e)(4) would require one-time systems adjustments related to the capability to test the sufficiency of financial resources and to perform an annual conforming model validation. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 1,400 hours.[461]

Proposed Rule 17Ad–22(e)(4) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities

[447] Where the Commission refers to anticipated burdens related to ''enforcement activities,'' the Commission notes that such policies and procedures contemplate enforcement by the respondent clearing agency itself. *See* Clearing Agency Standards Release, supra note 5, at 66246 (stating that ''the clearing agency must be able to enforce its policies and procedures that contemplate enforcement by the clearing agency'').

[448] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[449] This figure was calculated as follows: (Compliance Attorney for 3 hours) × 7 respondent clearing agencies = 21 hours.

[450] *See* 17 CFR 240.17Ad–22(d)(8); proposed Rule 17Ad–22(e)(2), *infra* Part VII; *see also supra* Part II.B.2 (discussing the requirements under the proposed rule).

[451] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[452] This figure was calculated as follows: ((Assistant General Counsel for 24 hours) + (Compliance Attorney for 10 hours)) = 22 hours × 7 respondent clearing agencies = 154 hours.

[453] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[454] This figure was calculated as follows: (Compliance Attorney for 4 hours) × 7 respondent clearing agencies = 28 hours.

[455] *See* proposed Rule 17Ad–22(e)(3), *infra* Part VII.

[456] *See* 17 CFR 240.17Ad–22(d); *see also* Part II.B.3 (discussing the requirements under the proposed rule and their relationship to existing requirements under Rule 17Ad–22).

[457] This figure was calculated as follows: ((Assistant General Counsel for 25 hours) + (Compliance Attorney for 18 hours) + (Senior Risk Management Specialist for 7 hours) + (Computer Operations Manager for 7 hours)) = 57 hours × 7 respondent clearing agencies = 399 hours.

[458] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[459] This figure was calculated as follows: ((Compliance Attorney for 8 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 5 hours) + (Risk Management Specialist for 33 hours)) = 49 hours × 7 respondent clearing agencies = 343 hours.

[460] *See* proposed Rule 17Ad–22(e)(4), *infra* Part VII; *see also supra* Part II.B.4.c (discussing the requirements under the proposed rule).

[461] This figure was calculated as follows: ((Assistant General Counsel for 60 hours) + (Compliance Attorney for 40 hours) + (Senior Risk Management Specialist for 30 hours) + (Computer Operations Manager for 45 hours) + (Chief Compliance Officer for 15 hours) + (Senior Programmer for 10 hours)) = 200 hours × 7 respondent clearing agencies = 1,400 hours.

with respect to the written policies and procedures created in response to the proposed rule and ongoing activities with respect to testing the sufficiency of financial resources and model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[462] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(4) would impose an aggregate annual burden on respondent clearing agencies of 420 hours.[463]

b. Proposed Rule 17Ad–22(e)(5)

Respondent clearing agencies that would be subject to proposed Rule 17Ad–22(e)(5) may already have some written policies and procedures designed to address the collateral risks borne by these entities.[464] As a result, the Commission preliminarily believes that a respondent clearing agency may need to review and update existing policies and procedures as necessary and may need to adopt new policies and procedures with respect to an annual review of the sufficiency of collateral haircuts and concentration limits. Accordingly, based on the similar policies and procedures requirements in and the Commission's previous corresponding burden estimates for existing Rule 17Ad–22(d)(3),[465] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 294 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[466]

Proposed Rule 17Ad–22(e)(5) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule and would also result in an annual review of collateral haircuts and concentration limits. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[467] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(5) would impose an aggregate annual burden on respondent clearing agencies of 252 hours.[468] The Commission notes that the estimated ongoing burden for Proposed Rule 17Ad–22(e)(5) is similar to the initial one-time burden because the proposed rule includes a specific requirement that policies and procedures for collateral include a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.

c. Proposed Rule 17Ad–22(e)(6)

The Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(6) would be more significant and may require a respondent clearing agency to make substantial changes to its policies and procedures.[469] In addition, proposed Rule 17Ad–22(e)(6) would require one-time systems adjustments related to the capability to perform daily backtesting and monthly (or more frequent than monthly) conforming sensitivity analyses. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 1,080 hours to review and update existing policies and procedures.[470]

Proposed Rule 17Ad–22(e)(6) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule and activities associated with the daily backtesting and monthly (or more frequent) sensitivity analysis requirements and annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[471] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(6) would impose an aggregate annual burden on respondent clearing agencies of 360 hours.[472]

d. Proposed Rule 17Ad–22(e)(7)

The Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(7) would be more significant and may require a respondent clearing agency to make substantial changes to its policies and procedures.[473] In addition, proposed Rule 17Ad–22(e)(7) would require one-time systems adjustments related to the capability to perform an annual conforming model validation, the testing of sufficiency of liquid resources and the testing of access to liquidity providers. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 2,310 hours to review and update existing policies and procedures.[474]

Proposed Rule 17Ad–22(e)(7) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule as well as activities related to the testing of sufficiency of liquidity resources and the testing of access to liquidity providers. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[475] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–

[462] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[463] This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 7 respondent clearing agencies = 420 hours.

[464] *See* 17 CFR 240.17Ad–22(d)(3); proposed Rule 17Ad–22(e)(5), *infra* Part VII; *see also supra* Part II.B.4.d (discussing the requirements under the proposed rule).

[465] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[466] This figure was calculated as follows: ((Assistant General Counsel for 16 hours) + (Compliance Attorney for 12 hours) + (Senior Risk Management Specialist for 7 hours) + (Computer Operations Manager for 7 hours)) = 42 hours × 7 respondent clearing agencies = 294 hours.

[467] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[468] This figure was calculated as follows: ((Compliance Attorney for 6 hours) + (Risk Management Specialist for 30 hours)) = 36 hours × 7 respondent clearing agencies = 252 hours.

[469] *See* proposed Rule 17Ad–22(e)(6), *infra* Part VII; *see also supra* Part II.B.4.e (discussing the requirements under the proposed rule, including those that do not appear in existing Rule 17Ad–22).

[470] This figure was calculated as follows: ((Assistant General Counsel for 50 hours) + (Compliance Attorney for 40 hours) + (Senior Risk Management Specialist for 25 hours) + (Computer Operations Manager for 40 hours) + (Chief Compliance Officer for 15 hours) + (Senior Programmer for 10 hours)) = 180 hours × 6 respondent clearing agencies = 1,080 hours.

[471] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[472] This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 6 respondent clearing agencies = 360 hours.

[473] *See* proposed Rule 17Ad–22(e)(7), *infra* Part VII; *see also supra* Part II.B.4.f (discussing the requirements under the proposed rule).

[474] This figure was calculated as follows: ((Assistant General Counsel for 95 hours) + (Compliance Attorney for 85 hours) + (Senior Risk Management Specialist for 45 hours) + (Computer Operations Manager for 60 hours) + (Chief Compliance Officer for 30 hours) + (Senior Programmer for 15 hours)) = 330 hours × 7 respondent clearing agencies = 2,310 hours.

[475] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

22(e)(7) would impose an aggregate annual burden on respondent clearing agencies of 896 hours.[476]

3. Proposed Rules 17Ad–22(e)(8) Through (10): Settlement

a. Proposed Rule 17Ad–22(e)(8)

Proposed Rule 17Ad–22(e)(8) contains substantially similar provisions to Rule 17Ad–22(d)(12).[477] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that respondent clearing agencies would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(12),[478] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[479]

Proposed Rule 17Ad–22(e)(8) would also impose ongoing burdens on a respondent clearing agency. The proposed requirements would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rules. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[480] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(8) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[481]

b. Proposed Rule 17Ad–22(e)(9)

Proposed Rule 17Ad–22(e)(9) contains substantially similar provisions to Rule 17Ad–22(d)(5).[482] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that respondent clearing agencies would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(5),[483] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[484]

Proposed Rule 17Ad–22(e)(9) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[485] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(9) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[486]

c. Proposed Rule 17Ad–22(e)(10)

Proposed Rule 17Ad–22(e)(10) contains substantially similar provisions to Rule 17Ad–22(d)(15).[487] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that a respondent clearing agency would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(15),[488] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[489]

Proposed Rule 17Ad–22(e)(10) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[490] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(10) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[491]

4. Proposed Rules 17Ad–22(e)(11) Through (12): CSDs and Exchange-of-Value Settlement Systems

a. Proposed Rule 17Ad–22(e)(11)

Proposed Rule 17Ad–22(e)(11) contains similar provisions to Rule 17Ad–22(d)(10).[492] As a result, a respondent clearing agency providing CSD services would already have written rules, policies, and procedures similar to the requirements that would

[476] This figure was calculated as follows: ((Compliance Attorney for 48 hours) + (Administrative Assistant for 5 hours) + (Senior Business Analyst for 5 hours) + (Risk Management Specialist for 60 hours) + (Senior Risk Management Specialist for 10 hours)) = 128 hours × 7 respondent clearing agencies = 896 hours.

[477] *See* 17 CFR 240.17Ad–22(d)(12); proposed Rule 17Ad–22(e)(8), *infra* Part VII; *see also supra* Part II.B.5 (discussing the requirements under the proposed rule).

[478] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[479] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[480] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[481] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[482] *See* 17 CFR 240.17Ad–22(d)(5); proposed Rule 17Ad–22(e)(9), *infra* Part VII; *see also supra* Part II.B.6 (discussing the requirements under the proposed rule).

[483] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[484] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[485] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[486] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[487] *See* 17 CFR 240.17Ad–22(d)(15); proposed Rule 17Ad–22(e)(10), *infra* Part VII; *see also supra* Part II.B.7 (discussing the requirements under the proposed rule).

[488] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[489] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[490] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[491] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[492] *See* 17 CFR 240.17Ad–22(d)(10); proposed Rule 17Ad–22(e)(11), *infra* Part VII.

be imposed under the proposed rule but also imposes additional requirements that do not appear in existing Rule 17Ad–22,[493] and accordingly a covered clearing agency providing CSD services may need to update or amend existing policies and procedures, as necessary, to satisfy the proposed requirements and may need to create new policies and procedures. Based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(10),[494] the Commission preliminarily believes that the respondent clearing agency would incur a one-time burden of approximately 55 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[495]

Proposed Rule 17Ad–22(e)(11) would also impose ongoing burdens on the respondent clearing agency providing CSD services. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[496] the Commission preliminarily estimates that the ongoing activities required by proposed Rules 17Ad–22(e)(11) would impose a total annual burden on the respondent clearing agency of approximately 8 hours.[497]

b. Proposed Rule 17Ad–22(e)(12)

Proposed Rule 17Ad–22(e)(12) contains substantially similar provisions to Rule 17Ad–22(d)(13).[498] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that a respondent clearing agency would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(13),[499] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[500]

Proposed Rule 17Ad–22(e)(12) would also impose ongoing burdens on a covered clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[501] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(12) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[502]

5. Proposed Rules 17Ad–22(e)(13) Through (14): Default Management

a. Proposed Rule 17Ad–22(e)(13)

Proposed Rule 17Ad–22(e)(13) would require a respondent clearing agency to have written policies and procedures reasonably designed to address participant default and ensure that the clearing agency can contain losses and liquidity demands and continue to meet its obligations. Proposed Rule 17Ad–22(e)(13) contains similar provisions to Rule 17Ad–22(d)(11) but would also impose additional requirements that do not appear in existing Rule 17Ad–22.[503] As a result, the Commission preliminarily believes that a respondent clearing agency would incur burdens of reviewing and updating existing policies and procedures in order to comply with the provisions of proposed Rule 17Ad–22(e)(13) and, in some cases, may need to create new policies and procedures. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(11),[504] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 420 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[505]

Proposed Rule 17Ad–22(e)(13) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require annual review and testing of a clearing agency's default policies and procedures. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[506] the Commission preliminarily believes that the ongoing activities required by proposed Rule 17Ad–22(e)(13) would impose an aggregate annual burden on respondent clearing agencies of approximately 63 hours.[507]

b. Proposed Rule 17Ad–22(e)(14)

Registered clearing agencies that provide CCP services for security-based swaps generally have written policies and procedures regarding the segregation and portability of customer positions and collateral as a result of applicable regulations but not existing Rule 17Ad–22.[508] As a result, respondent clearing agencies providing CCP services for security-based swaps would incur burdens of reviewing and updating existing policies and

[493] *See supra* Part II.B.8 (discussing the requirements under the proposed rule and their relationship to existing requirements under Rule 17Ad–22(d)(10)).

[494] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[495] This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 10 hours) + (Intermediate Accountant for 15 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 5 hours)) = 55 hours × 1 respondent clearing agency = 55 hours.

[496] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[497] This figure was calculated as follows: (Compliance Attorney for 8 hours) × 1 respondent clearing agency = 8 hours.

[498] *See* 17 CFR 240.17Ad–22(d)(13); proposed Rule 17Ad–22(e)(12), *infra* Part VII; *see also supra* Part II.B.9 (discussing the requirements under the proposed rule).

[499] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[500] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[501] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[502] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[503] *See* 17 CFR 240.17Ad–22(d)(11); proposed Rule 17Ad–22(e)(13), *infra* Part VII; *see also supra* Part II.B.10 (discussing the requirements under the proposed rule and their relationship to existing Rule 17Ad–22(d)(11).

[504] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[505] This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 16 hours) + (Senior Business Analyst for 12 hours) + (Computer Operations Manager for 12 hours)) = 60 hours × 7 respondent clearing agencies = 420 hours.

[506] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[507] This figure was calculated as follows: (Compliance Attorney for 9 hours) × 7 respondent clearing agencies = 63 hours.

[508] *See, e.g.,* 77 FR 6336 (Feb. 7, 2012) (CFTC adopting rules imposing LSOC on DCOs for cleared swaps); *see also supra* Part II.B.11, in particular note 297 and accompanying text. Because the affected clearing agencies are subject to the CFTC's segregation and portability requirements with respect to cleared swaps under LSOC, the Commission preliminarily believes the burden imposed by proposed Rule 17Ad–22(e)(14) would be limited.

procedures as necessary in order to comply with the proposed rule. The Commission preliminarily estimates that Rule 17Ad–22(e)(14) would impose on respondent clearing agencies an aggregate one-time burden of 72 hours to review and update existing policies and procedures.[509]

Proposed Rule 17Ad–22(e)(14) would also impose ongoing burdens on a respondent clearing agency that provides CCP services for security-based swaps. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[510] the Commission preliminarily believes that the ongoing activities required by proposed Rule 17Ad–22(e)(14) would impose an aggregate annual burden on respondent clearing agencies of approximately 12 hours.[511]

6. Proposed Rules 17Ad–22(e)(15) Through (17): General Business and Operational Risk Management

a. Proposed Rule 17Ad–22(e)(15)

Respondent clearing agencies would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and manage general business risks borne by the clearing agency. Policies and procedures governing the identification and mitigation of general business risk are not currently required under existing Rule 17Ad–22 and, as a result, the Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(15) would be more significant and may require a respondent clearing agency to make substantial changes to its policies and procedures.[512] The Commission preliminarily estimates that proposed Rule 17Ad–22(e)(15) would impose an aggregate one-time burden on respondent covered clearing agencies of 1,470 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[513]

Proposed Rule 17Ad–22(e)(15) would also imposed ongoing burdens on a respondent clearing agency. Proposed Rule 17Ad–22(e)(15) would require a respondent clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a viable plan, approved by its board of directors and updated at least annually, for raising additional equity in the event that the covered clearing agency's liquid net assets fall below the level required by the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[514] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(15) would impose an aggregate annual burden on respondent clearing agencies of 336 hours.[515]

b. Proposed Rule 17Ad–22(e)(16)

A registered clearing agency is currently required to have written policies and procedures reasonably designed to address, in large part, the safeguarding of assets of its assets and those of its participants under Rule 17Ad–22(d)(3).[516] Proposed Rule 17Ad–22(e)(16) contains substantially similar provisions. As a result, the Commission preliminarily believes that a respondent clearing agency would be required to conduct a review of current policies and procedures and update these existing policies and procedures where appropriate in order to ensure compliance with the proposed rule and that the PRA burden imposed by the proposed rule would be limited. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(3),[517] the Commission preliminarily estimates that all respondent clearing agencies would incur an aggregate one-time burden of approximately 140 hours to review and update existing policies and procedures.[518]

Proposed Rule 17Ad–22(e)(16) would also impose ongoing burdens on a respondent clearing agency. It would require ongoing monitoring and compliance activities with respect to the policies and procedures implemented in response to the requirements of the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[519] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(16) would impose an aggregate annual burden on respondent clearing agencies of 42 hours.[520]

c. Proposed Rule 17Ad–22(e)(17)

Proposed Rule 17Ad–22(e)(17) contains similar requirements to those under Rule 17Ad–22(d)(4) but would also impose additional requirements that do not appear in existing Rule 17Ad–22.[521] As a result, a respondent clearing agency is currently required to have some written rules, policies and procedures containing provisions similar to the requirements that would be imposed under the proposed rule, but it would also need to review and update existing policies and procedures, where necessary, and may need to create policies and procedures to address the additional requirements. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(4),[522] the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 196 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[523]

[509] This figure was calculated as follows: ((Assistant General Counsel for 12 hours) + (Compliance Attorney for 10 hours) + (Computer Operations Manager for 7 hours) + (Senior Business Analyst for 7 hours)) = 36 hours × 2 respondent clearing agency that provide, or would potentially provide, CCP services with respect to security-based swaps = 72 hours.

[510] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[511] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 2 respondent clearing agencies = 12 hours.

[512] *See* proposed Rule 17Ad–22(e)(15), *infra* Part VII; *see also supra* Part II.B.12 (discussing the requirements under the proposed rule).

[513] This figure was calculated as follows: ((Assistant General Counsel for 40 hours) + (Compliance Attorney for 30 hours) + (Computer Operations Manager for 10 hours) + (Senior Business Analyst for 10 hours) + (Financial Analyst for 70 hours) + (Chief Financial Officer for 50 hours)) = 210 hours × 7 respondent clearing agencies = 1,470 hours.

[514] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[515] This figure was calculated as follows: ((Compliance Attorney for 42 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours)) = 48 hours × 7 respondents clearing agencies = 336 hours.

[516] *See* 17 CFR 240.17Ad–22(d)(3); proposed Rule 17Ad–22(e)(16), *infra* Part VII; *see also supra* Part II.B.13 (discussing the requirements under the proposed rule).

[517] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[518] This figure was calculated as follows: ((Assistant General Counsel for 4 hours) + (Compliance Attorney for 8 hours) + (Senior Business Analyst for 4 hours) + (Computer Operations Manager for 4 hours)) = 20 hours × 7 respondent clearing agencies = 140 hours.

[519] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[520] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 7 respondent clearing agencies = 42 hours.

[521] *See* 17 CFR 240.17Ad–22(d)(4); proposed Rule 17Ad–22(e)(17), *infra* Part VII; *see also supra* Part II.B.14 (discussing the requirements under the proposed rule).

[522] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[523] This figure was calculated as follows: ((Assistant General Counsel for 4 hours) + (Compliance Attorney for 8 hours) + (Computer Operations Manager for 6 hours) + (Senior Business Analyst for 4 hours) + (Chief Compliance Officer for

Proposed Rule 17Ad–22(e)(17) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[524] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(17) would impose an aggregate annual burden on respondent clearing agencies of 112 hours.[525]

7. Proposed Rules 17Ad–22(e)(18) Through (20): Access

a. Proposed Rule 17Ad–22(e)(18)

Proposed Rule 17Ad–22(e)(18) contains similar requirements to those in existing Rules 17Ad–22(b)(5) through (7) and (d)(2).[526] As a result, a respondent clearing agency is currently required to have written rules, policies, and procedures containing provisions similar to the requirements that would be imposed under the proposed rule. Thus, for certain portions of proposed Rule 17Ad–22(e)(18), the Commission preliminarily believes that a respondent clearing agency would need to review and update existing policies and procedures where necessary. Because proposed Rule 17Ad–22(e)(18) also imposes additional requirements that do not appear in existing Rule 17Ad–22, however,[527] a respondent clearing agency may be required to create policies and procedures to address these additional requirements. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(b)(5) through (7) and (d)(2),[528] the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 308 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[529]

Proposed Rule 17Ad–22(e)(18) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[530] the Commission preliminarily estimates that the ongoing activities required by the proposed rule would impose an aggregate annual burden on respondent clearing agencies of 49 hours.[531]

b. Proposed Rule 17Ad–22(e)(19)

Respondent clearing agencies would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to address material risks associated from tiered participation arrangements as required by proposed Rule 17Ad–22(e)(19). Tiered participation arrangements are not addressed in existing Rule 17Ad–22. To the extent that a respondent clearing agency has not addressed tiered participation arrangements in its policies and procedures, the Commission preliminarily believes that the respondent clearing agency would need to create policies and procedures to address these proposed requirements. In this regard, the PRA burden for proposed Rule 17Ad–22(e)(19) would impose one-time initial burdens to create policies and procedures. The Commission preliminarily estimates that proposed Rule 17Ad–22(e)(19) would impose an aggregate one-time burden on respondent clearing agencies of 308 hours to create said policies and procedures.[532]

Proposed Rule 17Ad–22(e)(19) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[533] the Commission preliminarily estimates that the ongoing activities required by the proposed rule would impose an annual aggregate burden on respondent clearing agencies of 49 hours.[534]

c. Proposed Rule 17Ad–22(e)(20)

Registered clearing agencies are currently required to have written policies and procedures reasonably designed to manage risks related to links between the clearing agency and others under Rule 17Ad–22(d)(7). Proposed Rule 17Ad–22(e)(20) contains similar requirements, but also imposes additional requirements.[535] As a result, a respondent clearing agency may need to review and update existing policies and procedures or establish new policies and procedures, as necessary, to satisfy the proposed requirement. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(7),[536] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 308 hours to review and update existing policies and procedures.[537]

Proposed Rule 17Ad–22(e)(20) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance

4 hours) + (Senior Programmer for 2 hours)) = 28 hours × 7 respondent clearing agency = 196 hours.

[524] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[525] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 7 respondent clearing agencies = 42 hours.

[526] *See* 17 CFR 240.17Ad–22(b)(5) through (7) and (d)(2).

[527] *See* proposed Rule 17Ad–22(e)(18), *infra* Part VII; *see also supra* Part II.B.15 (discussing the requirements under the proposed rule).

[528] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[529] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + Computer Operations Manager for 15 hours) + (Senior Business Analyst for 5 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours)) = 44 hours × 7 respondent clearing agencies = 308 hours.

[530] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[531] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[532] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Computer Operations Manager for 15 hours) + (Senior Business Analyst for 5 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours)) = 44 hours × 7 respondent clearing agencies = 308 hours.

[533] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[534] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[535] *See* 17 CFR 240.17Ad–22(d)(7); proposed Rule 17Ad–22(e)(20), *infra* Part VII; *see also supra* Part II.B.17 (discussing the requirements under the proposed rule).

[536] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[537] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 15 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours) = 44 hours × 7 respondent clearing agencies = 308 hours.

burdens with respect to existing Rule 17Ad–22,[538] the Commission preliminarily estimates that the ongoing activities required by the proposed rule would impose an aggregate annual burden on respondent clearing agencies of 49 hours.[539]

8. Proposed Rules 17Ad–22(e)(21) Through (22): Efficiency

a. Proposed Rule 17Ad–22(e)(21)

Registered clearing agencies are currently required to have written policies and procedures requiring the clearing agency to be cost effective with respect to meeting the requirements of its participants and the markets it serves under Rule 17Ad–22(d)(6), and proposed Rule 17Ad–22(e)(21) contains similar requirements but also imposes new requirements.[540] As a result, a respondent clearing agency would likely incur the burdens of reviewing and updating existing policies and procedures and may need to create new policies and procedures to satisfy the proposed rule, as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(6),[541] the Commission preliminarily estimates that that respondent clearing agencies would incur an aggregate one-time burden of approximately 224 hours to review and update existing policies and procedures.[542]

Proposed Rule 17Ad–22(e)(21) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures required under the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[543] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(21) would impose an aggregate annual burden on respondent clearing agencies of 77 hours.[544]

b. Proposed Rule 17Ad–22(e)(22)

Respondent clearing agencies would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement the requirements of proposed Rule 17Ad–22(e)(22) with respect to the use of relevant internationally accepted communication procedures and standards. Although registered clearing agencies are not subject to an existing similar requirement under Rule 17Ad–22, the Commission understands that covered clearing agencies currently use the relevant internationally accepted communication procedures and standards and expects a covered clearing agency would need to make only limited changes to satisfy the requirements under the proposed rule.[545] Accordingly, the Commission preliminarily estimates that proposed Rule 17Ad–22(e)(22) would impose an aggregate one-time burden on respondent clearing agencies of 168 hours to review and update existing policies and procedures.[546]

Proposed Rule 17Ad–22(e)(22) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[547] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(22) would impose an aggregate annual burden on respondent clearing agencies of 35 hours.[548]

9. Proposed Rule 17Ad–22(e)(23): Disclosure

Proposed Rule 17Ad–22(e)(23) contains similar requirements to Rule 17Ad–22(d)(9) but also imposes substantial new requirements.[549] As a result, although a respondent clearing agency is already required to have written rules, policies and procedures containing provisions similar to some of the requirements in the proposed rule, for some provisions of proposed Rule 17Ad–22(e)(23), a respondent clearing agency would be required to establish policies and procedures to address the additional requirements. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(9),[550] the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 966 hours to review and update existing policies and procedures and to create policies and procedures, as necessary.[551]

Proposed Rule 17Ad–22(e)(23) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[552] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(23) would impose an aggregate annual burden on respondent clearing agencies of 238 hours.[553]

10. Total Burden for Proposed Rule 17Ad–22(e)

The aggregate initial burden for respondent clearing agencies under proposed Rule 17Ad–22(e) would be 10,664 hours. The aggregate ongoing burden for respondent clearing agencies under proposed Rule 17Ad–22(e) would be 3,460 hours.

[538] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[539] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[540] *See* 17 CFR 240.17Ad–22(d)(6).

[541] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[542] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 10 hours)) = 32 hours × 7 respondent clearing agencies = 224 hours.

[543] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[544] This figure was calculated as follows: ((Compliance Attorney for 5 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) = 11 hours × 7 respondent clearing agencies = 77 hours.

[545] *See supra* note 441.

[546] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Computer Operations Manager for 7 hours) + (Senior Business Analyst for 2 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours)) = 24 hours × 7 respondent clearing agencies = 168 hours.

[547] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[548] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[549] *See* 17 CFR 240.17Ad–22(d)(9); proposed Rule 17Ad–22(e)(23), *infra* Part VII; *see also supra* Part II.B.20 (discussing the requirements under the proposed rule).

[550] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[551] This figure was calculated as follows: ((Assistant General Counsel for 38 hours) + (Compliance Attorney for 24 hours) + (Computer Operations Manager for 32 hours) + (Senior Business Analyst for 18 hours) + (Chief Compliance Officer for 18 hours) + (Senior Programmer for 8 hours)) = 138 hours × 7 respondent clearing agencies = 966 hours.

[552] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[553] This figure was calculated as follows: (Compliance Attorney for 34 hours) × 7 respondent clearing agencies = 238 hours.

E. Total Annual Reporting and Recordkeeping Burden for Proposed Rule 17Ab2–2

Proposed Rule 17Ab2–2 would govern Commission determinations as to whether a registered clearing agency is a covered clearing agency and whether a covered clearing agency is either involved in activities with a more complex risk profile or systemically important in multiple jurisdictions.[554] Because such determinations may be made upon request of a clearing agency or its members, the respondents would have the burdens of preparing such requests for submission to the Commission. The Commission preliminarily notes that, to the extent such determinations are carried out by the Commission on its own initiative pursuant to proposed Rule 17Ab2–2, the PRA burdens on the respondents would be limited. Accordingly, based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[555] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 24 hours to draft and review a determination request to the Commission.[556]

F. Collection of Information Is Mandatory

The collection of information relating to proposed Rules 17Ad–22(e)(1) through (3), 17Ad–22(e)(4)(ii) through (v), 17Ad–22(e)(7)(i) through (ix), and 17Ad–22(e)(8) through (23) would be mandatory for all respondent clearing agencies. The collection of information requirement relating to proposed Rule 17Ad–22(e)(4)(i) and 17Ad–22(e)(7)(x) would be mandatory for a respondent clearing agency that provides CCP services and that is designated by the Commission either as systemically important in multiple jurisdictions or as a complex risk profile clearing agency. The collection of information requirement relating to proposed Rule 17Ad–22(e)(6) would be mandatory for a respondent clearing agency that provides CCP services.

The collection of information requirement relating to proposed Rule 17Ab2–2 is voluntary.

G. Confidentiality

The Commission preliminarily expects that the written policies and procedures generated pursuant to proposed Rule 17Ad–22(e) would be communicated to the members, subscribers, and employees (as applicable) of all entities covered by the proposed rule and the public (as applicable). To the extent that this information is made available to the Commission, it would not be kept confidential. Such policies and procedures would be required to be preserved in accordance with, and for periods specified in, Exchange Act Rules 17a–1 [557] and 17a–4(e)(7).[558] To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[559]

To the extent that the Commission receives confidential information pursuant to the collection of information under proposed Rule 17Ab2–2, the Commission preliminarily expects such information would be kept confidential subject to the provisions of applicable law.[560]

H. Request for Comments

The Commission invites comments on all of the above estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission requests comment in order to (a) evaluate whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimates of the burden of the collection of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) determine whether there are cost savings associated with the collection of information that have not been identified in this proposal.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–03–14. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7–03–14, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street NE., Washington, DC 20549–0213. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it by April 25, 2014.

IV. Economic Analysis

A. Introduction

The purpose of the proposed amendments to Rule 17Ad–22 and of proposed Rule 17Ab2–2 is to establish requirements for the operation and governance of registered clearing agencies that meet the definition of a ''covered clearing agency.'' Registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets. Many securities transactions are centrally cleared and settled, and central clearing and settlement is becoming more prevalent in the security-based swap markets. For example, DTCC reported processing $1.6 quadrillion in transactions in 2012.[561] For the same period, Intercontinental Exchange, Inc. reported $10.2 trillion in gross notional CDS cleared and settled.[562] While clearing

[554] *See infra* Part II.C (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part VII (proposed text of Rule 17Ab2–2).

[555] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[556] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Staff Attorney for 4 hours) + (Outside Counsel for 6 hours)) = 12 hours × 2 respondent clearing agencies = 24 hours.

[557] 17 CFR 240.17a–1.

[558] 17 CFR 240.17a–4(e)(7).

[559] *See, e.g.,* 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

[560] *See id.*

[561] *See* DTCC, 2012 Annual Report, *available at http://www.dtcc.com/about/annual-report.aspx.*

[562] *See* Intercontinental Exchange, Inc., 2012 Annual Report, at 66, *available at https://materials.proxyvote.com/Approved/45865V/20130319/AR_159922/.* Intercontinental Exchange, Inc. is the parent company of ICE and ICEEU.

ICE began clearing corporate single-name CDS in December 2009, and as of February 1, 2013, had cleared $1.9 trillion gross notional of single-name CDS on 153 North American corporate reference

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agencies generally benefit the markets they serve, such entities can pose substantial risk to the financial system as a whole, due in part to the fact that clearing agencies concentrate risk. Disruption to a clearing agency's operations, or failure on the part of a clearing agency to meet its obligations, could serve as a potential source of contagion, resulting in significant costs not only to the clearing agency and its members but also the broader economy and market participants.[563] As a result, proper management of the risks associated with central clearing and settlement is necessary to ensure the stability of U.S. securities markets.

The mandated central clearing and settlement of security-based swaps wherever possible and appropriate, a core component of Title VII, reinforces this need.[564] Where a clearing agency provides CCP services, clearing and settlement of security-based swap contracts replaces bilateral counterparty exposures with exposures against the clearing agency providing CCP services. Consequently, a move from voluntary central clearing and settlement of security-based swap contracts to mandatory clearing of security-based swap contracts, holding the volume of security-based swap transactions constant, will increase economic exposures against CCPs that clear security-based swaps. Increased exposures in turn raise the possibility that these CCPs may serve as a transmission mechanism for systemic events.

Clearing agencies have several incentives to implement comprehensive risk management programs. First, the ongoing viability of a clearing agency depends on its reputation and the confidence that market participants have in its services. Clearing agencies therefore have an incentive to minimize the likelihood that a member default or operational outage would disrupt settlement. Second, some clearing agencies, including those that mutualize default risks, contribute a portion of their own capital as part of their contingent resources. Clearing agencies with such capital contributions to their contingent resources thus have an economic interest in sound risk management. Registered clearing agencies are SROs that enforce applicable rules and requirements under Commission oversight and are also in certain instances subject to CFTC oversight.[565] Registered clearing agencies consequently also face a legal requirement that their rules be designed to protect the public interest in the process of clearing securities or derivatives.[566]

Nevertheless, clearing agencies' incentives for sound risk management may be tempered by pressures to reduce costs and maximize profits that are distinct from the public interest goals set forth in governing statutes, such as financial stability, and may result in clearing agencies choosing tradeoffs between the costs and benefits of risk management that are not socially efficient. Because the current market for clearing services is characterized by high barriers to entry and limited competition,[567] the market power exercised by clearing agencies in the markets they serve may blunt incentives to invest in risk management systems.[568] Further, even if clearing agencies do internalize costs that they impose on their clearing members, they may fail to internalize the consequences of their risk management decisions on other financial entities that are connected to them through relationships with clearing members.[569] Such a failure represents a financial network externality imposed by clearing agencies on the broader financial markets and suggests that financial stability, as a public good, may be under-produced in equilibrium.

As discussed in more detail below, the proposed amendments to Rule 17Ad–22 represent a strengthening of the Commission's regulation of registered clearing agencies. The Commission preliminarily believes that the more specific requirements imposed by the proposed amendments will further mitigate potential moral hazard associated with risk management at covered clearing agencies. For instance, in the absence of policies and procedures that require periodic stress-testing and validation of credit and liquidity risk models, clearing agencies could potentially choose to recalibrate models in periods of low volatility and avoid recalibration in periods of high volatility, causing them to underestimate the risks they face.

The Commission also preliminarily believes that the additional specificity of proposed Rule 17Ad–22(e), along with proposed testing requirements, would be more effective at mitigating these particular manifestations of incentive misalignments than existing Rule 17Ad–22. The Commission preliminarily believes, as a result, that a general benefit of the proposed amendments would be reductions in the likelihood of CCP failure that result from improved safeguards. This general benefit would be realized to the extent that clearing agencies do not already conform to new requirements under the proposed amendments. Despite the potential incentive problems noted above and perhaps in anticipation of regulatory efforts, some registered clearing agencies have taken steps to update their policies and procedures in accordance with the standards contained in the proposed rules. The Commission notes that in some instances the proposed rules establish as a minimum regulatory requirement

entities. *See* Exchange Act Release No. 34–61662 (Mar. 5, 2010), 75 FR 11589, 11591 (Mar. 11, 2010) (discussing ICE's credit default swap clearing activities as of March 2010); ICE, Volume of ICE CDS Clearing, *available at https://www.theice.com/clear_credit.jhtml*.

ICEEU began clearing CDS on single-name corporate reference entities in December 2009, and, as of February 1, 2013, had cleared €1.6 trillion in gross notional of single-name CDS on 121 European corporate reference entities. *See* Exchange Act Release No. 61973 (Apr. 23, 2010), 75 FR 22656, 22657 (Apr. 29, 2010) (discussing ICEEU's credit default swap clearing activity as of April 2010); ICEEU, Volume of ICE CDS Clearing, *available at https://www.theice.com/clear_credit.jhtml*.

[563] *See generally* Darrell Duffie, Ada Li & Theo Lubke, Policy Perspectives on OTC Derivatives Market Infrastructure, at 9 (Fed. Reserve Bank N.Y. Staff Reps., Mar. 2010), *available at http://www.newyorkfed.org/research/staff_reports/sr424.pdf* (''If a CCP is successful in clearing a large quantity of derivatives trades, the CCP is itself a systemically important financial institution. The failure of a CCP could suddenly expose many major market participants to losses. Any such failure, moreover, is likely to have been triggered by the failure of one or more large clearing members, and therefore to occur during a period of extreme market fragility.''); Pirrong, The Inefficiency of Clearing Mandates, Policy Analysis, No. 655, at 11–14, 16–17, 24–26 (2010), *available at http://www.cato.org/pubs/pas/PA665.pdf*, at 11–14, 16–17, 24–26 (stating, among other things, that ''CCPs are concentrated points of potential failure that can create their own systemic risks,'' that ''[a]t most, creation of CCPs changes the topology of the network of connections among firms, but it does not eliminate these connections,'' that clearing may lead speculators and hedgers to take larger positions, that a CCP's failure to effectively price counterparty risks may lead to moral hazard and adverse selection problems, that the main effect of clearing would be to ''redistribute losses consequent to a bankruptcy or run,'' and that clearinghouses have failed or come close to failing in the past, including in connection with the 1987 market break); Manmohan Singh, Making OTC Derivatives Safe—A Fresh Look, at 5–11 (IMF Working Paper, Mar. 2011), *available at http://www.imf.org/external/pubs/ft/wp/2011/wp1166.pdf* (addressing factors that could lead central counterparties to be ''risk nodes'' that may threaten systemic disruption).

[564] *See supra* Part I.B.1.

[565] *See supra* Part I.A and note 96 (describing the Commission's framework for regulation of SROs and the SRO rule filing process); *see also supra* note 53 (describing regulations adopted by the CFTC for DCOs).

[566] *See* 15 U.S.C. 78q–1(b)(3)(F).

[567] *See* Clearing Agency Standards Release, *supra* note 5, at 66263.

[568] *See infra* Part IV.C.2.a.

[569] *See* Daron Acemoglu, Asuman Ozdaglar & Alireza Tahbaz-Salehi, Systemic Risk and Stability in Financial Networks (NBER Working Paper No. 18727, Jan. 2013), *available at http://www.nber.org/papers/w18727*.

certain current practices at some registered clearing agencies. In these cases, the Commission preliminarily believes that imposing the proposed requirements on covered clearing agencies will have the effect of imposing consistent, higher minimum risk management standards across covered clearing agencies.

In analyzing the economic consequences and effects of the rules proposed in this release, the Commission has been guided by the objectives of Section 17A of the Exchange Act to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, the maintenance of fair competition, and to otherwise further the purposes of the Exchange Act through the registration and regulation of clearing agencies.[570] It has also been guided by the objectives of the Dodd-Frank Act to mitigate risks to the U.S. financial system, promote counterparty protection, increase market transparency for OTC derivatives, and facilitate financial stability.[571] The Commission has also taken into account the importance of maintaining a well-functioning security-based swap market and the objectives of the Clearing Supervision Act to establish an enhanced supervisory and risk control system for systemically important clearing agencies and other FMUs.[572] In addition, as directed by the Clearing Supervision Act, the Commission makes this proposal after giving careful consideration to the standards set forth in the PFMI Report as the relevant international standard. Proposing rules that maintain consistency with the standards set forth in the PFMI Report may reduce the likelihood that market participants, including members of covered clearing agencies, would restructure in an effort to operate in less-regulated markets.

The Commission preliminarily believes that the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 are consistent with the goals of Section 17A of the Exchange Act, to promote the prompt and accurate clearing and settlement of transactions in securities, of the Clearing Supervision Act, to enhance the supervision and oversight of clearing entities, and of Title VII, to create a robust regulatory structure for security-based swaps. In proposing these rules, the Commission is also mindful of the benefits that would accrue through maintaining consistency with regulations adopted by the Board and the CFTC.

The Commission is sensitive to the economic consequences and effects of the proposed rules, including their benefits and costs. In proposing these rules, the Commission has been mindful of the economic consequences of the decisions it makes regarding the scope of applying the proposed rules to covered clearing agencies. Moreover, the Commission acknowledges that, since many of the proposed rules require a covered clearing agency to adopt new policies and procedures, the economic effects and consequences of the proposed rules include those flowing from the substantive results of those new policies and procedures. Under Section 3(f) of the Exchange Act, whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[573] Further, as noted above, Section 17A of the Exchange Act directs the Commission to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents when using its authority to facilitate the establishment of a national system for clearance and settlement transactions in securities.[574] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[575] Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[576]

The Commission has attempted, where possible, to quantify the benefits and costs anticipated to flow from the proposed rules. In some cases, as indicated below, data to quantify the benefits and costs associated with the proposed rules are unavailable. For example, implementing policies and procedures that require stress testing of financial resources available to a covered clearing agency at least once each day may require additional investment in infrastructure, but the particular infrastructure requirements will depend on existing systems and a covered clearing agency's choice of modeling techniques. In other cases, quantification depends heavily on factors outside the control of the Commission, particularly with regard to the number of potential new entrants affected by the proposed rules that in the future may be designated systemically important by the FSOC.

Overall, the Commission preliminarily believes that the proposed rules represent improvements in risk management, be it systemic, legal, credit, liquidity, general business, custody, investment, or operational risk, in keeping with the requirements of Section 17A of the Exchange Act and the Dodd-Frank Act. The Commission preliminarily believes that the proposed rules will result in an increase in financial stability insofar as they result in minimum standards at covered clearing agencies that are higher than those standards implied by current practices at covered clearing agencies. In particular cases, such as new requirements related to management of liquidity risk and general business risk, stability may arise as a result of higher risk management standards at covered clearing agencies that effectively lower the probability that either covered clearing agencies or their members default. As explained in Part IV.C.2, reduced default probabilities for covered clearing agencies may, in turn, improve efficiency and capital formation.

Request for Comments. The Commission requests comment on all aspects of the economic analysis of the proposed rules, including their benefits and costs, as well as any effect these proposed rules may have on competition, efficiency, and capital formation. Acknowledging the data limitations noted above, the Commission encourages commenters to provide data and analysis to help further quantify or estimate the potential benefits and costs of the proposed rules.

B. Economic Baseline

1. Overview

To assess the economic effects of the proposed rules, including possible

[570] *See supra* note 2 and accompanying text (noting the requirements of Section 17A of the Exchange Act).

[571] *See supra* note 13 and accompanying text (noting the purpose of the Dodd-Frank Act to, among other things, promote financial stability); *supra* note 14 and accompanying text (noting the purpose of the Dodd-Frank Act to, among other things, create a regulatory framework for the OTC derivatives markets).

[572] *See supra* Part I.B.2 (describing the regulatory framework for FMUs set forth in the Clearing Supervision Act).

[573] *See* 15 U.S.C. 78c(f).

[574] *See supra* note 2 and accompanying text (noting the requirements of Section 17A).

[575] *See* 15 U.S.C. 78w(a)(2).

[576] *See id.*

effects on efficiency, competition, and capital formation, the Commission is using a baseline composed of (1) the current regulatory framework under which registered clearing agencies operate,[577] and (2) the current practices of registered clearing agencies as they relate to the rules being proposed today.

More specifically, the baseline includes existing legal requirements applicable to registered clearing agencies providing CCP or CSD services as they exist at the time of this proposal, including applicable rules adopted by the Commission. Rule 17Ad–22 established a regulatory framework for registered clearing agencies, including security-based swap clearing agencies deemed registered pursuant to the Dodd-Frank Act.[578] Section 17A of the Exchange Act generally regulates the national system for clearance and settlement, while Section 19 of the Exchange Act describes the registration, responsibilities, and oversight of SROs. Further, clearing agencies are subject to new requirements related to security-based swaps under the Dodd-Frank Act.

In terms of current practice, registered clearing agencies are required to operate in compliance with the requirements set forth in Rule 17Ad–22, though they may vary in the particular ways they meet these requirements. Some variation in practices across clearing agencies derives from the products they clear and the markets they serve. Additionally, the Commission understands that certain registered clearing agencies have already adopted practices consistent with several of the standards set forth in the PFMI Report. Accordingly, because proposed Rule 17Ad–22(e) and proposed Rule 17Ab2–2 result in general consistency with the standards set forth in the PFMI Report, the Commission preliminarily believes the resulting benefits and costs to covered clearing agencies would, in some cases, be incremental because of the relationship between existing requirements applicable to registered clearing agencies,[579] the anticipation of new requirements consistent with the standards set forth in the PFMI Report,[580] and the CPSS–IOSCO Recommendations that preceded the PFMI Report.[581] In certain other cases, such as management of liquidity risk and general business risk, registered clearing agencies that are covered clearing agencies would be required to make changes to current policies and procedures, so the resulting costs, benefits and economic effects may be significant.

In order to consider the broader implications of these proposed rules on market activity, including possible effects on efficiency, competition, and capital formation, the baseline also considers the current state of clearing and settlement services, including the number of registered clearing agencies, the distribution of members across these clearing agencies, and the volume of transactions these clearing agencies process. There are currently six registered clearing agencies that provide CCP services and one registered clearing agency that provides CSD services. As shown in Table 1, membership rates vary across these clearing agencies. Together, registered clearing agencies processed over $2 quadrillion in financial market transactions in 2012.[582]

TABLE 1—MEMBERSHIP STATISTICS FOR REGISTERED CLEARING AGENCIES [583]

	Number
CME Total Members	72
—Of which clear CDS	14
DTC Full Service Members	272
FICC GSD Members	107
MBSD Members	76
ICE Clear Credit Members	28
Clear Europe Members	79
—Clear Europe Members that clear CDS	18
NSCC Full Service Members	175
OCC Total Members	117

Registered clearing agencies are currently characterized by specialization and limited competition. Clearing and settlement services exhibit high barriers to entry and economies of scale. These features of the existing market, and the resulting concentration of clearing and settlement within a handful of entities, informs our examination of effects of the proposed amendments and rules on competition, efficiency, and capital formation.[584]

2. Current Regulatory Framework for Clearing Agencies

The proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 fit within the Commission's broad approach to regulation of the national system for clearance and settlement that comprises the baseline for the Commission's economic analysis. Key elements of the current regulatory framework for registered clearing agencies are Section 17A of the Exchange Act,[585] Titles VII and VIII of the Dodd-Frank Act, and existing Rule 17Ad–22. Section 17A of the Exchange Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.[586]

Title VII, in response to the 2008 financial crisis, provides the Commission and the CFTC with authority to regulate the mandatory exchange trading and central clearing and settlement of swaps that formerly may have been OTC derivatives.[587] Title VII amended Section 17A of the Exchange Act by adding new paragraphs (g) through (j) requiring the registration of clearing agencies serving the security-based swap market, giving the Commission authority to adopt rules governing security-based swap clearing agencies, and requiring compliance by registered clearing agencies with said rules. New Section 17A(i) of the Exchange Act provides that the Commission may conform standards for and oversight of clearing agencies to reflect evolving international standards.

The Clearing Supervision Act, adopted in Title VIII, provides for enhanced regulation of FMUs, such as clearing agencies, and for enhanced coordination between the Commission,

[577] A brief summary of the regulatory framework appears in Part IV.B.2. For a more detailed summary of the current regulatory framework, see Part I.

[578] *See* Clearing Agency Standards Release, *supra* note 5; *see also supra* note 25 and accompanying text (discussing the deemed registered provision).

[579] *See supra* Part I.C (discussing existing requirements under Rule 17Ad–22).

[580] *See supra* note 49.

[581] *See supra* note 50 and accompanying text.

[582] *See, e.g.,* CME Group, 2012 Annual Report, at 2, *available at http://www.cmegroup.com/investor-relations/annual-review/2012/downloads/cme-group-2012-annual-report.pdf* (indicating $806 trillion notional in trading volume); DTCC, 2012 Annual Report, *available at http://www.dtcc.com/about/annual-report.aspx* (indicating $1.6 quadrillion in transactions cleared).

[583] Membership statistics are taken from the Web sites of each of the listed clearing agencies and are current, for CME and ICE, as of October 2013; for FICC, including the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD''), as of September 2013; for OCC as of January 2014; and for DTC and NSCC as of December 6, 2013.

[584] *See infra* Part IV.C.2 (discussing the effect of the proposed rules on competition, efficiency, and capital formation).

[585] *See* 15 U.S.C. 78q–1. For a more detailed discussion of the regulatory framework for registered clearing agencies under Section 17A of the Exchange Act, see Part I.A.

[586] *See supra* note 2 and accompanying text (noting the requirements of Section 17A of the Exchange Act).

[587] *See* Dodd-Frank Act, 124 Stat. at 1641–1802. For a more detailed discussion of the regulatory framework for registered clearing agencies under Title VII, see Part I.B.1.

the CFTC, and the Board by facilitating examinations and information sharing.[588] It also requires the Commission and the CFTC to coordinate with the Board to develop risk management supervision programs for clearing agencies designated systemically important. Section 805(a) of the Clearing Supervision Act further provides that the Commission, considering relevant international standards and existing prudential requirements, may prescribe regulations that contain risk management standards for designated clearing agencies or the conduct of designated activities by a financial institution.

Rule 17Ad–22 under the Exchange Act, adopted in 2012, requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis. These requirements are designed to work in tandem with the SRO rule filing process and the requirement in Section 17A that the Commission must make certain determinations regarding a clearing agency's rules and operations for purposes of initial and ongoing registration.[589] In its economic analysis of the rule, the Commission noted that the economic characteristics of clearing agencies, including economies of scale, barriers to entry, and the particulars of their legal mandates, may limit competition and confer market power on such clearing agencies, which may lead to lower levels of service, higher prices, or under-investment in risk management systems.[590] To address these potential market failures, Rule 17Ad–22 was adopted to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of clearing agencies, improve efficiency, transparency, and access to clearing agencies, and promote consistency with international standards.[591] Part IV.B.3 discusses current practices at registered clearing agencies related to the requirements under Rule 17Ad–22.

a. Basel III Capital Requirements

In addition to requirements under the Exchange Act, the Dodd-Frank Act, and Rule 17Ad–22, other regulatory efforts are relevant to our analysis of the economic effects of proposed Rule 17Ad–22(e). In July 2012, the BCBS published the Basel III capital requirements, which set forth interim rules governing the capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives, and securities financing transactions.[592] Once in effect, the Basel III capital requirements will create incentives for banks to clear derivatives and securities financing transactions with CCPs licensed in a jurisdiction where the relevant regulator has adopted rules or regulations consistent with the standards set forth in the PFMI Report. Specifically, the Basel III capital requirements introduce new capital charges based on counterparty risk for banks conducting derivatives transactions or securities financing transactions through a CCP.[593]

New capital charges under the Basel III framework relate to a bank's trade exposure and default fund exposure to a CCP and are a function of multiplying these exposures by a corresponding risk weight. Historically, these exposures have carried a risk weight of zero. As banking regulators adopt rules consistent with the Basel III capital requirements, however, these weights will increase. The risk weight assigned under the Basel III capital requirements varies depending on whether the counterparty is a QCCP. For example, risk weights for trade exposures to a CCP generally would vary between 20% and 100% depending on the CCP's credit quality, while trade exposures to a QCCP would carry only a 2% risk weight.[594] In addition, bank exposures to CCP default funds would carry a risk weight of 1250%. While bank exposures to QCCP default funds will also carry a 1250% risk weight at low levels, under the Basel III framework, default fund exposures' contribution to a bank's risk weighed assets will be limited to at most 18% of the bank's trade exposures to a given QCCP.

In some jurisdictions, banking regulators have already adopted rules that implement many requirements under the Basel III framework. For example, in its Capital Requirements Directive IV, which went into effect on July 17, 2013, the E.U. incorporated into its own legal framework the Basel III framework. Article 301 contains rules governing bank exposures to CCPs that are consistent with the Basel III framework. Similarly, the BCBS reports that the Basel III capital requirements, with the exception of capital conservation buffers and countercyclical buffers, are currently in force for Japanese banks.[595] Canada and Switzerland also have risk-based capital rules in place.[596]

In the United States, on July 9, 2013, the Board and the Office of the Comptroller of the Currency jointly issued regulatory capital rules for U.S. banks consistent with the Basel III framework. Upon its effective date of January 1, 2014, the Regulatory Capital Rules subject bank exposures to CCPs and QCCPs to increased risk weights as specified in the Basel III framework.[597] In addition to specifying risk weights, the rules define the term QCCP for banks supervised by the Board and the Office of the Comptroller of the Currency.[598] According to these rules, QCCP status applies to any CCP that is a designated FMU. Further, any CCP that (i) requires full collateralization of contracts on a daily basis, and (ii), as demonstrated to the satisfaction of its supervisory regulator, is in sound financial condition, is subject to supervision by the Commission, and meets or exceeds the risk management standards established by the Commission under Titles VII and VIII of the Dodd-Frank Act, is a QCCP. Based on this definition, for banks regulated by the Board and the Office of the Comptroller of the Currency, all covered clearing agencies, with the exception of ICEEU,[599] will be considered QCCPs for

[588] *See* 12 U.S.C. 5461 *et seq.* For a more detailed discussion of the regulatory framework for registered clearing agencies under Title VIII, see Part I.B.2.

[589] *See* Clearing Agency Standards Release, *supra* note 5. For a more detailed discussion of the regulatory framework for registered clearing agencies under Rule 17Ad–22, see Part I.C. For a comparison of the requirements under proposed Rule 17Ad–22(e) and existing requirements under Rule 17Ad–22, see Part II.A.4. For further discussion of current industry practices subject to the requirements in Rule 17Ad–22, see Part IV.B.3.

[590] *See id.*

[591] *See* Clearing Agency Standards Release, *supra* note 5, at 66225, 66263–64.

[592] *See* supra note 48 (discussing the Basel III capital requirements). For a more detailed discussion of the Basel III framework, see Part IV.C.1.e.

[593] Since the Basel III framework applies lower capital requirements only to bank exposures related to OTC and exchange-traded derivatives activity and securities financing transactions, the Commission currently expects that, among all registered clearing agencies, FICC, ICEEU, and OCC would be those affected by the Basel III capital requirements. Each would meet the proposed definition of ''covered clearing agency.''

[594] The Basel III framework and rules adopted by the Board and the Office of the Comptroller of the Currency consistent with that framework apply lower risk weights of 2% or 4% to indirect exposures of banks to QCCPs. *See* Basel III capital requirements, *supra* note 59, paras. 114–15; Regulatory Capital Rules, *supra* note 53, at 62103.

[595] *See* BCBS, Progress Report on Implementation of the Basel Regulatory Framework (Oct. 2013), *available at http://www.bis.org/bcbs/implementation/bprl1.htm.*

[596] *See id.*

[597] *See* Regulatory Capital Rules, *supra* note 53.

[598] *See id.*

[599] Although ICEEU would not be subject to QCCP treatment as a designated FMU, it would

Continued

purposes of calculating risk weights for trade exposures and default fund exposures.

In Europe, under EMIR, legal persons incorporated under the law of an E.U. member state will only be able to use non-E.U. CCPs if those CCPs have been recognized under EMIR. Further, only non-E.U. CCPs recognized under EMIR will meet the conditions necessary to be considered a QCCP for E.U. purposes. Article 25 of EMIR outlines a recognition procedure for non-E.U. CCPs and Article 89 provides a timeline for recognition.[600] FICC, NSCC, and OCC applied for recognition under EMIR prior to a September 15, 2013 deadline.[601] As a result of applying for recognition, these covered clearing agencies will be permitted to continue to offer clearing services to existing E.U. clearing members until their applications are accepted or rejected.

Additionally, the Basel III capital requirements, as adopted by the Board, the Office of the Comptroller of the Currency, and banking regulators in other jurisdictions, impose new capital requirements related to unconditionally cancellable commitments and other off-balance sheet exposures. For example, the Board and the Office of the Comptroller of the Currency will require banks to include 10% of the notional amount of unconditionally cancellable commitments in their calculation of total leverage exposure.[602] The rules cap the ratio of tier one capital to total leverage exposure at 3% for banks subject to advanced approaches risk-based capital rules.[603] To the extent that clearing agencies rely on financial resources from banks as part of their risk management activities, new constraints on off-balance sheet exposures could raise the cost of these activities.

b. Other Regulatory Efforts

Efforts by the Board and the CFTC to adopt rules that are consistent with the standards set forth in the PFMI Report are also relevant to the economic analysis of the proposed rules.[604] In 2012, the Board adopted Regulation HH setting forth risk management standards for designated FMUs, and, on January 10, 2014, the Board proposed amendments to Regulation HH and its PSR Policy based upon the standards set forth in the PFMI Report.[605] Similarly, the CFTC has published final rules intended to be consistent with the standards set forth in the PFMI Report.[606]

In proposing the amendments to Rule 17Ad–22 and new Rule 17Ab2–2, the Commission is mindful of these regulations proposed by the Board and adopted by the CFTC, which seek to establish standards for designated FMUs and establish standards for certain DCOs, respectively.[607] Section 712(a)(2) of Title VII requires the Commission, before commencing any rulemaking regarding, among other things, security-based swap clearing agencies, to consult and coordinate to the extent possible with the CFTC and prudential regulators for the purposes of assuring regulatory consistency and comparability where possible.[608] In addition, as directed by the Clearing Supervision Act, the Commission is proposing these amendments to Rule 17Ad–22 and Rule 17Ab2–2 after giving careful consideration to the PFMI Report as the relevant international standard.

3. Current Practices

Current industry practices are a critical element of the economic baseline for registered clearing agencies. Registered clearing agencies are required to operate in compliance with existing Rule 17Ad–22 and, the Commission understands, have begun implementing some of the standards set forth in the PFMI Report. Because proposed Rule 17Ad–22(e) is consistent with those standards and furthers the objectives of Section 17A of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act, the Commission preliminarily believes that the proposed rule represents, where it imposes higher minimum standards on covered clearing agencies, an additional step towards improved risk management.

An overview of current practices is set forth below and includes discussion of covered clearing agency policies and procedures regarding general organization and risk management, including the management of legal, credit, liquidity, business, custody, investment, and operational risk. This discussion is based on the Commission's general understanding of current practices as of the date of this proposal, reflects the Commission's experience supervising registered clearing agencies, and is intended solely for the purpose of analyzing the economic effects of the Commission's proposal. The Commission notes that in each case, as SROs, registered clearing agencies are required to submit any proposed rule or any proposed change in, addition to, or deletion from the rules of the clearing agency to the Commission for review.[609] The Exchange Act also requires a registered clearing agency to enforce its rules, subject to Commission oversight, and empowers the Commission to enforce the rules of a registered clearing agency.[610]

a. General Organization

i. Legal Risk

Legal risk is the risk that a registered clearing agency's rules, policies, or procedures may not be enforceable and concerns, among other things, its contracts, the rights of members, netting arrangements, discharge of obligations, and settlement finality. Cross-border activities of a registered clearing agency may also present elements of legal risk.

Rule 17Ad–22(d)(1) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.[611] Each registered clearing agency makes a large portion of these

nonetheless be considered a QCCP because it is subject to regulation by the Commission. *See* Regulatory Capital Rules, *supra* note 53, at 62166 (defining ''Qualifying Central Counterparty'' at 1.iii(B)(2)).

[600] *See* Eur. Comm'n, Practical Implementation of the EMIR Framework to Non-EU Central Counterparties (CCPs) (May 13, 2013), *available at http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/130513_equivalence-procedure_en.pdf.*

[601] These three clearing agencies agreed to have their names publicly disclosed and do not necessarily represent the full set of registered clearing agencies that applied for recognition under EMIR. *See* ESMA, List of Central Counterparties (CCPs) Established in Non-EEA Countries Which Have Applied for Recognition Under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories (TRs) (EMIR) (Dec. 16, 2013), *available at http://www.esma.europa.eu/system/files/2013-1581_list_of_applicants_tc-ccps_version_16_december_2013.pdf.*

[602] *See* Regulatory Capital Rules, *supra* note 53, at 62169.

[603] *See id.* at 62284. The Regulatory Capital Rules require compliance by banks no later than 2018.

[604] For a more detailed discussion of the regulatory efforts undertaken by the Board and the CFTC, see note 53.

[605] *See id.*

[606] *See id.*

[607] *See id.* (discussing efforts by the Board and the CFTC to adopt rules consistent with the standards set forth in the PFMI Report).

[608] *See* Dodd-Frank Act, Sec. 712(a)(2), Public Law 111–203, 124 Stat. 1376, 1641–42 (2010).

[609] *See supra* Part I.A and note 95 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[610] *See supra* Part I.A, in particular notes 8–10 (describing the requirements applicable to registered clearing agencies under the Exchange Act and the supervisory and enforcement tools available to the Commission to facilitate compliance with those requirements under the Exchange Act).

[611] *See* 17 CFR 240.17Ad–22(d)(1); Clearing Agency Standards Release, *supra* note 5, at 66245–46.

policies and procedures available to members and participants. In addition, each also publishes their rule books and other key procedures publicly in order to promote the transparency of their legal framework.[612]

ii. Governance

Rule 17Ad–22(d)(8) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[613] Important elements of a registered clearing agency's governance arrangements include its ownership structure; its charter, bylaws, and charters for committees of its board and management committees; its rules, policies, and procedures; the composition and role of its board, including the structure and role of board committees; reporting lines between management and the board; and the processes that provide for management accountability with respect to the registered clearing agency's performance.

Each registered clearing agency has a board that governs its operations and supervises senior management. Each registered clearing agency also has an independent audit committee of the board and has established a board committee or committee of members tasked with overseeing the clearing agency's risk management functions. The boards of registered clearing agencies that would be subject to proposed Rule 17Ad–22(e) as covered clearing agencies currently include non-management members.

iii. Framework for the Comprehensive Management of Risks

Rules 17Ad–22(b) and (d) require registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure and mitigate credit exposures, identify operational risks, evaluate risks arising in connection with cross-border and domestic links for the purpose of clearing or settling trades, achieve DVP settlement, and implement risk controls to cover the clearing agency's credit exposures to participants.[614] Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish business continuity plans setting forth procedures for the recovery of operations in the event of a disruption.[615] Rule 17Ad–22(d)(11) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[616]

In addition to meeting these requirements, the Commission understands that registered clearing agencies also specify actions to be taken when their resources are insufficient to cover losses faced by the registered clearing agency.[617] These actions may include assessment rights on clearing members, forced allocation, and contract termination.

b. Financial Risk Management

Registered clearing agencies that provide CCP services have a variety of options available to mitigate the financial risks to which they are exposed. While the manner in which a CCP chooses to mitigate these financial risks depends on the precise nature of the CCP's obligations, a common set of procedures have been implemented by many CCPs to manage credit and liquidity risks. Broadly, these procedures enable CCPs to manage their risks by reducing the likelihood of member defaults, limiting potential losses and liquidity pressure in the event of a member default, implementing mechanisms that allocate losses across members, and providing adequate resources to cover losses and meet payment obligations as required.

Registered clearing agencies that provide CCP services must be able to effectively measure their credit exposures in order to properly manage those exposures. A CCP faces the risk that its exposure to a member can change as a result of a change in prices, positions, or both. CCPs can ascertain current credit exposures to each member by, in some cases, marking each member's outstanding contracts to current market prices and, to the extent permitted by their rules and supported by law, by netting any gains against any losses. Rule 17Ad–22 includes certain requirements related to financial risk management by CCPs, including requirements to measure credit exposures to members and to use margin requirements to limit these exposures. These requirements are general in nature and provide registered clearing agencies flexibility to measure credit risk and set margin. Within the bounds of Rule 17Ad–22, CCPs may employ models and choose parameters that they conclude are appropriate to the markets they serve.

The current practices of registered clearing agencies that provide CCP services generally include the following procedures: (1) Measuring credit exposures at least once a day; (2) setting margin coverage at a 99% confidence level over some set period; (3) using risk-based models; (4) establishing a fund that mutualizes losses of defaults by one or more participants that exceed margin coverage; (5) maintaining sufficient financial resources to withstand the default of at least the largest participant family,[618] and (6), in

[612] The rule book of each registered clearing agency, as well as select policies and procedures, are publically available on each registered clearing agency's Web site.

[613] *See* 17 CFR 240.17Ad–22(d)(8); *see also* Clearing Agency Standards Release, *supra* note 5, at 66251–52.

[614] *See* 17 CFR 240.17Ad–22(b) and (d); *see also* Clearing Agency Standards Release, *supra* note 5.

[615] *See* 17 CFR 240.17Ad–22(d)(4); *see also* Clearing Agency Standards Release, *supra* note 5, at 66248–49.

[616] *See* 17 CFR 240.17Ad–22(d)(11).

[617] *See* David Elliot, Central Counterparty Loss-Allocation Rules, at tbl. 1A (Bank of England Financial Stability Paper No. 20, Apr. 2013), *available at http://www.bankofengland.co.uk/research/Documents/fspapers/fs_paper20.pdf* (noting the loss-allocation rules applied at the end of a clearing agency waterfall).

[618] *See, e.g.,* IMF, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the National Securities Clearing Corporation's Observance of the CPSS–IOSCO Recommendations for Central Counterparties, at 10 (May 2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10129.pdf* (assessing NSCC's observance of Recommendation 5 from the RCCP that a CCP should maintain sufficient financial resources to withstand, at a minimum, the default of a participant to which it has the largest exposure in extreme but plausible market conditions; also noting that NSCC began evaluating itself against this standard in 2009 and has backtesting results to support that it maintained sufficient liquidity to cover the failure of the largest affiliated family 99.98% of the time during the period from January through April 2009); IMF, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the Fixed Income Clearing Corporation—Government Securities Division's Observance of the CPSS–IOSCO Recommendations for Central Counterparties, at 9–10 (2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10130.pdf* (finding that FICC's Government Securities Division observed the requirement to maintain enough financial resources to meet the default of its largest participant in extreme but plausible market conditions).

the case of security-based swap transactions, maintaining enough financial resources to be able to withstand the default of their two largest participant families.[619]

i. Credit Risk

Rule 17Ad–22(b)(1) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure their credit exposures at least once per day.[620] Several CCPs have policies and procedures designed to require measuring credit exposures multiple times per day.

Rule 17Ad–22(b)(3) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.[621] It further requires CCPs for security-based swaps to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a CCP for security-based swaps.[622] Accordingly, the Commission notes that Rule 17Ad–22(b)(3) imposes a ''cover two'' requirement on CCPs for security-based swaps in order to protect such CCPs from the extreme jump-to-default risk and nonlinear payoffs associated with the nature of the financial products they clear and the participants in the markets they serve. Meanwhile, CCPs that clear products other than security-based swaps are subject to a ''cover one'' requirement.[623] Rule 17Ad–22(b)(3) also states that such policies and procedures may provide that additional financial resources be maintained by the CCP in combined or separately maintained funds.[624]

Under existing rules, CCPs collect contributions from their members for the purpose of establishing guaranty or clearing funds to mutualize losses under extreme but plausible market conditions. Currently, the guaranty funds or clearing funds consist of liquid assets and their sizes vary depending on a number of factors, including the products the CCP clears and the characteristics of CCP members. In particular, the guaranty funds for CCPs that clear security-based swaps are relatively larger, as measured by the size of the fund as a percentage of the total and largest exposures, than the guaranty or clearing funds maintained by CCPs for other financial instruments. CCPs generally take the liquidity of collateral into account when determining member obligations. Applying haircuts to assets posted as margin, among other things, mitigates the liquidity risk associated with selling margin assets in the event of a participant default.

ii. Collateral and Margin

Rule 17Ad–22(b)(2) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit their exposures to participants.[625] This margin can also be used to reduce a CCP's losses in the event of a participant default.

Registered clearing agencies that provide CCP services take positions as substituted counterparties once their trade guarantee goes into effect. Therefore, if a counterparty whose obligations the registered clearing agency has guaranteed defaults, the covered clearing agency may face market risk, which can take one of two forms. First, a covered clearing agency is subject to the risk of movement in the market prices of the defaulting member's open positions. Where a seller defaults and fails to deliver a security, the covered clearing agency may need to step into the market to buy the security in order to complete settlement and deliver the security to the buyer. Similarly, where a buyer defaults, the covered clearing agency may need to meet payment obligations to the seller. Thus, in the interval between when a member defaults and when the covered clearing agency must meet its obligations as a substituted counterparty in order to complete settlement, market price movements expose the covered clearing agency to market risk. Second, the covered clearing agency may need to liquidate non-cash margin collateral posted by the defaulting member. The covered clearing agency is therefore exposed to the risk that erosion in market prices of the collateral posted by the defaulting member could result in the covered clearing agency having insufficient financial resources to cover the losses in the defaulting member's open positions.

To manage their exposure to market risk resulting from fulfilling a defaulting member's obligations, registered clearing agencies compute margin requirements using inputs such as portfolio size, volatility, and sensitivity to various risk factors that are likely to influence security prices. Moreover, since the size of price movements is, in part, a function of time, registered clearing agencies may limit their exposure to market risk by marking participant positions to market daily and, in some cases, more frequently. CCPs also use similar factors to determine haircuts applied to assets posted by members in satisfaction of margin requirements. To manage market risk associated with collateral liquidation, CCPs consider the current prices of assets posted as collateral and price volatility, asset liquidity, and the correlation of collateral assets and a member's portfolio of open positions. Further, because CCPs need to value their margin assets in times of financial stress, their rulebooks may include features such as market-maker domination charges that increase clearing fund obligations regarding open positions of members in securities in which the member serves as a dominant market maker. The reasoning behind this charge is that, should a member default, liquidity in products in which the member makes markets may fall, leaving these positions more difficult to liquidate for non-defaulting participants.

Rule 17Ab–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk-based models and parameters to set margin requirements.[626] The generally recognized standard for such models and parameters is, under normal market conditions, price movements that

[619] *See, e.g.,* CFTC–SEC Staff Roundtable on Clearing of Credit Default Swaps, at 123 (Oct. 2010), *available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7_102210-transcrip.pdf* (Stan Ivanov of ICE stating, ''[A]t ICE we look at two simultaneous defaults of the two biggest losers upon extreme conditions. . . .''); *see also* ICE, CDS Client Clearing Overview, at 8 (Aug. 2013), *available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Client_Clearing_Overview.pdf* (noting that the guaranty fund covers the simultaneous default of the two largest clearing members); CME Rulebook, Ch. 8H, Rule 8H07, *available at http://www.cmegroup.com/rulebook/CME/I/8H/8H.pdf.*

[620] *See* 17 CFR 240.17Ad–22(b)(1).

[621] *See* 17 CFR 240.17Ad–22(b)(2).

[622] *See id.*

[623] *See supra* Part II.B.4.c and *infra* Part IV.C.3.a.iv(1) (discussing the related ''cover one'' and ''cover two'' requirements in proposed Rule 17Ad–22(e)(4)).

[624] *See id.*

[625] *See* 17 CFR 240.17Ad–22(b)(2).

[626] *See id.*

produce changes in exposures that are expected to breach margin requirements or other risk controls only 1% of the time (*i.e.,* at a 99% confidence interval) over a designated time horizon.[627] Currently, CCPs use margin models to ensure coverage at a single-tailed 99% confidence interval. Losses beyond this level are typically covered by the CCP's guaranty fund. This standard comports with existing international standards for bank capital requirements, which require banks to measure market risks at a 99% confidence interval when determining regulatory capital requirements.[628]

Rule 17Ad–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to review such margin requirements and the related risk-based models and parameters at least monthly.[629] CCPs are accordingly required to establish a model validation process that evaluates the adequacy of margin models, parameters, and assumptions. Additionally, CCPs are required to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the CCPs' margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.[630]

iii. Liquidity Risk

In addition to credit risk and the aforementioned market risk, registered clearing agencies also face liquidity or funding risk. Currently, to complete the settlement process, registered clearing agencies that employ netting rely on incoming payments from participants in net debit positions in order to make payments to participants in net credit positions. If a participant does not have sufficient funds or securities in the form required to fulfill a payment obligation immediately when due (even though it may be able to pay at some future time), or if a settlement bank is unable to make an incoming payment on behalf of a participant, a registered clearing agency may face a funding shortfall. Such funding shortfalls may occur due to a lack of financial resources necessary to meet delivery or payment obligations, however even registered clearing agencies that do hold sufficient financial resources to meet their obligations may not carry those in the form required for delivery or payments to participants.

A registered clearing agency that provides CCP services may hold additional financial resources to cover potential funding shortfalls in the form of collateral. As noted above, CCPs may take the liquidity of collateral into account when determining member obligations. Applying haircuts to illiquid assets posted as margin mitigates the liquidity risk associated with selling margin assets in the event of participant default. Some registered CCPs also arrange for liquidity provision from other financial institutions using lines of credit. Additionally, some registered clearing agencies enter into prearranged funding agreements with their members pursuant to their rules. For example, members of one registered clearing agency are obligated to enter into repurchase agreements against securities that would have been delivered to a defaulting member.

No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to address liquidity risk.

c. Settlement

Rule 17Ad–22(d)(5) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks and require funds transfers to the clearing agency to be final when effected.[631] Rule 17Ad–22(d)(12) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day.[632] Accordingly, for example, certain registered clearing agencies provide for final settlement of securities transfers no later than the end of the day of the transaction. Rule 17Ad–22(d)(15) also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.[633]

d. CSDs and Exchange-of-Value Settlement Systems

i. CSDs

Rule 17Ad–22(d)(10) requires a registered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for transfer by book entry to the greatest extent possible. Currently, some securities, such as mutual fund securities and government securities, are issued primarily or solely on a dematerialized basis. Dematerialized shares do not exist as physical certificates but are held in book entry form in the name of the owner (which, where the master security holder file is not maintained on paper due to the use of technology, is also referred to as electronic custody). Other types of securities may be issued in the form of one or more physical security certificates, which could be held by the CSD to facilitate immobilization. Alternatively, securities may be held by the beneficial owner in record name, in the form of book-entry positions, where the issuer offers the ability for a security holder to hold through the direct registration system.

[627] *See* 17 CFR 240.17Ad–22(a)(4). The Commission notes that because it is proposing to add new definitions to Rule 17Ad–22(a), ''normal market conditions'' would appear in Rule 17Ad–22(a)(12) in the event the proposed rules are adopted. The Commission is not proposing to alter the definition of ''normal market conditions.''

[628] *See* BCBS, International Convergence of Capital Measurement and Capital Standards: A Revised Framework (June 2004), *available at http://www.bis.org/publ/bcbs107.pdf*; *see also* Darryll Hendricks & Beverly Hirtle, New Capital Rule Signals Supervisory Shift (Secondary Mortgage Mkts, Sept. 1998), *available at http://www.freddiemac.com/finance/smm/july98/pdfs/hen_hirt.pdf.*

Prior to this standard, banks measured value-at-risk using a range of confidence intervals from 90–99%. *See* BCBS, An Internal Model-Based Approach to Market Risk Capital Requirements, at 12 (Apr. 1995), *available at http://www.bis.org/publ/bcbs17.pdf.* When determining the minimum quantitative standards for calculating risk measurements, the BCBS noted then the importance of specifying ''a common and relatively conservative confidence level,'' choosing the 99% confidence interval over other less conservative measures. *See id.*

Since its adoption in 1998, the standard has become a generally recognized practice of banks to quantify credit risk as the worst expected loss that a portfolio might incur over an appropriate time horizon at a 99% confidence interval. *See* Kenji Nishiguchi, Hiroshi Kawai & Takanori Sazaki, Capital Allocation and Bank Management Based on the Quantification of Credit Risk, at 83 (FRBNY Econ. Policy Rev., Oct. 1998), *available at http://www.newyorkfed.org/research/epr/98v04n3/9810nish.pdf;* Jeff Aziz & Narat Charupat, Calculating Credit Exposure and Credit Loss: A Case Study, at 34 (Sept. 1998), *available at http://www.bis.org/bcbs/ca/alrequse98.pdf.*

[629] *See* 17 CFR 240.17Ad–22(b)(2).

[630] *See* 17 CFR 240.17Ad–22(b)(4).

[631] *See* 17 CFR 240.17Ad–22(d)(5).

[632] *See* 17 CFR 240.17Ad–22(d)(12).

[633] *See* 17 CFR 240.17Ad–22(d)(15).

Whether immobilization occurs at the CSD or through direct registration depends on what is provided for by the issuer.

When a trade occurs, the depository's accounting system credits one participant account and debits another participant account. Transactions between counterparties in dematerialized shares are recorded by the registrar responsible for maintaining the paper or electronic register of security holders, such as by a transfer agent, and reflected in customer accounts.

Registered CSDs currently reconcile ownership positions in securities against CSD ownership positions on the security holders list daily, mitigating the risk of unauthorized creation or deletion of shares.

ii. Exchange-of-Value Settlement Systems

Rule 17Ad–22(d)(13) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment,[634] which serves to link obligations by conditioning the final settlement of one upon the final settlement of the other. One registered clearing agency, for example, operates a Model 2 DVP system that provides for gross securities transfers during the day followed by an end-of-day net funds settlement. Under the rules governing the clearing agency's system, the delivering party in a DVP transaction is assured that it will be paid for the securities once they are credited to the receiving party's securities account. DVP eliminates the risk that a buyer would lose the purchase price of a security purchased from a defaulting seller or that a seller would lose the sold security without receiving payment for a security acquired by a defaulting buyer.

For example, one registered clearing agency has rules governing its continuous net settlement (''CNS'') system, under which it becomes the counterparty for settlement purposes at the point its trade guarantee attaches, thereby assuming the obligation of its members that are receiving securities to receive and pay for those securities, and the obligation of members that are delivering securities to make the delivery. Unless the clearing agency has invoked its default rules, it is not obligated to make those deliveries until it receives from members with delivery obligations deliveries of such securities; rather, deliveries that come into CNS ordinarily are promptly redelivered to parties that are entitled to receive them through an allocation algorithm. Members are obligated to take and pay for securities allocated to them in the CNS process. These rules also provide mechanisms to allow receiving members a right to receive high priority in the allocation of deliveries, and also permit a member to buy-in long positions that have not been delivered to it by the close of business on the scheduled settlement date.

e. Default Management

i. Participant-Default Rules and Procedures

Rule 17Ad–22(d)(11) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of its default procedures publicly available and establish default procedures that ensure it can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. The rules of registered clearing agencies typically state what constitutes a default, identify whether the board or a committee of the board may make that determination, and describe what steps the clearing agency may take to protect itself and its members. In this regard, registered clearing agencies typically attempt, among other things, to hedge and liquidate a defaulting member's positions. Rules of registered clearing agencies also include information about the allocation of losses across available financial resources.

ii. Segregation and Portability

No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to enable the portability of positions of a member's customers and the collateral provided in connection therewith. Additionally, no rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to protect the positions of a member's customers from the default or insolvency of the member.[635]

f. General Business and Operational Risk Management

i. General Business Risk

Business risk refers to the risks and potential losses arising from a registered clearing agency's administration and operation as a business enterprise that are neither related to member default nor separately covered by financial resources designated to mitigate credit or liquidity risk. While Rule 17Ad–22 sets forth requirements for registered clearing agencies to identify, monitor, and mitigate or eliminate a broad array of risks through written policies and procedures, no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage general business risk or to meet a capital requirement. Nonetheless, registered clearing agencies currently have certain internal controls in place to mitigate business risk. Some clearing agencies, for instance, have policies and procedures that identify an auditor who is responsible for examining accounts, records, and transactions, as well as other duties prescribed in the audit program. Other registered clearing agencies allow members to collectively audit the books of the clearing agency on an annual basis, at their own expense.

ii. Custody and Investment Risks

Registered clearing agencies face default risk from commercial banks that they use to effect money transfers among participants, to hold overnight deposits, and to safeguard collateral. Rule 17Ad–22(d)(3) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) hold assets in a manner that minimizes risk of loss or delay in its access to them; and (ii) invest assets in instruments with minimal credit, market, and liquidity risks.[636] Registered clearing agencies currently seek to minimize the risk of loss or delay in access by holding assets that are highly liquid (*e.g.,* cash, U.S. Treasury securities, or securities issued by a U.S. government agency) and by engaging banks to custody the assets and facilitate settlement. Typically, registered clearing agencies take steps to ensure that assets held in custody are protected from claims from the custodian's creditors using trust accounts or equivalent arrangements. Additionally, designated clearing agencies may gain access to account

[634] *See* 17 CFR 240.17Ad–22(d)(13); *see also* Clearing Agency Standards Release, *supra* note 5, at 66256.

[635] *See supra* note 293 (discussing existing rules applicable to registered broker-dealers that address customer security positions and funds in cash securities and listed option markets, thereby promoting segregation and portability at the broker-dealer level).

[636] *See* 17 CFR 240.17Ad–22(d)(3).

services at a Federal Reserve Bank, to the extent such services are not already available as the result of other laws and regulations.[637]

iii. Operational Risk

Operational risk refers to a broad category of potential losses arising from deficiencies in internal processes, personnel, and information technology. Registered clearing agencies face operational risk from both internal and external sources, including human error, system failures, security breaches, and natural or man-made disasters. Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and to minimize those risks through the development of appropriate systems, controls and procedures.[638] It also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) implement systems that are reliable and secure, and have adequate, scalable capacity; and (ii) have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.[639]

As a result, registered clearing agencies have developed and currently maintain plans to assure the safeguarding of securities and funds, the integrity of automated data processing systems, and the recovery of securities, funds, or data under a variety of loss or destruction scenarios.[640] These plans may include turning operations over to a secondary site that is located a sufficient distance from the primary location to ensure a distinct geographic risk profile. In addition, registered clearing agencies generally maintain an internal audit department to review the adequacy of their internal controls, procedures, and records with respect to operational risks. Some registered clearing agencies also engage independent accountants to perform an annual study and evaluation of the internal controls relating to their operations.[641]

g. Access

i. Access and Participation Requirements

Rule 17Ad–22(b)(5) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership on fair and reasonable terms at the clearing agency to clear securities for itself or on behalf of other persons.[642] Rule 17Ad–22(b)(6) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require participants to maintain a portfolio of any minimum size or a minimum transaction volume.[643] Rule 17Ad–22(b)(7) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal or greater than $50 million with the ability to obtain membership at the clearing agency, provided such persons are able to comply with reasonable membership standards, with higher net capital requirements permissible subject to Commission approval.[644]

In addition, Rule 17Ad–22(d)(2) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, have procedures in place to monitor that participation requirements are met on an ongoing basis, and have participation requirements that are objective and publicly disclosed, and permit fair and open access.[645] Typically, a registered clearing agency's rulebook requires applicants for membership to provide certain financial and operational information prior to being admitted as a member and on an ongoing basis as a condition of continuing membership. Registered clearing agencies review this information to ensure that the applicant has the operational capability to meet the other demands of interfacing with the clearing agency. In particular, registered clearing agencies typically require that an applicant demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the clearing agency and other members with necessary promptness and accuracy. As a result, an applicant needs to demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to conform to conditions or requirements in these areas that the clearing agency reasonably may deem necessary for its protection. Registered clearing agencies have published these requirements on their Web sites.

Registered clearing agencies use an ongoing monitoring process to help them understand relevant changes in the financial condition of their members and to mitigate credit risk exposure of the clearing agency to its members. The risk management staff analyzes financial statements filed with regulators, as well as information obtained from other SROs and gathered from various financial publications, so that the clearing agency may evaluate, for instance, whether members maintain sufficient financial resources and robust operational capacity to meet their obligations as participants in the clearing agency pursuant to existing Rule 17Ad–22(d)(2)(i).

Table 1 contains membership statistics for registered clearing agencies.[646] Current membership generally reflects features of cleared markets. The decision to become a clearing member depends on the products being cleared, the structure of these asset markets as well as the current state of regulation for cleared markets. For example, the structure of security-based swap markets and the payoffs to security-based swap contracts differs markedly from that of equity markets and common stock, which may explain some of the differences between the concentrated membership of certain clearing agencies and the relatively broader membership of others.

[637] *See supra* Part II.B.4.f.iii (discussing the requirement under proposed Rule 17Ad–22(e)(7)(iii) for a covered clearing agency to have policies and procedures reasonably designed to ensure it has access to account services at a Federal Reserve Bank or other relevant central bank).

[638] *See* 17 CFR 240.17Ad–22(d)(4).

[639] *See id.*

[640] Many of these practices had been previously developed pursuant to prior Commission guidelines. *See* ARP I and II, *supra* note 324; *see also supra* note 326 (discussing related requirements under proposed Regulation SCI).

[641] *See, e.g.,* NSCC, Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties (Nov. 2011), *available at http://www.dtcc.com/legal/policy-and-compliance.aspx.*

[642] *See* 17 CFR 240.17Ad–22(b)(5).

[643] *See* 17 CFR 240.17Ad–22(b)(6).

[644] *See* 17 CFR 240.17Ad–22(b)(7).

[645] *See* 17 CFR 240.17Ad–22(d)(2).

[646] *See supra* Part IV.B.1.

ii. Tiered Participation Arrangements

Tiered participation arrangements occur when clearing members (direct participants) provide access to clearing services to third parties (indirect participants). No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage material risks arising from tiered participation arrangements. The Commission understands, however, that certain registered clearing agencies have policies and procedures currently in place in order to identify, monitor, or manage such arrangements. Specifically, such clearing agencies rely on information gathered from, and distributed by, direct participants in order to manage these tiered participation arrangements. For example, under some covered clearing agencies' rules, direct participants generally have the responsibility to indicate to the clearing agency whether a transaction submitted for clearing represents a proprietary or customer position. Such rules further require direct participants to calculate, and notify the clearing agency of the value of, each customer's collateral. Direct participants also communicate with indirect participants regarding the clearing agency's margin and other requirements.

iii. Links

Rule 17Ad–22(d)(7) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis.[647]

Each registered clearing agency is linked to other clearing organizations, trading platforms, and service providers. For instance, a link between U.S. and Canadian clearing agencies allows U.S. members to clear and settle valued securities transactions with participants of a Canadian securities depository. The link is designed to facilitate cross-border transactions by allowing members to use a single depository interface for U.S. and Canadian dollar transactions and eliminate the need for split inventories.[648] Registered clearing agencies that provide CCP services currently establish links to allow members to realize collateral and other operational efficiencies.

h. Efficiency

i. Efficiency and Effectiveness

Rule 17Ad–22(d)(6) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the clearing agency to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.[649] Registered clearing agencies have procedures to control costs and to regularly review pricing levels against operating costs. These clearing agencies may use a formal budgeting process to control expenditures, and may review pricing levels against their costs of operation during the annual budget process. Registered clearing agencies also analyze workflows in order to make recommendations to improve their operating efficiency.

ii. Communication Procedures and Standards

Although no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to use or accommodate relevant internationally accepted communication procedures and standards, the Commission believes that registered clearing agencies already use these standards. Registered clearing agencies typically rely on electronic communication with market participants, including members. For example, some registered clearing agencies have rules in place stating that clearing members must retrieve instructions, notices, reports, data, and other items and information from the clearing agency through electronic data retrieval systems. Some registered clearing agencies have the ability to rely on signatures transmitted, recorded, or stored through electronic, optical, or similar means. Other clearing agencies have policies and procedures that provide for certain emergency meetings using telephonic or other electronic notice.

i. Transparency

Transparency requirements and disclosures by registered clearing agencies serve to limit the size of potential information asymmetries between registered clearing agencies, their members, and market participants. Rule 17Ad–22(d)(9) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate risks and costs associated with using the clearing agency's services.[650] Information regarding the operations and services of each registered clearing agency can be viewed publicly either on the clearing agency's Web site or a Web site maintained by an affiliate of the clearing agency. Because registered clearing agencies are SROs,[651] changes to their rules are published by the Commission and are available for public viewing on each clearing agency's Web site.[652]

Besides providing market participants with information on the risks and costs associated with their services, registered clearing agencies regularly provide information to their members to assist them in managing their risk exposures and potential funding obligations. Some of these disclosures may be common to all members—such as information about the composition of clearing fund assets—while other disclosures that concern particular positions or obligations may only be made to individual members.

4. Determinations by the Commission

Currently, although Rule 17Ad–22(d) applies to registered clearing agencies, no mechanism exists for the Commission to make determinations with regard to covered clearing agencies of the type that would occur under proposed Rule 17Ab2–2.[653]

C. Consideration of Benefits, Costs, and the Effect on Competition, Efficiency, and Capital Formation

The discussion below sets forth the potential economic effects stemming from the proposed rules. The section begins by framing more general economic issues related to the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2. The discussion that follows considers the effects of the proposed rules on efficiency, competition, and capital formation. The section ends with a discussion of the benefits and costs flowing from specific provisions of the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2.

[647] *See* 17 CFR 240.17Ad–22(d)(7).

[648] *See* Exchange Act Release No. 52784 (Nov. 16, 2005), 71 FR 70902 (Nov. 23, 2005); Exchange Act Release No. 55239 (Feb. 5, 2007), 72 FR 6797 (Feb. 13, 2007).

[649] *See* 17 CFR 240.17Ad–22(d)(6).

[650] *See* 17 CFR 240.17Ad–22(d)(9).

[651] *See supra* Part I.A and note 95 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[652] *See supra* note 362 (discussing requirements under Rule 19b–4(i)).

[653] *See* proposed Rule 17Ab2–2, *infra* Part VII.

1. General Economic Considerations

The proposed amendments to Rule 17Ad–22, taken as a whole, would likely produce economic effects that are either conditioned on multiple provisions of proposed Rule 17Ad–22(e) being implemented as a set or are simply common to multiple provisions of the proposal. Since these economic effects are attributable in some way to each of the individual subsections of proposed Rule 17Ad–22(e), this section considers potential impacts of the proposed amendments, as a whole, through their effects on systemic risk, the discretion with which covered clearing agencies operate, market integrity, concentration in the market for clearing services and among clearing members, and QCCP status.

a. Systemic Risk

A large portion of financial activity in the United States ultimately flows through one or more registered clearing agencies that would become covered clearing agencies under the proposed rules. These clearing agencies have direct links to members and indirect links to the customers of members. They are also linked to each other through common members, operational processes, and in some cases cross-margining and cross-guaranty agreements. These linkages allow covered clearing agencies to provide opportunities for risk-sharing but also allow them to serve as potential conduits for risk transmission. Covered clearing agencies play an important role in fostering the proper functioning of financial markets. If they are not effectively managed, however, they may transmit financial shocks, particularly on days of market stress.

The centralization of clearance and settlement activities at covered clearing agencies allows market participants to reduce costs, increase operational efficiency, and manage risks more effectively.[654] While providing benefits to market participants, the concentration of these activities at a covered clearing agency implicitly exposes market participants to the risks faced by covered clearing agencies themselves, making risk management at covered clearing agencies a key element of systemic risk mitigation.

b. Discretion

The Commission recognizes that the degree of discretion permitted by the proposed rules partially determines their economic effect. Even where current practices at covered clearing agencies would not need to change significantly to comply with the proposed rules, covered clearing agencies could still potentially face costs associated with the limitations on discretion that will result from the proposed rules, including costs related to limiting a clearing agency's flexibility to respond to changing economic environments. For example, to the extent that covered clearing agencies currently in compliance with the proposed rules value the ability to periodically allow net liquid assets to drop below the minimum level specified by the proposed rules, they may incur additional costs because under the proposed rules they lose the option to do so.

Although there may be costs to limiting the degree of discretion covered clearing agencies have over risk management policies and procedures, the Commission preliminarily believes there are also potential benefits. As discussed above, clearing agencies may not fully internalize the social costs of poor internal controls and thus, given additional discretion, may not craft appropriate risk management policies and procedures. For example, even if existing regulation provides clearing agencies with the incentives necessary to manage risks appropriately in a static sense, they may not provide clearing agencies with incentives to update their risk management programs in response to dynamic market conditions. Additionally, efforts at cost reduction or profit maximization could encourage clearing agencies to reduce the quality of risk management by, for example, choosing to update parameters and assumptions rapidly in periods of low volatility while maintaining stale parameters and assumptions in periods of high volatility. By reducing covered clearing agencies' discretion over their policies and procedures, the proposed amendments to Rule 17Ad–22 may reduce the likelihood that risk management practices lag behind changing market conditions by requiring periodic analysis of model performance while paying particular attention to periods of high volatility or low liquidity.

Subjecting covered clearing agencies to more specific requirements may have other benefits for cleared markets as well. Recent academic research has explored the ways in which regulation affects liquidity in financial markets when participants are ''ambiguity averse,'' where ambiguity is defined as uncertainty over the set of payoff distributions for an asset.[655] Such investors may heavily weigh worst-case scenarios when they decide whether to hold the asset. The Commission preliminarily believes that regulation aimed at enhancing standards for covered clearing agencies while reducing their discretion may reduce the ambiguity associated with holding cleared assets in the presence of credit risk and settlement risk[656] and thus may allow investors to rule out worst-case states of the world. In this regard, more specific rules may encourage participation in cleared markets by investors that benefit from resulting risk-sharing opportunities.[657]

c. Market Integrity

The Commission preliminarily believes that the proposed amendments to Rule 17Ad–22 could provide the benefit of reduced potential for market fragmentation that may arise from different requirements across regulatory regimes. These benefits would flow to markets that are also supervised by the Board and the CFTC, and internationally, since cleared markets are global in nature and linked to one another through common participants.

Based on its consultation and coordination with other regulators, the Commission preliminarily believes its proposal is consistent and comparable, where possible and appropriate, with the rules and policy statement proposed by the Board and the rules adopted by the CFTC. The Board's proposed revisions to its PSR Policy incorporate only the headline principles contained in the PFMI Report and are consistent with the Commission's approach in proposed Rule 17Ad–22(e).[658]

With respect to the rules proposed by the Board and adopted by the CFTC, in

[654] *Cf.* PFMI Report, *supra* note 1, at 9.

[655] *See e.g.,* Itzhak Gilboa & David Schmeidler, Maxmin Expected Utility with Non-Unique Prior, 18 J. Mathematical Econ. 141 (1989) (proposing an axiomatic foundation of a decision rule based on maximizing expected minimum payoff of a strategy).

[656] Specifically, by performing key roles in the transaction process, clearing agencies serve to maintain higher minimum payoffs in poor states of the world, by, for example, immobilizing securities or adopting DVP systems.

[657] *See e.g.,* David Easley & Maureen O'Hara, Microstructure and Ambiguity, 65 J. Fin. 1817 (2010) (using a theoretical model of trade on venues that differ in rules, the authors show how rules that reduce market-related ambiguity may induce a participatory equilibrium).

[658] The Commission preliminarily notes that the Commission's proposal provides a greater level detail than the proposed PSR Policy and is tailored to take into account considerations particular to covered clearing agencies, consistent with the Commission's role as the supervisory agency under the Clearing Supervision Act. The Commission further notes that, in contrast to the Board's PSR Policy, proposed Rule 17Ad–22(e) would constitute an enforceable federal regulation if adopted. *See* proposed PSR Policy, *supra* note 53, at 2841 (distinguishing the legal effect of proposed Reg. HH from the proposed PSR Policy).

many instances the rules proposed by the Commission are consistent with these regulatory provisions, as each of the three rule sets are intended to be consistent with the headline principles contained in the PFMI Report,[659] but the Commission's proposals differ from those requirements proposed by the Board and adopted by the CFTC in terms of the specific portions of the key considerations and explanatory text contained in the PFMI Report that are, or are not, referenced or emphasized. In some cases, the Commission is proposing more specific requirements than those proposed by the Board or adopted the CFTC, and, in others, it is proposing rules with fewer additional specific requirements.

The following discussion provides examples of proposed rule provisions that are representative of the differences between the Commission's proposal and the Board's proposal and the CFTC's final rules, where the Commission is proposing more detailed requirements than those proposed by the Board or adopted by the CFTC:

• In proposing Rule 17Ad–22(e)(4), the Commission would explicitly permit a covered clearing agency's policies and procedures to be reasonably designed to maintain financial resources either in combined or separately maintained clearing or default funds. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision. The Commission preliminarily believes this requirement is appropriate because permitting a covered clearing agency to maintain a separate default fund for purposes of complying with proposed Rules 17Ad–22(e)(4)(ii) and (iii) increases the range of options available to covered clearing agencies when complying with this requirement and, when used appropriately, will allow a covered clearing agency to distribute the costs and responsibilities of clearing membership more equitably among clearing members.

• In proposing Rule 17Ad–22(e)(7), the Commission would permit a covered clearing agency's policies and procedures to include as qualifying liquid resources (i) assets that are readily available and convertible into cash through prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency, following a review conducted for this purpose not less than annually, and (ii) other assets that are readily available and eligible for pledging to a relevant central bank, if the covered clearing agency has access to routine credit at such central bank that permits said pledges or other transactions by the covered clearing agency. Rules proposed by the Board do not include a provision comparable to either of these two proposed requirements, and rules adopted by the CFTC do not include a provision including as qualifying liquid resources assets readily available and eligible for pledging to a central bank.[660]

The Commission preliminarily believes this requirement is appropriate given the specific circumstances of the U.S. securities markets. U.S. securities markets are among the largest and most liquid in the world, and CCPs operating in the United States are also among the largest in the world. The resulting peak liquidity demands of CCPs are therefore proportionately large on both an individual and an aggregate basis, and the ability of CCPs to satisfy a requirement limiting qualifying liquid resources to committed facilities could be constrained by the capacity of traditional liquidity sources in the U.S. banking sector in certain circumstances. The Commission preliminarily believes that limiting the funding arrangements that are included within the definition of qualifying liquid resources to committed funding arrangements is not appropriate in the case of the U.S. securities markets and expanding the concept of qualifying liquid resources to include other highly reliable funding arrangements is necessary and appropriate to ensure the proper functioning of covered clearing agencies under the Exchange Act. For similar reasons, the Commission preliminarily believes it is appropriate to include in the definition of qualifying liquid resources assets that a central bank would permit a covered clearing agency to use as collateral, to the extent such covered clearing agency has access to routine credit at such central bank.

• In proposing Rule 17Ad–22(e)(13), the Commission would explicitly require a covered clearing agency's policies and procedures to be reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to contain losses and liquidity demands in a timely manner and to continue to meet its obligations by, among other things, addressing the allocation of credit losses the covered clearing agency may face. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision to address the allocation of credit losses.[661] The Commission preliminarily believes this requirement is appropriate to help ensure that credit losses a covered clearing agency may reasonably be expected to experience are capable of allocation through pre-established practices of the covered clearing agency. The proposed rule would also facilitate the orderly handling of member defaults and provide certainty and transparency by enabling members to understand their obligations to the covered clearing agency in extreme circumstances *ex ante*.

• In proposing Rule 17Ad–22(e)(18), the Commission would explicitly require a covered clearing agency's policies and procedures to be reasonably designed to require monitoring of compliance with access and participation requirements. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision. The Commission preliminarily believes this requirement is consistent with Exchange Act provisions requiring registered clearing agencies to have rules designed to not permit unfair discrimination in the admission of participants because it helps ensure that a covered clearing agency complies with its own membership requirements.

• In proposing Rule 17Ad–22(e)(19), the Commission would explicitly require a covered clearing agency's policies and procedures to be reasonably designed to require regular review of its tiered participation arrangements. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision. The

[659] For example, the Commission preliminarily believes that proposed Rule 17Ad–22(e)(23), requiring disclosure of rules, key procedures, and market data, contains the same substantive requirements as rules proposed by the Board and adopted by the CFTC. *See* proposed Reg. HH, *supra* note 53, at 3686–88, 3693 (the Board proposing Sec. 234.3(a)(23)); DCO Int'l Standards Release, *supra* note 53, at 72493–94, 72521 (CFTC adopting Sec. 39.37).

In this case, the Commission notes that regulators have taken slightly different approaches to achieving disclosure of rules, key procedures, and market data. The CFTC requires disclosure through the CPSS–IOSCO Disclosure Framework. *See* DCO Int'l Standards Release, *supra* note 53, at 72493–94, 72521 (CFTC adopting Sec. 39.37(a)); *see also* CPSS–IOSCO, Disclosure Framework for Financial Market Infrastructures (Apr. 2012), *available at http://www.bis.org/publ/cpss101c.pdf*. The Commission and the Board have proposed to require disclosure through a comprehensive public disclosure set forth in their proposed rules. The Commission preliminarily believes, however, that the three disclosure regimes impose the same substantive requirements.

[660] *See* proposed Reg. HH, *supra* note 53, at 3677–78, 3691 (the Board proposing Sec. 234.3(a)(7)); DCO Int'l Standards Release, *supra* note 53, at 72487–91, 72518 (CFTC adopting Sec. 39.33(c)).

[661] *See* 17 CFR 39.16; proposed Reg. HH, *supra* note 53, at 3680–81, 3692 (the Board proposing Sec. 234.3(a)(13)); *see also* DCO Principles Release, *supra* note 53, at 69395–97, 69442 (CFTC adopting Sec. 39.16).

Commission preliminarily believes this requirement is consistent with Exchange Act provisions requiring registered clearing agencies to have rules designed to not permit unfair discrimination in the admission of participants because it helps ensure that a covered clearing agency periodically reconsiders whether in practice its membership requirements may result in either an inappropriately broad or narrow membership.

The following discussion provides examples of proposed rule provisions that are representative of the differences between the Commission's proposal and the Board's proposal and the CFTC's final rules, where the Commission is proposing requirements that are more general than those proposed by the Board or adopted by the CFTC:

• In proposing Rule 17Ad–22(e)(2), the Commission would not require a covered clearing agency's policies and procedures to be reasonably designed to include requirements for disclosure of board decisions, review of the performance of the board of directors and individual directors, documentation and disclosure of governance arrangements, procedures for managing conflicts of interests involving board members, and oversight of the risk function. Rules adopted by the CFTC include such requirements.[662] The Commission preliminarily believes that such requirements would in part be duplicative of existing Exchange Act requirements applicable to covered clearing agencies grounded in the broad definition of the term ''rules of a clearing agency'' in Section 3(a)(27) of the Exchange Act,[663] and otherwise have been contemplated by the Commission's proposed Regulation MC.[664] Accordingly any further requirements in this respect would be considered by the Commission separately.

• In proposing Rules 17Ad–22(e)(4) and (e)(7), the Commission would not require a covered clearing agency's policies and procedures for stress testing its financial resources and liquid resources, respectively, to cover specific stress scenarios, as rules adopted by the CFTC do.[665] The Commission preliminarily believes it is appropriate to provide discretion to the covered clearing agencies to identify the stress scenarios most appropriate for their needs given their status as SROs subject to the Commission's oversight, and to rely upon other tools available to the Commission through its supervisory and examination programs to ensure the responsibilities of covered clearing agencies in this regard are fulfilled.

• In proposing Rule 17Ad–22(e)(5), the Commission would not specifically require, as the CFTC does in its rules, a covered clearing agency's policies and procedures to be reasonably designed to (i) establish prudent valuation practices and develop haircuts that are tested regularly and take into account stressed market conditions (including to reduce the need for procyclical adjustments); (ii) avoid concentrated holdings of certain assets where it could significantly impair the ability to liquidate such assets quickly without significant adverse price effects; and (iii) use a collateral management system that is well designed and operationally flexible, such that it, among other things, accommodates changes in the ongoing monitoring and management of collateral; and (iv) allow for the timely valuation of collateral and execution of any collateral or margin calls.[666] While the Commission preliminarily agrees that these requirements may facilitate prudent practices, the Commission preliminarily observes that consideration of these practices would fall within the general responsibilities of a covered clearing agency and its board of directors. The Commission therefore preliminarily believes that proposed Rule 17Ad–22(e)(5) strikes the appropriate balance in establishing policies and procedures requirements with respect to collateral management.

• In proposing Rule 17Ad–22(e)(6), the Commission also would not require a covered clearing agency's policies and procedures to be reasonably designed to determine the appropriate historic time period for the margin methodology based on the characteristics of each product, spread, account, or portfolio or to require specifying minimum liquidation periods for different types of derivatives. Rules adopted by the CFTC include such requirements.[667] While the Commission preliminarily agrees that these requirements may facilitate prudent practices, the Commission preliminarily observes that consideration of these practices would fall within the general responsibilities of a covered clearing agency and its board of directors. The Commission therefore preliminarily believes that proposed Rule 17Ad–22(e)(6) strikes the appropriate balance in establishing policies and procedures requirements with respect to risk management.

These differences between the Commission's proposal and the Board's proposed rules and the CFTC's final rules are provided here as examples of the differences observed between the respective rule sets and do not constitute an exhaustive list. In preliminarily formulating the specific requirements of the proposed rules in furtherance of Section 17A of the Exchange Act, the Commission was guided by its experience in supervising registered clearing agencies, including through the SRO rule filing process under Section 19(b) of the Exchange Act and Rule 19b–4, periodic inspections and examinations, and other monitoring of the activities of registered clearing agencies.[668] The Commission also took into account the particular circumstances of the U.S. securities markets, including but not limited to business models of and current practices at covered clearing agencies, characteristics of the products cleared, the nature of the covered clearing agencies' participant base, and other factors. The Commission preliminarily believes the differences between its proposal and the Board's proposed rules and the CFTC's final rules are appropriate for the reasons noted above. The Commission further preliminarily notes that some of the differences between the Commission's proposal and the CFTC's final rules is attributable to differences between the scope of the Commission's and the CFTC's regulatory authority.[669]

Further, CPSS–IOSCO members are also in various stages of implementing the standards set forth in the PFMI Report into their own regulatory regimes, and the Commission preliminarily believes that proposing a set of requirements generally consistent with the relevant international standards would result in diminished likelihood that participants in cleared markets would restructure and operate

[662] *See* DCO Int'l Standards Release, *supra* note 53, at 72480–81, 72515 (CFTC adopting Sec. 39.30).

[663] *See* 15 U.S.C. 78c(a)(27).

[664] *See supra* note 111 (discussing rules for governance arrangements proposed by the Commission to, among other things, mitigate conflicts of interest at registered clearing agencies that provide CCP services for security-based swaps).

[665] *See* DCO Int'l Standards Release, *supra* note 53, at 72492–93, 72520 (CFTC adopting Sec. 39.36(c)).

[666] *See* 17 CFR 39.11, 39.13; *see also* DCO Principles Release, *supra* note 53 (CFTC adopting Secs. 39.11 and 39.13).

[667] *See* 17 CFR 39.13(g)(2); *see also* DCO Principles Release, *supra* note 53, at 69364–79, 69438 (CFTC adopting Sec. 39.13(g)(2)).

[668] *See supra* Part I.A and note 96 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[669] For example, the Commission is proposing Rules 17Ad–22(e)(11) and (12) to establish requirements for covered clearing agencies that provide CSD services and for exchange-of-value settlement systems. *See supra* Parts II.B.8–9 and *infra* Part VII (discussing the proposed rules and providing rule text, respectively). The CFTC has not proposed comparable rules because CSDs and securities settlement systems do not fall within the scope of its regulatory authority.

in less-regulated markets.[670] Additionally, international standards such as the Basel III framework could create complications for U.S. clearing agencies not subject to regulations based on the standards set in the PFMI Report as a result of the Basel III framework's treatment of QCCPs. In particular, if U.S. clearing agencies do not obtain QCCP status from foreign banking regulators who have adopted rules conforming to the Basel III framework because, for instance, the regulatory framework is not consistent with the standards set forth in the PFMI Report, foreign bank members of U.S. clearing agencies may have incentives to move their clearing business to clearing agencies in jurisdictions where they might obtain lower capital requirements under the Basel III framework.[671]

Failure to maintain consistency with other regulators may disrupt cleared markets in a number of ways. Significant differences across regulatory regimes may encourage participants to restructure their operations in order to avoid a particular regulatory regime.[672] Such differences may reduce the liquidity of cleared products in certain markets if they result in an undersupply of clearing services. Further, inconsistency in regulation across jurisdictions may increase the likelihood that restructuring by market participants in response such inconsistency results in concentrating clearing activity in regimes with a weaker commitment to policies and procedures for sound risk management.

In the case of clearing agency standards, there are additional motivations for consistency with other regulatory requirements. The Commission preliminarily believes that such consistency would prevent the application of inconsistent regulatory burdens and thereby reduce the likelihood that participants in cleared markets would restructure and operate in less-regulated markets. Additionally, such consistency would allow foreign bank clearing members and foreign bank customers of clearing members of covered clearing agencies to be subject to lower capital requirements under the Basel III framework.[673]

d. Concentration

The economic effects associated with the proposed rules may also be partially determined by the economic characteristics of clearing agencies. Generally, the economic characteristics of FMIs, including clearing agencies, include specialization, economies of scale, barriers to entry, and a limited number of competitors.[674] Such characteristics, coupled with the particulars of an FMI's legal mandate, could result in market power, leading to lower levels of service, higher prices, and under-investment in risk management systems.[675]

The centralization of clearing activities in a relatively small number of clearing agencies somewhat insulated from market forces may result in a reduction in their incentives to innovate and to invest in the development of appropriate risk management practices on an ongoing basis, particularly when combined with the cost reduction pressures noted above in Part IV.A.[676] However, the Commission notes that the inverse may not necessarily hold. In other words, additional competition in the market for clearing services may not necessarily result in improved risk management. For instance, aggressive price-cutting in a ''race to the bottom'' may result in clearing agencies accepting lower-quality collateral, requiring lower margin and default fund contributions, lowering access requirements, or holding lower reserves, potentially undermining their risk management efforts.[677]

Market power may raise particular issues with respect to the allocation of benefits and costs flowing from these proposed rules and precipitate changes in the structure of the financial networks that are served by covered clearing agencies. For example, as a result of limited competition,[678] existing covered clearing agencies may easily pass the incremental costs associated with enhanced standards on to their members, who may share these costs with their customers, potentially resulting in increased transaction costs in cleared securities.

If incremental increases in costs lead clearing agencies to charge higher prices for their services, then certain clearing members may choose to terminate membership and cease to clear transactions for their customers. Should this occur the result may be further concentration among clearing members, where each remaining member clears a higher volume of transactions. In this case, clearing agencies and the financial markets they serve would be more exposed to these larger clearing members. These remaining clearing members may, however, each internalize more of the costs their activity in cleared markets imposes on the financial system.

The increased importance of a small set of clearing members, in turn, may result in firms not previously systemically important increasing in systemic importance. This is particularly true for clearing members that participate in multiple markets, both cleared and not cleared.[679] However, adequate regulation of capital levels and margin amounts at surviving clearing members could mean that, though shocks to these members may be

[670] *See supra* note 53 (citing the Board's proposal and the CFTC's final rules).

[671] *See supra* note 48 and *infra* Part IV.C.1.e (discussing the Basel III capital requirements and the economic effect of QCCP status under the Basel III capital requirements, respectively).

[672] *See, e.g.,* Arnoud W.A. Boot, Silva Dezõelan, & Todd T. Milbourn, Regulatory Distortions in a Competitive Financial Services Industry, 16 J. Fin. Serv. Res. 249 (2000) (showing that, in a simple industrial organization model of bank lending, a change in the cost of capital resulting from regulation results in a greater loss of profits when regulated banks face competition from non-regulated banks than when regulations apply equally to all competitors); Victor Fleischer, Regulatory Arbitrage, 89 Tex. L. Rev. 227 (2010) (discussing how, when certain firms are able to choose their regulatory structure, regulatory costs are shifted onto those entities that cannot engage in regulatory arbitrage).

[673] *See* Basel III capital requirements, *supra* note 48.

[674] *See supra* note 49 (defining ''financial market infrastructure'').

[675] *Cf.* PFMI Report, *supra* note 1, at 11.

[676] Kenneth J. Arrow, Economic Welfare and the Allocation of Resources for Invention 609–626, *in* The Rate and Direction of Inventive Activity: Economic and Social Factors (NBER, 1962), *available at http://www.nber.org/chapters/c2144.pdf.*

[677] *See* CPSS, Market Structure Development in the Clearing Industry: Implications for Financial Stability, at sec. 5 (Nov. 2010), *available at http://www.bis.org/publ/cpss92.pdf; see also* Siyi Zhu, Is There a 'Race to the Bottom' in Central Counterparties Competition?—Evidence from LCH.Clearnet SA, EMCF and EuroCCP, DNB Occasional Studies, Vol. 9, No. 6 (2011); John Kiff et al., Credit Derivatives: Systemic Risks and Policy Options (IMF Working Paper No. 254, Nov. 2009), *available at http://www.imf.org/external/pubs/ft/wp/2009/wp09254.pdf.*

[678] *See generally* Nadia Linciano, Giovanni Siciliano & Gianfranco Trovatore, The Clearing and Settlement Industry: Structure Competition and Regulatory Issues (Italian Secs. & Exch. Comm'n Research Paper 58, May 2005), *available at http://www.ssrn.com/abstract=777508* (concluding in part that the core services offered by the clearance and settlement industry tend toward natural monopolies because the industry can be characterized as a network industry, where consumers buy systems rather than single goods, consumption externalities exist, costs lock-in consumers once they choose a system, and production improves with economies of scale); Heiko Schmiedel, Markku Malkamäki & Juha Tarkka, Economies of Scale and Technological Development in Securities Depository and Settlement Systems, at 10 (Bank of Fin. Discussion Paper 26, Oct. 2002), *available at http://www.suomenpankki.fi/en/julkaisut/tutkimukset/keskustelualoitteet/Documents/0226.pdf.* (''The overall results of this study reveal the existence of substantial economies of scale among depository and settlement institutions. On average, the centralized U.S. system is found to be the most cost effective settlement system and may act as the cost saving benchmark.'').

[679] *See, e.g.,* Roe, *supra* note 172 (arguing that counterparty risk concentrated within CCPs may be transferred to the broader financial system through links between clearing members and their clients).

larger, the propagation of shocks may be limited to a smaller set of entities and their equity holders.

e. Qualifying CCP Status and Externalities on Clearing Members

An effect of the proposed amendments to Rule 17Ad–22 is that covered clearing agencies required to comply with the proposed rules may be more likely to qualify as QCCPs in non-U.S. jurisdictions that have adopted the Basel III framework's QCCP definition. Under the Basel III framework, a QCCP is defined as an entity operating as a CCP that is prudentially supervised in a jurisdiction where the relevant regulator has established, and publicly indicated that it applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the standards set forth in the PFMI Report.[680] Because the proposed amendments to Rule 17Ad–22 are intended to be in line with the standards set forth in the PFMI Report, the Commission preliminarily believes that foreign bank clearing members of certain covered clearing agencies and foreign banks clearing indirectly through clearing members of covered clearing agencies may benefit from covered clearing agencies obtaining QCCP status. In particular, bank clearing members and bank indirect participants of covered clearing agencies that could attain QCCP status would face lower capital requirements with respect to cleared derivatives and repurchase agreement transactions because, under the Basel III framework, capital requirements for bank exposures to QCCPs are lower than capital requirements for bank exposures to non-qualifying CCPs for these products. Although the Board and the Office of the Comptroller of the Currency have already adopted rules implementing the Basel III capital requirements that would identify all covered clearing agencies (with the exception of ICEEU) as QCCPs for the purposes of applying risk weights to assets at U.S. banks,[681] the proposed amendments to Rule 17Ad–22 may result in non-U.S. bank clearing members experiencing lower capital requirements related to exposures against covered clearing agencies relative to a baseline scenario in which foreign banking regulators do not determine that a covered clearing agency is a QCCP.[682]

The Basel III framework affects capital requirements for bank exposures to central counterparties in two important ways. The first relates to trade exposures, defined under the Basel III capital requirements as the current and potential future exposure of a clearing member or indirect participant in a CCP arising from OTC derivatives, exchange-traded derivatives transactions, and securities financing transactions. If these exposures are held against a QCCP, they will be assigned a risk weight of 2%. In contrast, exposures against non-qualifying CCPs do not receive lower capital requirements relative to bilateral exposures and are assigned risk weights between 20% and 100%, depending on counterparty credit risk. Second, the Basel III capital requirements impose a cap on risk weights applied to default fund contributions, limiting risk-weighted assets (subject to a 1250% risk weight) to a cap of 20% of a clearing member's trade exposures against a QCCP. This is in contrast to treatment of exposures against non-qualifying CCPs, which are uncapped and subject to a 1250% risk weight. Because QCCP status generally impacts capital treatment, any benefits of attaining QCCP status will likely accrue, at least in part, to foreign clearing members or foreign indirect participants subject to the Basel III capital requirements.[683] As a result of lower risk weights applied to exposures and a cap on capital requirements against default fund obligations, clearing members of QCCPs subject to Basel III capital requirements may experience an improved capital position relative to bank members of non-QCCPs. This may lower the costs of debt capital for bank members of QCCPs.[684]

Non-U.S. banks that are constrained by Basel III tier one capital requirements would face a shock to risk-weighted assets once capital rules come into force.[685] The size of the shock depends on regulators' determinations with regard to QCCP status. Regardless of the size of the shock and in order to come into compliance with capital rules, however, affected banks will have to raise capital or reduce leverage. In the absence of perfect markets, these banks may incur ongoing costs as a result.

In quantifying the benefits of achieving QCCP status, the Commission based its estimate on publicly available information with regard to OCC.[686] To estimate the upper bound for the potential benefits accruing to bank clearing members at OCC as a result of QCCP status, the Commission identified a sample of 20 bank clearing members at OCC and, for each bank, collected information about total assets, risk weighted assets, net income and tier one capital ratio at the holding company level for 2012.[687] The Commission then allocated trade exposures and default fund exposures across the sample of bank clearing members based on the level of risk-weighted assets.[688] The Commission measured the impact on risk-weighted assets for non-U.S. bank clearing members under two different capital treatment regimes. The first regime is in the absence of QCCP status, assuming a 100% risk weight applied to trade exposures and 1250% risk weight applied to default fund exposures for non-U.S. members. In the second regime, OCC obtains QCCP status, and banks are allowed to apply a 2% risk

[680] *See* supra note 48 (discussing the Basel III capital requirements).

[681] *See infra* Part IV.C.1.e.

[682] The Commission notes that benefits to banks that may arise as a result of the proposed rules may be contingent upon regulators in other jurisdictions taking action to recognize the QCCP status of covered clearing agencies.

[683] For a discussion of the effects of QCCP status on competition between bank and non-bank clearing members, see Part IV.C.2.a.

[684] *See supra* note 593 (noting that the Commission currently expects the lower capital treatment under the Basel III framework to affect registered clearing agencies FICC, ICEEU, and OCC, each of which would meet the definition of a ''covered clearing agency'' under the proposed rules).

[685] As discussed above, the Board and Office of Comptroller of the Currency have adopted rules implementing capital requirements under Basel III that make capital treatment for exposures to CCPs independent of the proposed rules for U.S. banks regulated by these two agencies, and therefore the Commission preliminarily believes no benefits would accrue to U.S. bank clearing members of FICC and OCC.

[686] Under the Basel III framework ICCEU and FICC's repurchase agreement segment would also be eligible for QCCP status. However, FICC does not report counterparties to repo agreements, and ICEEU does not separately report exposures related to security-based swap clearing, so we are currently unable to quantify potential benefits related to QCCP status for these entities.

[687] The Commission used the set of entities it identified as banks on OCC's member list, available at *http://www.optionsclearing.com/membership/member-information/*. For U.S. bank holding companies, 2012 total assets, risk weighted assets, net income, and tier 1 capital ratios were collected from Y–9C reports available at the National Information Center, *http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx*. For non-U.S. bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to bank Web sites. Where necessary, values were converted back to U.S. dollars at appropriate exchange rates obtained from Thomson Reuters Datastream and the Federal Reserve, *http://www.federalreserve.gov/releases/h10/hist/*.

[688] For example, one bank in the sample, with 6.25% of total risk-weighted assets, was assigned 6.25% of the total trade and default fund exposures while another bank in the sample, with 3.43% of total risk weighted assets, was assigned 3.43% of these exposures. Because trade exposures of OCC members against OCC are nonpublic, the Commission used the balance of OCC margin deposits and deposits in lieu of margin held at OCC, $57.48 billion, as a proxy for trade exposures. OCC's 2012 clearing fund deposits were valued at $2.66 billion. *See* OCC, 2012 Annual Report, *available at http://www.optionsclearing.com/components/docs/about/annual-reports/occ_2012_annual_report.pdf*.

weight applied to trade exposures and a 1250% risk weight to default fund exposures up to a total exposure cap of 20% of trade exposures.[689] If OCC is determined to be a QCCP, then the increase in risk weighted assets will be smaller in magnitude, implying a smaller adjustment at lower cost. The Commission preliminarily estimates that benefits associated with OCC obtaining QCCP status stemming from lower capital requirements against trade exposures to QCCPs as a result of the proposed rules to have an upper bound of $600 million per year, or approximately 0.60% of the total 2012 net income reported by bank clearing members at OCC.

The Commission's analysis is limited in several respects and relies on several assumptions. First, a limitation of our proxy for trade exposures and our use of OCC's clearing fund is that the account balances include deposits by bank clearing members, who would experience lower capital requirements under the Basel III framework, and non-bank clearing members who would not. The Commission preliminarily assumes, for the purposes of establishing an upper bound for the benefits to market participants that are associated with QCCP status for OCC under the proposed rules, that the balance of both OCC's margin account and OCC's default fund are attributable only to bank clearing members. Additionally, we assume an extreme case where, in the absence of QCCP status, trade exposures against a CCP would be assigned a 100% risk weight, causing the largest possible shock to risk-weighted assets for affected banks.

Concluding that lower capital requirements on trade exposures to OCC would produce effects in the real economy also requires that certain conditions exist. Agency problems, taxes, or other capital market imperfections could result in banks targeting a particular capital structure. Further, capital constraints on bank clearing members subject to the Basel III framework should bind so that higher capital requirements on bank clearing members subject to the Basel III framework in the absence of QCCP status would cause these banks to exceed capital constraints if they chose to redistribute capital to shareholders or invest capital in projects with returns that exceed their cost of capital. Using publically available data, however, it is not currently possible to determine whether capital constraints will bind for bank clearing members when rules applying Basel III capital requirements come into force, so to estimate an upper bound for the effects of QCCP status on bank clearing members we assume that tier one capital constraints for all bank clearing members of OCC would bind in an environment with zero weight placed on bank exposures to CCPs.[690]

For the purposes of quantifying potential benefits from QCCP status, the Commission has also assumed that banks choose to adjust to new capital requirements by deleveraging. In particular, the Commission assumed that banks would respond by reducing risk-weighted assets equally across all risk classes until they reach the minimum tier one capital ratio under the Basel framework of 8.5%. We measure the ongoing costs to each non-U.S. bank by multiplying the implied change in total assets by each bank's return on assets, estimated using up to 12 years of annual financial statement data.[691]

The Basel III capital requirements for exposures to CCPs yield additional benefits for QCCPs that the Commission is currently unable to quantify due to lack of data concerning client clearing arrangements by banks. For client exposures to clearing members, the Basel III capital requirements allow participants to reflect the shorter close-out period of cleared transactions in their capitalized exposures. The Basel III framework's treatment of exposures to CCPs also applies to client exposures to CCPs through clearing members. This may increase the likelihood that bank clients of bank clearing members that are subject to the Basel III capital requirements share some of the benefits of QCCP status.

Furthermore, the fact that the Basel III capital requirements apply to bank clearing members may have important implications for competition and concentration. While the proposed rules may extend lower capital requirements against exposures to CCPs to non-U.S. bank clearing members of covered clearing agencies,[692] the benefits of QCCP status will still be limited to bank clearing members. However, the costs associated with compliance with the proposed rules may be borne by all clearing members, regardless of whether or not they are supervised as banks. A potential consequence of this allocation of costs and benefits may be ''crowding out'' of members of QCCPs that are not banks and will not experience benefits with respect to the Basel III framework. This may result in an unintended consequence of increased concentration of clearing activity among bank clearing members. As noted in Part IV.C.1.d, this increased concentration could mean that each remaining clearing member becomes more important from the standpoint of systemic risk transmission.

In addition to benefits for bank clearing members, certain benefits resulting from QCCP status may also accrue to covered clearing agencies. If banks value lower capital requirements attributable to QCCP status, bank clearing members may prefer membership at QCCPs to membership at CCPs that are not QCCPs. A flight of clearing members from covered clearing agencies in the absence of QCCP status would result in default-related losses being mutualized across a narrower member base. If the flight from covered clearing agencies results in lower transactional volume at these clearing agencies, then economies of scale may be lost, resulting in higher clearing fees and higher transaction costs in cleared products.

2. Effect on Competition, Efficiency, and Capital Formation

The proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 have the potential to affect competition, efficiency, and capital formation. As with the rest of the benefits and costs associated with the proposed amendments to Rule 17Ad–22, the Commission preliminarily believes that several of the effects described below only occur to the extent that covered clearing agencies do not already have operations and governance mechanisms

[689] The Basel III framework allows banks to compute default fund exposures in two ways. Method 1 involves computing capital requirements for each member proportional to its share of an aggregate capital requirement for all clearing members in a scenario where to average clearing members default. The Commission currently lacks data necessary to compute default fund exposures under this approach, instead we use Method 2, which caps overall exposure to a QCCP at 20% of trade exposures. *See* Basel III framework, *supra* note 48, Annex 4, paras. 121–25 (outlining two methods for computing default fund exposures).

[690] The Commission notes that, at present, no bank in its sample of bank clearing members of OCC is bound by capital requirements under the Basel III framework. Bank holding company risk-weighted assets, adjusted total assets, and capital ratio data have been taken from *http://www2.fdic.gov/SDI/*. The Commission used data from 2009–2012 for its sample of bank clearing members and assumed no bank-specific countercyclical capital buffers for these banks. This suggests a minimum tier 1 capital ratio of 9.6%, exceeding the Basel III minimum by 1.1%. The same analysis suggests a minimum total capital ratio of 12.3%, exceeding the Basel III minimum by 1.8%.

[691] This data has been taken from Compustat. Due to data limitations, for certain banks a shorter window was used for this calculation. The minimum sample window was nine years.

[692] *See supra* note 599 and accompanying text (noting that banks supervised by the Board and the Office of the Comptroller of the Currency would treat covered clearing agencies as QCCPs for the purposes of calculating regulatory capital ratios).

that conform to the requirements in proposed Rule 17Ad–22(e). Additionally, the Commission preliminarily believes that consistency with international regulatory frameworks, as embodied by the standards set forth in the PFMI Report, which may promote the integrity of cleared markets, could have substantial effects on competition, efficiency, and capital formation.

a. Competition

Two important characteristics of the market for clearance and settlement services are high fixed costs and economies of scale. Large investments in risk management and information technology infrastructure costs, such as financial data database and network maintenance expenses, are components of high fixed costs for clearing agencies. Consequently, the clearance and settlement industry exhibits economies of scale in that the average total cost per transaction, which includes fixed costs, diminishes with the increase in transaction volume as high fixed costs are spread over a larger number of transactions.

Furthermore, high fixed costs translate into barriers to entry that preclude competition. Lower competition is an important source of market power for clearing agencies. As a result, clearing agencies possess the ability to exert market power and influence the fees charged for clearance and settlement services in the markets they serve.[693] Any costs resulting from the proposed amendments may have the effect of raising already high barriers to entry. As the potential entry of new clearing agencies becomes more remote, existing clearing agencies may be able to reduce service quality, restrict the supply of services, or increase fees above marginal cost in an effort to earn economic rents from participants in cleared markets.[694]

Even if they could not take advantage of a marginal increase in market power, clearing agencies may use their market power to pass any increases in costs that flow from the proposed amendments to their members. This may be especially true in the cases of member-owned clearing agencies, such as DTC, FICC, NSCC, and OCC, where members lack the opportunity to pass costs through to outside equity holders. Allowing clearing members to serve on the board of directors of a covered clearing agency may align a covered clearing agency's incentives with its membership. Certain complications may also arise, however, when clearing members sit on boards of covered clearing agencies as members of the board and may choose to allocate the costs of enhanced risk management inefficiently across potential competitors, in an effort to reduce their own share of these costs.

Members who are forced to internalize the costs of additional requirements under the proposed rules may seek to terminate their membership. Additionally, prospective clearing members may find it difficult to join clearing agencies, given the additional costs they must internalize.[695] Remaining clearing members may gain market power as a result, enabling them to extract economic rents from their customers. Rent extraction could take the form of higher transaction costs in cleared markets, thereby reducing efficiency, as discussed below.

The Commission also acknowledges that proposed Rule 17Ad–22(e)(19) may affect competition among firms that choose to become clearing members, and those who provide clearing services indirectly, through a clearing member. Monitoring and managing the risks associated with indirect participation in clearing may be costly. If monitoring and managing the risks associated with indirect participation in clearing proves costly for clearing agencies and if clearing agencies are able to pass the additional costs related to monitoring and managing risks to clearing members, it may cause marginal clearing members unable to absorb these additional costs to exit. While these exits may be socially efficient, since they reflect the internalization of costs otherwise imposed upon other participants in cleared markets through increased probability of clearing agency default, they may nevertheless result in lower competition among clearing members for market share, potentially providing additional market power to the clearing members that remain.

The Commission preliminarily believes, however, that management of risks from indirect participation is important in mitigating the risks that clearing agencies pose to financial stability. The tiered participation risk exposures, including credit, liquidity, and operational risks inherent in indirect participation arrangements, may present risks to clearing agencies, their members, and to the broader financial markets. For instance, if the size of an indirect participant's positions is large relative to a clearing member's capacity to absorb risks, this may increase the clearing member's default risk. Consequently, a clearing agency with indirect participation arrangements may be exposed to the credit risk of an indirect participant through its clearing members. Similarly, a margin call on, or a default by, an indirect participant could constrain liquidity of its associated clearing members, making it more difficult for these members to manage their positions at the clearing agency.

The consistency across regulatory frameworks contemplated by the proposed rules may also affect competition. Financial markets in cleared products are global, encompassing many countries and regulatory jurisdictions. Consistency with international regulatory frameworks may facilitate entry of clearing agencies into new markets. By contrast, conflicting or duplicative regulation across jurisdictions, or even within jurisdictions, may cause competitive friction that inhibits entry and helps clearing agencies behave like local monopolists. Consistency in regulation can facilitate competition among clearing agencies so long as regulation is not so costly as to discourage participation in any market. Additionally, the Commission preliminarily believes that proposed Rule 17Ad–22(e)(23) may facilitate competition among clearing agencies across jurisdictions by requiring public disclosures that enable market participants to compare clearing agencies more easily.

The consistency across regulatory requirements contemplated by the proposed rules may affect competition among banks in particular. Clearing derivative and repurchase agreement transactions through QCCPs will result in lower capital requirements for banks under the Basel III capital requirements. Therefore, consistency with the standards set forth in the PFMI Report may allow banks that clear these products through covered clearing agencies to compete on equal terms with banks that clear through other clearing agencies accorded QCCP status. This effect potentially countervails higher barriers to entry that enhanced risk management standards may impose on clearing members by lowering the marginal cost of clearing these transactions. Furthermore, covered clearing agencies potentially compete with one another for volume from clearing members. Since clearing members receive better treatment for exposures against QCCPs, clearing

[693] *See, e.g.,* Clearing Agency Standards Release, *supra* note 5, at 66263.

[694] *See, e.g.,* Clearing Agency Standards Release, *supra* note 5, at 66263 n.481.

[695] *See supra* Part IV.C.1.d (discussing concentration both in the market for clearing services and among clearing members).

members will find it less costly to deal with QCCPs. Failure to establish requirements consistent with the standards set forth in the PFMI Report may place U.S. covered clearing agencies at a competitive disadvantage globally.

The ability of covered clearing agencies to obtain QCCP status may also affect competition among clearing agencies. Under the Basel III framework, QCCP status would have practical relevance only for covered clearing agencies providing CCP services for derivatives, security-based swaps, and securities financing transactions. To the extent that the proposed rules increase the likelihood that banking regulators that have implemented the Basel III framework in their jurisdiction recognize covered clearing agencies as QCCPs, banks that clear at covered clearing agencies will experience lower capital requirements. Since clearing agencies may compete for volume from clearing members that are also banks, the proposed rules may remove a competitive friction between covered clearing agencies and other clearing agencies that enjoy recognition as QCCPs by banking regulators. As a corollary, the proposed rules could potentially disadvantage any registered clearing agencies that are not covered clearing agencies.[696] The Commission also preliminarily notes that the ability of registered clearing agencies to voluntarily apply for covered clearing agency status under proposed Rule 17Ab2–2(a) may potentially allow entrants to achieve QCCP status if the Commission determines they should receive covered clearing agency status and they otherwise meet the requirements of the Basel III framework.

Further competitive effects may flow from the proposal as a result of the determinations under proposed Rule 17Ab2–2 for clearing agencies engaged in activities with a more complex risk profile and clearing agencies that are systemically important in multiple jurisdictions. These entities will be responsible for maintaining additional financial resources sufficient to cover the default of the two participant families that would potentially cause the largest aggregate credit exposures in extreme but plausible market conditions as well as undertake an annual feasibility analysis for extending liquidity risk management from ''cover one'' to ''cover two.'' These clearing agencies will have to collect these resources from participants, either through higher margin requirements or guaranty fund contributions, or indirectly through third-party borrowing arrangements secured by member resources. Regardless of how clearing agencies obtain these additional resources, the requirement to do so potentially raises the costs to use services provided by covered clearing agencies which could, at the margin, shift transactional volume to clearing agencies that fall outside the scope determined by proposed Rule 17Ab2–2, where competing clearing agencies exist, or opt out of clearing altogether.

b. Efficiency

The proposed amendments to Rule 17Ad–22 may affect efficiency in a number of ways, though as discussed previously, most of these effects will only flow to the extent that covered clearing agencies do not already comply with the proposed amendments. First, because the proposed amendments result in general consistency with the standards set forth in the PFMI Report and requirements proposed by the Board and adopted by the CFTC, consistency likely fosters efficiency by reducing the risk that covered clearing agencies will be faced with conflicting or duplicative regulation when clearing financial products across multiple regulatory jurisdictions.

Consistency across regulatory regimes in multiple markets may also result in efficiency improvements. Fully integrated markets would allow clearing agencies to more easily exploit economies of scale because clearing agencies tend to have low marginal costs and, thus, could provide clearance and settlement services over a larger volume of transactions at a lower average cost. Differences in regulation, on the other hand, may result in market fragmentation, allowing clearing agencies to operate as local monopolists. The resulting potential for segmentation of clearing and settlement businesses along jurisdictional lines may lead to overinvestment in the provision of clearing services and reductions in efficiency as clearing agencies open and operate solely within jurisdictional boundaries. If market segmentation precludes covered clearing agencies from clearing transactions for customers located in another jurisdiction with a market too small to support a local clearing agency, fragmentation may result in under-provisioning of clearing and settlement services in these areas, in turn reducing the efficiency with which market participants share risk.

The proposed amendments may also affect efficiency directly if they mitigate covered clearing agencies' incentives to underinvest in risk management and recovery and wind-down procedures. CCP default and liquidation is likely a costly event, so to the extent that the proposed rules mitigate the risk of CCP default and prescribe rules for orderly recovery and wind-down, they will produce efficiency benefits. Another direct effect on efficiency may come if registered clearing agencies attempt to restructure their operations in ways that would allow them to fall outside of the scope of proposed Rule 17Ad–22(e).

Finally, price efficiency and the efficiency of risk sharing among market participants may be affected by the proposed amendments. On one hand, the cost of a transaction includes costs related to counterparty default that are typically unrelated to fundamental asset payoffs. Academic research using credit default swap transaction data has revealed a statistically significant, though economically small, relationship between the credit risk of a counterparty and the spreads implicit in transaction prices.[697] Enhanced risk management by clearing agencies may reduce this component of transaction costs. By reducing deviations of prices from fundamental value, the proposed amendments may increase price efficiency. If lower transaction costs or reduced ambiguity facilitates participation in cleared markets by investors who would benefit from opportunities for risk-sharing in these markets,[698] then this transmission channel may result in more efficient allocation of risk. On the other hand, the proposed amendments may have adverse implications for price efficiency in cleared markets if they drive up transaction costs as higher costs of risk management enter asset prices. An increase in transaction costs could cause certain market participants to avoid trading altogether, reducing liquidity in

[696] *See supra* note 593 (noting that the Commission currently expects the lower capital treatment under the Basel III framework to affect registered clearing agencies FICC, ICEEU, and OCC, each of which would meet the definition of a ''covered clearing agency'' under the proposed rules).

[697] *See e.g.,* Navneet Arora, Priyank Gandhi & Francis Longstaff, Counterparty Credit Risk and the Credit Default Swap Market, 103 J. Fin. Econ. 280 (2012). Using transaction prices and quotes by 14 different CDS dealers, the authors identified how dealers' credit risk affects transaction prices. They observed a relationship between spreads and credit risk implying that a 645-basis-point increase in a dealer's credit spread would produce a one-basis-point increase in transaction prices. They explain the magnitude of this relationship by noting that their sample included transactions that were mostly collateralized, which would diminish the sensitivity of transaction prices to counterparty credit risk.

[698] If investors who might benefit from risk-sharing in cleared markets are ambiguity-averse, then regulation that addresses payoffs in times of financial strain may induce their participation. *See supra* note 655 and accompanying text.

cleared products and opportunities for risk sharing among investors in these markets.

c. Capital Formation

The implications for capital formation that flow from these proposed rules stem mainly from incremental costs that result from compliance with more specific standards and benefits in the form of more efficient risk sharing.

In cases where current practice falls short of the proposed amendments, covered clearing agencies may have to invest in infrastructure or make other expenditures to come into compliance, which may divert capital from other uses. In line with our previous discussion of cost allocation in the market for clearing services, these resources may come from clearing members and their customers.[699]

At the same time, the Commission preliminarily believes that the standards contemplated under the proposed rules may foster capital formation. As mentioned earlier, clearing agencies that are less prone to failure may help reduce transaction costs in the markets they clear.[700] Conceptually, the component of transaction costs that reflects counterparty credit risk insures one counterparty against the default of another.[701] Reductions in counterparty default risk allow the corresponding portion of transaction costs to be allocated to more productive uses by market participants who otherwise would bear these costs.

If, on balance, the proposed amendments cause transaction costs to decrease in cleared markets, then the expected value of trade may increase. Counterparties that are better able to diversify risk through participation in cleared markets may be more willing to invest in the real economy rather than choosing to engage in precautionary savings.

3. Effect of Proposed Amendments to Rule 17Ad–22 and Proposed Rule 17Ab2–2

The discussion below outlines the costs and benefits preliminarily considered by the Commission as they relate to the rules being proposed today. These specific costs and benefits are in addition to the more general costs and benefits anticipated under the Commission's proposal discussed in Part IV.C.1 and include, in particular, the costs and benefits stemming from the availability of QCCP status under the Basel III capital requirements. Many of the costs and benefits discussed below are difficult to quantify. This is particularly true where clearing agency practices are anticipated to evolve and adapt to changes in technology and other market developments. The difficulty in quantifying costs and benefits of the proposed rules is further exacerbated by the fact that in some cases the Commission lacks information regarding the specific practices of clearing agencies that could assist in quantifying certain costs. For example, as noted in Part IV.C.3.a.iv(4), without detailed information about the composition of illiquid assets held by clearing agencies and their members, the Commission cannot provide reasonable estimates of costs associated with satisfying substantive requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii). Another example, discussed in Part IV.C.3.a.iv(5), is testing and validation of financial risk models, where the Commission is only able to estimate that costs will fall within a range. In this case, the costs associated with substantive requirements under the proposed rules may depend on the types of risk models employed by clearing agencies, which are, in turn, dictated by the markets they serve. As a result, much of the discussion is qualitative in nature, though where possible, the costs and benefits have been quantified.

a. Proposed Rule 17Ad–22(e)

The Commission recognizes that the scope of the proposed rules is an important determinant of their economic effect. Having considered the anticipated costs associated with the proposed rules, the Commission preliminarily believes that it is appropriate to limit the application of proposed Rule 17Ad–22(e) to covered clearing agencies, as these are the registered clearing agencies for which the benefits of the proposed rules are the greatest. In particular, as discussed below, the Commission preliminarily believes that an important benefit resulting from the enhanced risk management requirements in the proposed rules is a reduction in the risk of a failure of a covered clearing agency. For example, for designated clearing agencies these benefits may be significant due to their size, exposure to, and interconnectedness with market participants, and the effect their failure may have on markets, market participants, and the broader financial system. For complex risk profile clearing agencies, significant benefits may flow as a result of their higher baseline default risk.

As an alternative, the Commission could have proposed to extend the scope of proposed Rule 17Ad–22(e) to cover all registered clearing agencies. The Commission preliminarily acknowledges, however, that costs of compliance with the proposed rules may represent barriers to entry for clearing agencies. By continuing to apply Rule 17Ad–22(d) to registered clearing agencies that are not covered clearing agencies, the Commission preliminary believes that the proposed scope Rule 17Ad–22(e) appropriately preserves the potential for innovation in the establishment and operation of registered clearing agencies.[702] Moreover, including CME and ICE in the set of covered clearing agencies would potentially subject them to requirements that would be duplicative of CFTC requirements.

i. Proposed Rule 17Ad–22(e)(1): Legal Risk

Because, as noted above, proposed Rule 17Ad–22(e)(1) would require substantially the same set of policies and procedures as Rule 17Ad–22(d)(1),[703] the Commission preliminarily believes that proposed Rule 17Ad–22(e)(1) would likely impose limited material additional costs on covered clearing agencies and produce limited benefits, in line with the general economic considerations discussed in Part IV.C.1.

ii. Proposed Rule 17Ad–22(e)(2): Governance

Each covered clearing agency has a board of directors that governs its operations and oversees its senior management. Proposed Rule 17Ad–22(e)(2) would establish more detailed requirements for governance arrangements at covered clearing agencies relative to those imposed on

[699] *See supra* Part IV.C.1 (discussing the economic effects of the proposed rules on the market for clearing services generally).

[700] *See supra* Part IV.C.1.a (discussing the general economic effects of the proposed rules on systemic risk).

[701] *See supra* note 697.

[702] The Commission notes that under proposed Rule 17Ab2–2(a), a registered clearing agency that is not involved in activities with a more complex risk profile and is not a designated clearing agency may apply for covered clearing agency status, which would subject them to the requirements of Rule 17Ad–22(e). The Commission preliminarily believes that this may occur if the registered clearing agency believes such status may credibly signal the quality of the services it provides or if it is seeking to obtain QCCP status under the Basel III framework.

[703] *See supra* note 107; *supra* Part II.B.1 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(1)); *supra* Part IV.B.3.a.i (discussing current practices among registered clearing agencies regarding legal risk); *see also* 17 CFR 240.17Ad–22(d)(1).

registered clearing agencies under Rule 17Ad–22(d)(8).[704]

The Commission understands that any covered clearing agency subject to the proposed rule has policies and procedures in place that clearly prioritize the risk management and efficiency of the clearing agency. However, the Commission preliminarily believes that covered clearing agencies do not already have in place policies and procedures with respect to other requirements under proposed Rule 17Ad–22(e)(2). Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies may need to update their policies and procedures to comply with proposed Rule 17Ad–22(e)(2)(iv). These updates will entail certain basic compliance costs, and covered clearing agencies may also incur assessment costs related to analyzing current governance arrangements in order to determine the extent to determine which they do not meet the requirements of the proposed amendments. The estimated costs in terms of paperwork are discussed in Part III.D.1. If, as a result of new policies and procedures, a covered clearing agency is required to recruit new directors, the Commission preliminarily estimates a cost per director of $73,000.[705]

While there are potential costs associated with compliance, the Commission preliminarily believes that benefits would potentially accrue from these requirements. Specifically, the Commission preliminarily believes that enhanced governance arrangements would further promote safety and efficiency at the clearing agency—motives that may not be part of a clearing agency's governance arrangements in the absence of regulation. Policies and procedures required under the proposed rules would also reinforce governance arrangements at covered clearing agencies by requiring board members and senior management to have appropriate experience and skills to discharge their duties and responsibilities.

Compliance with these proposed requirements could reduce the risk that insufficient internal controls within a covered clearing agency endanger broader financial stability. While the benefits of compliance are difficult to quantify, the Commission preliminarily believes that they flow predominantly from a reduced probability of covered clearing agency default.

iii. Proposed Rule 17Ad–22(e)(3): Comprehensive Framework for the Management of Risks

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(3) would aid covered clearing agencies in implementing a systematic process to examine risks and assess the probability and impact of those risks.[706] Proposed Rule 17Ad–22(e)(3)(i) specifies that a risk management framework include policies and procedures reasonably designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency. Critically, these policies and procedures would be subject to review on a specified basis and approval by the board of directors annually. A sound framework for comprehensive risk management under regular review would have the benefits of providing covered clearing agencies with a better awareness of the totality of risks they face in the dynamic markets they serve. In addition, the requirement to have policies and procedures that provide for an independent audit committee of the board and that provide internal audit and risk management functions with sufficient resources, authority, and independence from management, as well as access to risk and audit committees of the board, would reinforce governance arrangements directly related to risk management at covered clearing agencies. A holistic approach to risk management could help ensure that policies and procedures that covered clearing agencies adopt pursuant to the proposed rules work in tandem with one another. For example, such an approach could result in risk-based membership standards under proposed Rule 17Ad–22(e)(18) that are consistent with policies and procedures related to the allocation of credit losses under proposed Rule 17Ad–22(e)(13)(i). The Commission preliminarily believes ensuring that a covered clearing agency's risk management activities fit within a unified framework could mitigate the risk of financial losses to covered clearing agencies' members and participants in the markets they serve.

Additionally, the proposed rule extends requirements under Rules 17Ad–22(d)(4) and 17Ad–22(d)(11) by requiring plans for recovery and wind-down.[707] To the extent that covered clearing agencies do not already have such plans in place, they may incur additional incremental costs. Plans for recovery and wind-down benefit both clearing members and, more generally, participants in markets where products are cleared. Many of the costs and benefits of such plans depend critically on the specific recovery and wind-down tools that covered clearing agencies choose to include in their rules. The presence of such plans could reduce uncertainty over the allocation of financial losses to clearing members in the event that a covered clearing agency faces losses due to member default or for other reasons that exceed its prefunded default resources. Further, recovery and wind-down plans that detail the circumstances under which clearing services may be suspended or terminated may mitigate the risk of market disruption in periods of financial stress. Market participants who face the possibility that the assets they trade may no longer be cleared and settled by a CCP may be unwilling to trade such assets at times when risk sharing is most valuable. While the effects are difficult to quantify, the Commission preliminarily believes that recovery and wind-down plans may support liquidity in times of financial stress.

Based on its supervisory experience, the Commission preliminarily believes that all covered clearing agencies have an independent audit committee of the board and most covered clearing agencies already have some rules governing recovery and wind-down of clearing operations but have plans that vary in their degree of formality. As a result, the benefits and costs associated with these requirements will likely be limited to incremental changes associated with covered clearing agencies' review of their policies and procedures for recovery and wind-down and to registered clearing agencies that move into the set of covered clearing agencies.

[704] *See supra* Part II.B.2 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(2) and its relationship to Rule 17Ad–22(d)(8)); *see also supra* note 119 (discussing how the proposed rule would complement other proposed requirements concerning governance at clearing agencies that may apply separately).

[705] The Commission estimated a cost per director of $68,000 in proposing Regulation MC. *See* Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881, 65921 & n.215 (Oct. 26, 2010). The $73,000 estimate reflects this amount in 2013 dollars, using consumer price inflation data provided by the Bureau of Labor Statistics.

[706] *See supra* Part II.B.3 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(3)).

[707] *See supra* Part II.B.3.b (discussing the requirements for recovery and orderly wind-down plans under proposed Rule 17Ad–22(e)(3)(ii)).

iv. Proposed Rules 17Ad–22(e)(4) Through (7): Financial Risk Management

(1) Proposed Rule 17Ad–22(e)(4): Credit Risk

Proposed Rule 17Ad–22(e)(4) would establish requirements for credit risk management by covered clearing agencies.[708] Based on its supervisory experience, the Commission preliminarily believes that all entities that would be covered clearing agencies are already in compliance with proposed Rules 17Ad–22(e)(4)(i) through (iv). Pursuant to Rule 17Ad–22(b)(3), registered clearing agencies that provide CCP services currently maintain additional financial resources to meet the ''cover one'' requirement, and registered clearing agencies that would be complex risk profile clearing agencies under the proposed rules currently maintain financial resources to meet the ''cover two'' requirement.[709] All covered clearing agencies exclude resources that are not prefunded when calculating this coverage.[710] As a result, the Commission preliminarily believes little or no additional direct costs or benefits will result from these requirements unless registered clearing agencies were to become covered clearing agencies and include resources that are not prefunded towards their resource requirements. The requirement to include only prefunded resources when calculating the financial resources available to meet the standards under proposed Rules 17Ad–22(e)(4)(i) through (iii) potentially reduces the risk that covered clearing agencies request financial resources from their members in times of financial stress, when members are least able to provide these resources.

While requiring ''cover two'' for complex risk profile clearing agencies and for covered clearing agencies designated systemically important in multiple jurisdictions would place additional burdens on the affected clearing agencies, the Commission preliminarily believes that the requirement is appropriate because disruption to these entities due to member default carries relatively higher expected costs than for other covered clearing agencies. These relatively higher expected costs arise from the fact that covered clearing agencies designated systemically important in multiple jurisdictions are exposed to foreign financial markets and may serve as a conduit for the transmission of risk; for complex risk profile clearing agencies, high expected costs may arise from discrete jump-to-default price changes in the products they clear and higher correlations in the default risk of members.[711]

Proposed Rule 17Ad–22(e)(4)(vi) and (vii) would also impose additional costs by requiring additional measures to be taken with respect to the testing of a covered clearing agency's financial resources and model validation of a covered clearing agency's credit risk models. These requirements do not currently exist as part of the standards applied to registered clearing agencies.[712] Covered clearing agencies may incur additional costs under expanded and more frequent testing of total financial resources if the formal requirement that results of monthly testing be reported to appropriate decision makers is a practice not currently used by covered clearing agencies. A range of costs for these new requirements is discussed in Part IV.C.3.a.iv(5).

Frequent monitoring and stress testing of total financial resources, conforming model validations, and reporting of results of the monitoring and testing to appropriate personnel within the clearing agency could help rapidly identify any gaps in resources required to ensure stability, even in scenarios not anticipated on the basis of historical data. Moreover, the requirement to test and, when necessary, update the assumptions and parameters supporting models of credit risk will support the adjustment of covered clearing agency financial resources to changing financial conditions, and mitigate the risk that covered clearing agencies will strategically manage updates to their risk models in support of cost reduction or profit maximization.

(2) Proposed Rule 17Ad–22(e)(5): Collateral

Proposed Rule 17Ad–22(e)(5) would require a covered clearing agency to have policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and to set and enforce appropriately conservative haircuts and concentration limits. Collateral haircut and concentration limit models would be subject to a not-less-than-annual review of their sufficiency.[713] Rule 17Ad–22(d)(3) currently requires registered clearing agencies to have policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or risk of delay in access to them and invest assets in instruments with minimal credit, market, and liquidity risk.

By focusing on the nature of assets and not on accounts, the Commission preliminarily believes the proposed rule may allow covered clearing agencies the ability to manage collateral more efficiently. In particular, under the proposed rule, a covered clearing agency would have the option of accepting collateral that is riskier than cash and holding this collateral at commercial banks, potentially increasing default risk exposure. On the other hand, the requirement to regularly review concentration limits and haircuts mitigates the risk that a covered clearing agency's collateral policies fail to respond to changing economic conditions. Based on its supervisory experience, the Commission understands that all registered clearing agencies that would meet the definition of a covered clearing agency already conform to the requirements under the proposed rule related to the nature of assets they may accept as collateral and the haircuts and concentration limits they apply to collateral assets, so the associated costs and benefits that would result from these requirements would apply only if registered clearing agencies not already in compliance were to become covered clearing agencies.

As a result of the proposed rule, these covered clearing agencies and registered clearing agencies that become covered clearing agencies may experience additional costs as a result of the proposed annual review requirements for the sufficiency of collateral haircut and concentration limit models. Based on its supervisory experience, the Commission preliminarily believes that many clearing agencies that require collateral would need to develop policies and procedures to review haircuts and concentration limits annually. Enforcement of the proposed

[708] *See supra* Part II.B.4.c (discussing the full set of requirements under proposed Rule 17Ad–22(e)(4)).

[709] The Commission also notes that no covered clearing agency would be systemically important in multiple jurisdictions unless and until the Commission made such a determination pursuant to proposed Rule 17Ab2–2. *See supra* Part II.C and *infra* Part VII (discussing the determinations process under proposed Rule 17Ab2–2 and providing proposed rule text, respectively).

[710] *See supra* Part IV.B.3.b.i (discussing current practices regarding credit risk management at registered clearing agencies).

[711] *Cf.* PFMI Report, *supra* note 1, at 43 (discussing Principle 4, Explanatory Note 3.4.19).

[712] Rule 17Ad–22(b)(4) requires a registered clearing agency's policies and procedures be reasonably designed to provide for an annual validation of its margin models and the related parameters and assumptions. *See* 17 CFR 240.17Ad–22(b)(4).

[713] *See supra* Part II.B.4.d (discussing the full set of requirements under proposed Rule 17Ad–22(e)(5)).

haircut requirement would also require additional resources. A range of costs for these new requirements is discussed in Part IV.C.3.a.iv(5). Adherence to the new requirements by these entrants could extend the benefits of prompt loss coverage, incentive alignment, and systemic risk mitigation to a larger volume of cleared transactions.

(3) Proposed Rule 17Ad–22(e)(6): Margin

Proposed Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to have policies and procedures reasonably designed to require it to cover credit exposures using a risk-based margin system and to establish minimum standards for such a system. It would require these policies and procedures to cover daily collection of variation margin. The proposed rule also requires a set of policies and procedures generally designed to support a reliable margin system. Among these are policies and procedures to ensure the use of reliable price data sources and appropriate methods for measuring credit exposure, which could improve margin system accuracy. Finally, covered clearing agencies would be required to have policies and procedures related to the testing and verification of margin models.[714] Proposed Rules 17Ad–22(a)(6) and (14) support these requirements by addressing the means of verification for margin models and the level of coverage required of a margin system against potential future exposures, respectively. Based on its supervisory experience, however, the Commission understands that all current covered clearing agencies have policies and procedures that conform to the requirements under proposed Rules 17Ad–22(e)(6)(i) through (v) and (vii), and some will have to update their policies and procedures to comply with proposed Rule 17Ad–22(e)(6)(vi).

Similar to proposed Rules 17Ad–22(e)(4) and (7), covered clearing agencies that do not already engage in backtesting of margin resources at least once each day or engage in a monthly analysis of assumptions and parameters, as well as registered clearing agencies that enter into the set of covered clearing agencies in the future, may incur incremental compliance costs as a result of the proposed rule. Since margin plays a key role in clearing agency risk management, however, requiring that margin be periodically verified and modified as a result of changing market conditions may mitigate the risks posed by covered clearing agencies to financial markets in periods of financial stress. Further, periodic review of model specification and parameters reduces the likelihood that covered clearing agencies opportunistically update margin models in times of low volatility and fail to update margin models in times of high volatility. A range of costs for verification and modification of margin models is discussed in Part IV.C.3.a.iv(5). Further, since risk-based initial margin requirements may cause market participants to internalize some of the costs borne by the CCP as a result of large or risky positions,[715] ensuring that margin models are well-specified and correctly calibrated with respect to economic conditions will help ensure that they continue to align the incentives of clearing members with the goal of financial stability.

(4) Proposed Rule 17Ad–22(e)(7): Liquidity Risk

Proposed Rule 17Ad–22(e)(7) would require a covered clearing agency to have policies and procedures reasonably designed to effectively monitor, measure, and manage liquidity risk.[716] Parties to securities and derivatives transactions rely on clearing agencies for prompt clearance and settlement of transactions. Market participants in centrally cleared and settled markets are often linked to one another through intermediation chains in which one party may rely on proceeds from sales of cleared products to meet payment obligations to another party. If insufficient liquidity causes a clearing agency to fail to meet settlement or payment obligations to its members, consequences could include the default of a clearing member who may be depending on these funds to make a payment to another market participant, with losses then transmitted to others that carry exposure to this market participant if the market participant is depending on payments from the clearing members to make said payments to others. Therefore, the benefits related to liquidity risk management generally flow from the reduced risk of systemic risk transmission by covered clearing agencies as a result of liquidity shortfalls, either in the normal course of operation or as a result of member default.

Enhanced liquidity risk management may produce additional benefits. Clearing members would face less uncertainty over whether a covered clearing agency has the liquidity resources necessary to make prompt payments which would reduce any need to hedge the risk of nonpayment. Potential benefits from enhanced liquidity risk management may also extend beyond members of covered clearing agencies or markets for centrally cleared and settled securities. Clearing members are often members of larger financial networks, and the ability of a covered clearing agency to meet payment obligations to its members can directly affect its members' ability to meet payment obligations outside of the cleared market. Thus, management of liquidity risk may mitigate the risk of contagion between asset markets.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies would need to create new policies and procedures, or update existing policies and procedures, to meet requirements under the various subsections of proposed Rule 17Ad–22(e)(7). These actions would entail compliance costs, as noted in Part III.B.2. Further, the Commission preliminarily believes that for some covered clearing agencies the proposed requirements would require them to establish new practices. The cost of adherence to the proposed rule would likely be passed on to market participants in cleared markets, as discussed in more detail below.

Under proposed Rule 17Ad–22(e)(7)(i), a covered clearing agency would be required to have policies and procedures reasonably designed to require maintaining sufficient resources to achieve ''cover one'' for liquidity risk. This requirement mirrors the ''cover one'' requirement for credit risk in proposed Rule 17Ad–22(e)(4)(iii). Based on its supervisory experience, the Commission preliminarily believes that many covered clearing agencies do not currently meet a ''cover one'' requirement for liquidity and thus will likely incur costs to comply with this proposed rule. As discussed earlier, whether covered clearing agencies choose to gather liquidity directly from members or instead choose to rely on third-party arrangements, the costs of liquidity may be passed on to other market participants, eventually

[714] See supra Part II.B.4.e (discussing the full set of requirements under proposed Rule 17Ad–22(e)(6)).

[715] *See e.g.,* Philipp Haene & Andy Sturm, Optimal Central Counterparty Risk Management (Swiss Nat'l Bank Working Paper, June 2009) (addressing the tradeoff between margin and default fund, considering collateral costs, clearing member default probability, and the extent to which margin requirements are associated with risk mitigating incentives).

[716] *See supra* Part II.B.4.f (discussing the full set of requirements under proposed Rule 17Ad–22(e)(7)).

increasing transaction costs.[717] The requirement may, however, reduce the procyclicality of covered clearing agencies' liquidity demands, which may reduce costs to market participants in certain situations. For instance, the requirement would reduce the likelihood that a covered clearing agency would have to call on its members to contribute additional liquidity in periods of financial stress, when liquidity may be most costly.

Under proposed Rule 17Ad–22(e)(7)(ii), a covered clearing agency would be required to have policies and procedures reasonably designed to ensure that it meets the minimum liquidity resource requirement in proposed Rule 17Ad–22(e)(7)(i) with qualifying liquid resources.[718] Qualifying liquid resources would include cash held at the central bank or at a creditworthy commercial bank, assets that are readily converted into cash pursuant to committed lines of credit, committed foreign exchange swaps, committed repurchase agreements or other highly reliable prearranged funding agreements, or assets that may be pledged to a central bank in exchange for cash (if the covered clearing agency has access to routine credit at a central bank). The Commission notes that the proposed rules allow covered clearing agencies some measure of flexibility in managing qualifying liquid resources and that covered clearing agencies would be able to use creditworthy commercial bank services where appropriate.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies currently do not meet the proposed liquidity requirements with qualifying liquid resources. As an alternative to the proposed rules, the Commission could have restricted the definition of qualifying liquid resources to assets held by covered clearing agencies. These covered clearing agencies and the markets they serve would benefit from the proposed minimum requirements for liquidity resources in terms of the reduced risk of liquidity shortfalls and associated contagion risks described above. However, qualifying liquid resources may be costly for covered clearing agencies to maintain on their own balance sheets. Such resources carry an opportunity cost. Assets held as cash are, by definition, not available for investment in less liquid assets that may be more productive uses of capital. This cost may ultimately be borne by clearing members who contribute liquid resources to covered clearing agencies to meet minimum requirements under proposed Rule 17Ad–22(e)(7)(ii) and their customers.

The Commission notes that, under the proposed rules, covered clearing agencies have flexibility to meet their qualifying liquid resource requirements in a number of ways. In perfect capital markets, maintaining on-balance-sheet liquidity resources should be no more costly than entering into committed lines of credit or prearranged funding agreements backed by less-liquid assets that would allow these assets to be converted into cash. However, market frictions, such as search frictions, may enable banks to obtain liquidity at lower cost than other firms. In the presence of such frictions, obtaining liquidity using committed and uncommitted funding arrangements provided by banks may prove a less costly option for some covered clearing agencies than holding additional liquid resources on their balance sheets. In particular, the Commission preliminarily believes that requiring covered clearing agencies to enter into committed or uncommitted funding arrangements would decrease the costs that would be experienced by them in the event they sought to liquidate securities holdings during periods of market disruptions and increase the likelihood that they meet funding obligations to market participants by reducing the risk of delay in converting non-cash assets into cash.

The Commission notes that committed or uncommitted funding arrangements would only count towards minimum requirements to the extent that covered clearing agencies had securities available to post as collateral, so use of these facilities may require covered clearing agencies to require their members to contribute more securities. If these securities are costly for clearing members to supply, then additional required contributions to meet minimum requirements under proposed Rule 17Ad–22(e)(7)(ii) may impose burdens on clearing members and their customers. Similarly, prearranged funding arrangements may entail implicit costs to clearing members. Prearranged funding arrangements could impose costs on clearing members if they are obligated to contribute securities towards a collateral pool that the covered clearing agency would use to back borrowing. Alternatively, clearing members may be obligated under a covered clearing agency's rules to act as counterparties to repurchase agreements. Under the latter scenario, clearing members would bear costs associated with accepting securities in lieu of cash. Additionally, the Commission notes certain explicit costs specifically associated with these arrangements outlined below.

Counterparties to committed arrangements allowable under proposed Rule 17Ad–22(a)(15) charge covered clearing agencies a premium to provide firm liquidity commitments and additional out-of-pocket expenses will be incurred establishing and maintaining committed liquidity arrangements. The Commission preliminarily estimates that the total cost of committed funding arrangements will be approximately 30 basis points per year, including upfront fees, legal fees, commitment fees, and collateral agent fees.[719] Furthermore, the Commission is aware of other potential consequences of these arrangements. In some instances, they may cause entities outside of a covered clearing agency to bear risks ordinarily concentrated within the covered clearing agency, while, in others, these arrangements may result in increased exposure of covered clearing agencies to certain members.[720] Financial intermediaries that participate in committed credit facilities may be those least able to provide liquidity in times of financial stress, so these commitments may represent a route for risk transmission.[721] Finally, the Commission notes that covered clearing agencies may face constraints in the size of credit facilities available to them. Recent market statistics have estimated the total size of the committed credit facility market in the U.S. at $1.2 trillion with only 12 of 1800 facilities exceeding $10 billion in size.[722] Given the volume of activity at covered clearing agencies, it is possible that they may only be able to use committed credit facilities to meet a portion of their liquidity

[717] *See supra* Part IV.C.1.d (discussing the effect of the proposed rules on concentration in the market for clearing services and among clearing members).

[718] *See* proposed Rule 17Ad–22(a)(15), *infra* Part VII (defining ''qualifying liquid resources'').

[719] *See* Letter from Kim Taylor, President, CME Clearing, to Melissa Jurgens, Office of the Secretariat, CFTC, Sept. 16, 2013, at 13 & n.48 (noting CME's assumption that the cost of committed liquidity or committed repurchase facilities is approximately $3 million for every $1 billion of required committed facilities, including upfront fees, commitment fees, legal fees, and collateral agent fees).

[720] *See id.* at 11.

[721] *See* Letter from Robert C. Pickel, CEO, ISDA to Secretary, CFTC, Sept. 16, 2013, at 4 (discussing collateral and liquidity requirements); *see also* Craig Pirrong, Clearing and Collateral Mandates: A New Liquidity Trap?, 24 J. Applied Corp. Fin. 67 (2012).

[722] *See* Bloomberg, Global Syndicated Loans, 1st Half 2013 League Tables (July 1, 2013), *available at http://www.bloomberg.com/professional/files/2012/08/Global-Syndicated-Loans-2012.pdf.*

requirements under proposed Rule 17Ad–22(e)(7)(ii).

A covered clearing agency may alternatively use a prearranged funding arrangement determined to be highly reliable in extreme but plausible market conditions to raise liquid resources backed by non-cash assets but that does not require firm commitments from liquidity providers. This strategy would avoid certain of the explicit fees associated with firm commitments, while incurring costs related to the annual review and maintenance of such arrangements. Based on its supervisory experience and discussions with market participants, the Commission preliminarily believes the cost associated with commitment fees to be between 5 and 15 basis points per year. Given the 30 basis point cost associated with committed funding arrangements, mentioned above, uncommitted facilities could entail costs of between 15 and 25 basis points.[723] Prearranged funding arrangements may ultimately prove less costly than holding cash and may be more widely available than committed arrangements, while still reducing the likelihood of delay faced by covered clearing agencies that attempt to market less-liquid assets. As mentioned above in the context of committed credit facilities, the Commission acknowledges that financial institutions who offer to provide liquidity to covered clearing agencies on an uncommitted basis may be least able to do so in times of financial stress, when access to liquidity is most needed by the covered clearing agency. Without a commitment in place, counterparties retain the option to fail to provide liquidity during stressed conditions, when liquidity is most valuable to clearing agencies and the markets they serve. To the extent covered clearing agencies may establish requirements for clearing members to provide liquidity to ensure compliance with the Commission's proposed rules, the costs experienced by members indirectly may exceed those associated with committed credit facilities.

Finally, covered clearing agencies that have access to routine credit at a central bank could meet the qualifying liquid resources requirement with assets that are pledgeable to a central bank. The Commission notes that this may represent the lowest cost option for covered clearing agencies, but understands that this latter provision would represent an advantage only if and when a covered clearing agency receives the benefit of access to routine central bank borrowing. The Commission anticipates that at such future time access to routine credit at a central bank would provide covered clearing agencies with additional flexibility with respect to resources used to comply with the liquidity risk management requirements of proposed Rules 17Ad–22(e)(7)(i) and (ii).

The total cost of maintaining qualifying liquid resources pursuant to proposed Rules 17Ad–22(e)(7)(i) and (ii) is composed of the cost of each liquidity source including assets held by covered clearing agencies, committed credit facilities and prearranged funding agreements, multiplied by the quantity of each of these liquidity sources held by covered clearing agencies. The Commission is unable to quantify the cost of cash held by clearing agencies and securities required to back credit facilities since such estimates would require detailed information about additional required contributions of clearing members under the proposed rules, as well as clearing members' best alternative to holding cash and securities.[724] As mentioned above, however, the Commission has limited information about the costs associated with committed and uncommitted credit facilities. Based on this information, we are able to quantify the costs associated with committed credit facilities that will result from the requirement to maintain qualifying liquid resources. The Commission preliminarily estimates that the cost of compliance with the proposed rules will be between $133 million and $225 million per year as a result of the requirement to enter into prearranged funding agreements for non-cash assets used to meet liquidity requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii). This analysis assumes that covered clearing agencies will enter into such agreements at arm's length on an uncommitted basis. Based on staff discussions with market participants, the Commission understands that alternative arrangements between covered clearing agencies and their members may be obtained at lower cost, though these arrangements may come with increased wrong-way risk.[725]

U.S. Treasury securities would not fall under the proposed definition of qualifying liquid resources. The Commission understands that U.S. Treasury markets represent some of the largest and most liquid markets in the world, see Part IV.B.3.f.ii, and that, in ''flights to quality'' and ''flights to liquidity'' in times of financial stress, U.S. Treasuries trade at a premium to other assets.[726] If, as an alternative to the proposed rules, the Commission included U.S. government securities in the definition of qualifying liquid resources, the Commission preliminarily estimates the cost of complying with requirements under proposed Rule 17Ad–22(e)(7)(i) and (ii) would be reduced by between $9

[723] Subtracting the lower bound of commitment fees (5 basis points) from the estimated total cost of a committed facility (30 basis points) yields an estimate of the upper bound of the fees associated with an uncommitted facility (30 − 5 = 25 basis points). We estimate the lower bound of fees associated with an uncommitted facility analogously (30 − 15 = 15 basis points).

[724] Covered clearing agencies may choose to allocate liquidity burdens based on a number of factors related to the markets they serve and their membership. *See, e.g.,* Exchange Act Release No. 34–70999 (Dec. 5, 2013), 78 FR 75400 (Dec. 11, 2013) (Commission order approving NSCC rule change to institute supplemental liquidity deposits to its clearing fund designed to increase liquidity resources to meet its liquidity needs).

[725] To produce this range, the Commission used a combination of publicly available information from SRO rule filings, comment letters, and 2012 annual financial statements, and non-public information gathered as a result of its regulatory role. For each covered clearing agency, the Commission assumed that the covered clearing agency's guaranty fund represents the sole source of liquidity used to satisfy its minimum liquidity requirements under the proposed rules. To compute the level of qualifying liquid resources currently held by each covered clearing agency, the Commission assumed that cash in the covered clearing agency's guaranty fund remains fixed at current levels and added to this any amount from credit facilities that could be backed by the value of securities held in the covered clearing agency's guaranty funds.

Taking the sum of these current qualifying liquid resources over all covered clearing agencies and subtracting this from the sum of the ''cover one'' guaranty fund requirement over all covered clearing agencies results in the total shortfall relative to minimum requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii). The Commission further assumed that covered clearing agencies would cover this shortfall using prearranged funding agreements backed by additional securities posted to guaranty funds by clearing members. Finally, the Commission multiplied the total prearranged funding amount by between 0.15% and 0.25% to arrive at a range of ongoing costs.

[726] *See* Alessandro Beber, Michael W. Brandt & Kenneth A. Kavajecz, Flight-to-Quality or Flight-to-Liquidity? Evidence from the Euro-Area Bond Market, 22 Rev. Fin. Stud. 925 (2009) (decomposing sovereign yield spreads into credit and liquidity components and showing that credit quality matters for bond valuation but that, in times of market stress, investors chase liquidity, not quality); Markus K. Brunnermeier & Lasse Heje Pedersen, Market Liquidity and Funding Liquidity, 22 Rev. Fin. Stud. 2201 (2009) (showing, in a theoretical model, how with low wealth shocks, demand for illiquid assets falls off more sharply than demand for liquid assets); Francis A. Longstaff, The Flight-to-Liquidity Premium in U.S. Treasury Bond Prices, 77 J. Bus 511 (2004) (estimating the liquidity premium associated with U.S. Treasuries relative to close substitutes); Dimitri Vayanos Flight to Quality, Flight to Liquidity, and the Pricing of Risk (NBER Working Paper No. 10327, Feb. 2004) (showing, in a theoretical model, that during volatile times, assets' liquidity premia increase), *available at http://www.nber.org/papers/w10327.pdf.*

million and $225 million per year.[727] The Commission preliminarily believes, however, that there are benefits to including government securities only if prearranged funding agreements exist. In particular, given the quantity of these securities financed by the largest individual dealers, fire-sale conditions could materialize if collateral is liquidated in a disorderly manner, which could prevent covered clearing agencies from meeting payment obligations.[728]

Proposed Rule 17Ad–22(e)(7)(iii) concerns access to accounts and services at a central bank, when available and where practical.[729] The Commission preliminarily believes that it may be beneficial for covered clearing agencies to use central bank account services because doing so would reduce exposure to commercial bank default risk. Moreover, for some covered clearing agencies, central bank services may represent the lowest-cost admissible funding arrangement under the proposed rule. The Commission understands, however, that central bank services are only currently available to a subset of covered clearing agencies, and the proposed rule only requires policies and procedures to ensure use of central bank accounts and services when practical and available.

Proposed Rules 17Ad–22(e)(7)(iv) and (v) address relations between covered clearing agencies and their liquidity providers. The Commission preliminarily believes that a key benefit of these proposed rules would be an increased level of assurance that liquidity providers would be able to supply liquidity to covered clearing agencies on demand. Such assurance is especially important because of the possibility that covered clearing agencies may rely on outside liquidity providers to convert non-cash assets into cash using prearranged funding arrangements or committed facilities, pursuant to proposed Rule 17Ad–22(e)(7)(ii) and the definition of qualifying liquid resources in proposed Rule 17Ad–22(a)(15). The required policies and procedures would ensure the covered clearing agency undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers understand the liquidity risk borne by the liquidity provider, and that the liquidity provider would have the capacity to provide liquidity under commitments to the covered clearing agency. Finally, covered clearing agencies would be required, under the proposed rule, to maintain and test the covered clearing agency's procedures and operational capacity for accessing liquidity under their agreements. The Commission preliminarily believes that, besides the costs associated with new or updated policies and procedures discussed in Part III.B.2, covered clearing agencies and liquidity providers may experience costs associated with the proposed rules as a result of the requirement to test liquidity resources, such as, for example, fees associated with conducting test draws on a covered clearing agency's credit lines. Costs associated with ongoing monitoring and compliance related to testing are included in the Commission's estimate of quantifiable costs presented in Part IV.C.3.d.

Proposed Rules 17Ad–22(e)(7)(vi) and (vii) may impose costs on covered clearing agencies as a result of requirements for testing the sufficiency of liquidity resources and validating models used to measure liquidity risk. The testing and model validation requirements of these proposed rules are similar to requirements for testing and model validation for credit risk in proposed Rules 17Ad–22(e)(4)(vi) and (vii), and the Commission preliminarily believes that these proposed rules would yield similar benefits. Frequent monitoring and testing liquidity resources could help rapidly identify any gaps in resources required to meet payment obligations. Moreover, the requirement to test and, when necessary, update the assumptions and parameters supporting models of liquidity risk will support the adjustment of covered clearing agency liquidity resources to changing financial conditions and mitigate the risk that covered clearing agencies will strategically manage updates to their liquidity risk models in support of cost-reduction or profit-maximization.

Proposed Rule 17Ad–22(e)(7)(viii) addresses liquidity shortfalls at a covered clearing agency, and the Commission preliminarily believes the proposed rule would reduce ambiguity related to settlement delays in the event of liquidity shocks. Among other things, by requiring procedures that seek to avoid delay of settlement payments, this proposed rule would require covered clearing agencies to address liquidity concerns in advance rather than relying on strategies of delaying accounts payable in the event of liquidity shocks. As discussed previously, effective liquidity risk management by covered clearing agencies that serves to eliminate uncertainty on the part of clearing members that payments by the covered clearing agency will be made on time may allow these clearing members to allocate their liquidity resources to more efficient uses than holding precautionary reserves.[730] The Commission preliminarily believes the proposed rule may reduce some of the flexibility covered clearing agencies have in the absence of the proposed rule, which could impose additional burdens on these clearing agencies as discussed in Part IV.C.1.b.

Proposed Rule 17Ad–22(e)(7)(ix) would require a covered clearing agency to have policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.[731] The ability to replenish liquidity resources is critical to ensure that covered clearing agencies are able to continue operations after a stress event. Beyond the general benefits associated with liquidity risk management noted earlier, this proposed rule would yield particular benefits insofar as it would reduce uncertainty about covered clearing agency liquidity resources at precisely those times when information about liquidity may be most important to market participants.

Finally, proposed Rule 17Ad–22(e)(7)(x) would require a covered clearing agency that provides CCP services and is either systemically important in multiple jurisdictions or is a clearing agency involved in activities with a more complex risk profile to conduct a feasibility analysis for ''cover

[727] The Commission re-estimated the level of prearranged funding agreements required to meet requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii) using the data and methodology described in note 725, except in this case the Commission assumed that all non-defaulting member resources applied to funding obligations were a mix of cash and U.S. Treasuries for a lower bound, and assumed that all resources applied to funding obligations were a mix of cash and U.S. Treasuries for an upper bound.

Taking the sum of these current qualifying liquid resources over all covered clearing agencies and subtracting this from the sum of cover one guaranty fund requirement over all covered clearing agencies results in the total shortfall relative to minimum requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii) if U.S. government and agency securities were considered qualifying liquid resources. As above, the Commission further assumed that covered clearing agencies would cover this shortfall using prearranged funding agreements backed by additional securities posted to guaranty funds by clearing members and multiplied this amount by between 0.15% and 0.25% to arrive at a range of ongoing costs.

[728] Brian Begalle et al., The Risk of Fire Sales in the Tri-Party Repo Market, at 19 & n.37 (FRBNY Staff Report No. 616, May 2013), *available at http://www.newyorkfed.org/research/staff_reports/sr616.pdf.*

[729] *See* proposed Rule 17Ad–22(e)(7)(iii), *infra* Part VII.

[730] *See supra* Part IV.C.2.b.

[731] *See* proposed Rule 17Ad–22(e)(7)(ix), *infra* Part VII.

two.'' [732] The primary cost associated with this rule will be an annual analysis by the affected covered clearing agencies. Costs associated with a feasibility study would likely include the cost of staffing and consulting, which will depend on the scope of products cleared and the particular approach taken by each covered clearing agencies. The costs associated with this requirement are included in Part IV.C.3.d.

(5) Testing and Validation of Risk Models

Proposed Rules 17Ad–22(e)(4) through (7) include requirements for covered clearing agencies to have policies and procedures reasonably designed to test and validate models related to financial risks. Covered clearing agencies may incur additional costs under expanded and more frequent testing of financial resources if the proposed requirements for testing and validation do not conform to practices currently used by covered clearing agencies.[733] These costs are composed of two portions. The first encompasses startup costs related to collection and storage of data elements necessary to implement testing and validation, along with investments in software tools and human capital to support these functions. The second portion of costs includes the ongoing, annual costs of conducting testing and validation under the proposed rules.

Based on its supervisory experience and discussions with industry participants, the Commission preliminarily believes that startup costs to support testing and validation of credit risk, margin, and liquidity risk models at covered clearing agencies could fall in the range of $5 million to $25 million for each covered clearing agency. This range primarily reflects investments in information technology to process data already available to covered clearing agencies for stress testing and validation purposes. The range's width reflects differences in markets served by, as well as the scope of operations of, each covered clearing agency. Based on its supervisory experience and discussions with industry participants, the Commission estimates a lower bound of $1 million per year for ongoing costs related to testing of risk models.

Should each covered clearing agency choose to hire external consultants for the purposes of performing model validation required under proposed Rules 17Ad–22(e)(4) and 17Ad–22(e)(7) through written policies and procedures, the Commission preliminarily estimates the ongoing cost associated with hiring such consultants would be approximately $4,388,160 in the aggregate.[734]

The Commission acknowledges that it could have, as an alternative, proposed rules that would require testing and validation of financial risk models at covered clearing agencies at different frequencies. For example, the Commission could have required backtesting of margin resources less frequently than daily. Such a policy could imply less frequent adjustments in margin levels that may result in over- or under-margining. The Commission preliminarily believes that the frequencies of testing and validation of financial risk models that it has proposed are appropriate given the risks faced by covered clearing agencies and current market practices related to frequency of meetings of risk management committees and boards of directors at covered clearing agencies.

v. Proposed Rules 17Ad–22(e)(8) Through (10): Settlement and Physical Delivery

Proposed Rules 17Ad–22(e)(8) through (10) require covered clearing agencies to have policies and procedures reasonably designed to address settlement risk. Many of the issues raised by settlement are similar to those raised by liquidity. Uncertainty in settlement may make it difficult for clearing members to fulfill their obligations to other market participants within their respective financial networks if they hold back precautionary reserves, as discussed above. Based on its supervisory experience, the Commission preliminarily believes that the benefits and costs for the majority of covered clearing agencies will likely be limited. Registered clearing agencies that enter into the set of covered clearing agencies in the future, by contrast, may bear more significant costs as a result of the enhanced standards.

Settlement finality is important to market participants for a number of reasons. Reversal of transactions can be costly to participants. For example, if transactions are reversed, buyers and sellers of securities may be exposed to additional market risk as they attempt to reestablish desired positions in cleared products. Similarly, reversal of transactions may render participants expecting to receive payment from the covered clearing agency unable to fulfill payment obligations to their counterparties, exposing these additional parties to the transmitted credit risk. Finally, settlement finality can help facilitate default management procedures by covered clearing agencies since they improve transparency of members' positions. Unless settlement finality is established by covered clearing agencies, market participants may attempt to hedge reversal risk for themselves. This could come at the cost of efficiency if it means that, on the margin, participants are less likely to use cleared products as collateral in other financial transactions.

In addition, settlement in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, as the proposed rules would require, greatly reduces settlement risk related to payment agents. Using central bank accounts to effect settlement rather than settlement banks removes a link from the intermediation chain associated with clearance and settlement. As a result, a covered clearing agency would be less exposed to the default risk of its settlement banks. In cases where settlement banks maintain links to other covered clearing agencies, for example as liquidity providers or as members, reducing exposure to settlement bank default risk may be particularly valuable.

As in the case of proposed Rule 17Ad–22(e)(7)(iii), the Commission acknowledges there may be circumstances in which covered clearing agencies either do not have access to central bank account services or the use of such services is impractical. Accordingly, the Commission preliminarily believes it is appropriate to allow covered clearing agencies the flexibility to also use commercial bank account services to effect settlement, subject to a requirement that covered clearing agencies monitor and manage the risks associated with such arrangements.

[732] *See* proposed Rule 17Ad–22(e)(7)(x), *infra* Part VII.

[733] The Commission notes that while the stress testing provisions in proposed Rules 17Ad–22(e)(4) through (7) include new requirements for covered clearing agencies, Rule 17Ad–22(b)(4) requires registered clearing agencies that provide CCP services for security-based swaps to have policies and procedures for a general margin model validation requirement. *See supra* note 712.

[734] This figure was calculated as follows: 2 Consultants for 40 hours per week at $653 per hour = $52,240 × 12 weeks = $626,880 per clearing agency × 7 covered clearing agencies = $4,388,160. The $653 per hour figure for a consultant was calculated using *www.payscale.com*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The Commission previously estimated that ongoing costs associated with hiring external consultants to fulfill the requirements of Rule 17Ad–22(b)(4) would be approximately $3.9 million per year. *See* Clearing Agency Standards Release, *supra* note 5, at 66261.

vi. Proposed Rule 17Ad–22(e)(11): CSDs

CSDs play a key role in modern financial markets. For many issuers, many transactions in their securities involve no transfer of physical certificates.

Paperless trade generally improves transactional efficiency. Book-entry transfer of securities may facilitate conditional settlement systems required by proposed Rule 17Ad–22(e)(12). For example, book-entry transfer in a delivery versus payment system allows securities to be credited to an account immediately upon debiting the account for the payment amount. Institutions and individuals may elect to no longer hold and exchange certificates that represent their ownership of securities. An early study showed that the creation of DTC resulted in a 30–35% reduction in the physical movement of certificates.[735] Among other benefits, to the extent that delays in exchanging paper certificates result in settlement failures, immobilization and dematerialization of shares reduces the frequency of these failures.[736]

For markets to realize the transactional benefits of paperless trade, however, requires confidence that CSDs can correctly account for the number of securities in their custody and for the book entries that allocate these securities across participant accounts. In order to realize these benefits, the proposed rules also require covered CSDs to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the integrity of securities issues, minimize the risks associated with transfer of securities, and protect assets against custody risk. Based on its supervisory experience, the Commission preliminarily believes that registered CSDs already have infrastructure in place to meet these requirements. However, CSDs may face incremental compliance costs in instances where they must modify their rules in order to implement appropriate controls. Compliance costs may be higher for potential new CSDs that are determined to be covered clearing agencies in the future.

vii. Proposed Rule 17Ad–22(e)(12): Exchange-of-Value Settlement Systems

Clearance and settlement of transactions between two parties to a trade involves an exchange of one obligation for another. Regarding transactions in securities, these claims can be securities or payments for securities. A particular risk associated with transactions is principal risk, which is the risk that only one obligation is successfully transferred between counterparties. For example, in a purchase of common stock, a party faces principal risk if, despite successfully paying the counterparty for the purchase, the counterparty may fail to deliver the shares.

The proposed requirements under Rule 17Ad–22(e)(12) are substantially the same as those in Rule 17Ad–22(d)(13).[737] As a result, covered clearing agencies that have been in compliance with Rule 17Ad–22(d)(13) face no substantially new requirements under Proposed Rule 17Ad–22(e)(12). The Commission preliminary expects the proposed rule would likely impose limited material additional costs on covered clearing agencies. It would also produce benefits in line with the general economic considerations discussed in Part IV.C.1. The economic effects may differ for registered clearing agencies that enter into the set of covered clearing agencies in the future.

viii. Proposed Rule 17Ad–22(e)(13): Participant-Default Rules and Procedures

Proposed Rule 17Ad–22(e)(13) would require covered clearing agencies to have policies and procedures for participant default with additional specificity relative to current requirements for registered clearing agencies under Rule 17Ad–22(d)(11). In particular, proposed Rule 17Ad–22(e)(13) requires policies and procedures that address the allocation of credit losses that exceed default resources, repayment of liquidity providers, replenishment of financial resources, and testing and review of default procedures.

Based on its supervisory experience, the Commission preliminarily believes all covered clearing agencies currently test and review default procedures at least annually, so the costs of this requirement would apply only to registered clearing agencies that may enter into the set of covered clearing agencies in the future. Most covered clearing agencies, however, will be required to update their policies and procedures as a result of proposed Rules 17Ad–22(e)(13)(i) and (ii). Clearing members may experience benefits from proposed Rule 17Ad–22(e)(13)(i), which requires covered clearing agencies to provide disclosure to members regarding the allocation of default losses when these losses exceed the level of financial resource it has available. As a result of this additional transparency, clearing members may experience an improved ability to manage their expectations of potential obligations against the covered clearing agency, which may increase the likelihood of orderly wind-downs in the event of member default. Crafting such allocation plans by covered clearing agencies may entail certain compliance costs, as previously discussed in Part III.D.5.a and as discussed further in Part IV.C.3.d. Further, covered clearing agencies may allocate default losses in a number of ways that may themselves have implications for participation, competition, and systemic risk.[738] For example, if, as a part of a default resolution plan, selective tear-up is contemplated after a failed position auction, then clearing members who expect low loss exposure in the tear-up may not have adequate incentives to participate in the position auction, even if they are better able to absorb losses than clearing members who expect high exposure in the tear-up plan. This would increase the chances of a failed auction and the chances of a protracted and more disruptive wind-down. Thus, the total costs of any loss allocation plan may depend largely on the particular choices embedded in covered clearing agencies' plans.

As an alternative to the proposed rules, the Commission could have proposed more prescriptive requirements for default procedures at covered clearing agencies. The Commission preliminarily believes that differences in cleared assets and in the characteristics of clearing members supports allowing each covered clearing agency flexibility in choosing its own default procedures pursuant to proposed Rule 17Ad–22(e)(13).

In addition to loss allocation plans, proposed Rule 17Ad–22(e)(13) contains new provisions related to the replenishment of financial resources and testing and review of default procedures that do not appear in Rule

[735] *See* Neal L. Wolkoff & Jason B. Werner, The History of Regulation of Clearing in the Securities and Futures Markets, and Its Impact on Competition, 30 Rev. Banking & Fin. L. 313, 323 (2010).

[736] *See* Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92nd Cong., 1st Sess. 13, at 168 (1971) (suggesting that the delivery and transfer process for paper certificates were a principal cause of failures to deliver and receive during the ''paperwork crisis'' of the late 1960s).

[737] *See supra* note 274; *supra* Part II.B.9 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(13)); *supra* Part IV.B.3.d.ii (discussing current practices among registered clearing agencies regarding exchange-of-value settlement systems); *see also* 17 CFR 240.17Ad–22(d)(13).

[738] *See, e.g.,* Elliot, *supra* note 617 (discussing various loss-allocation rules and CCP recovery and wind-down).

17Ad–22(d)(11). The Commission preliminarily believes that proposed rules related to replenishment of financial resources may reduce the potential for systemic risk and contagion in cleared markets, as they facilitate covered clearing agencies' prompt access to these resources in times of financial stress. The Commission also preliminarily believes that broad-based participation in the testing of default procedures could reduce disruption to cleared markets in the event of default. However, to the extent that testing of these procedures requires participation by members of covered clearing agencies, members' customers, and other stakeholders, these parties may bear costs under the proposed rules. The Commission is unable to quantify the economic effects of participation in these tests at this time.

ix. Proposed Rule 17Ad–22(e)(14): Segregation and Portability

Segregation and portability of customer positions serves a number of useful purposes in cleared markets. In the normal course of business, the ability to efficiently identify and move an individual customer's positions and collateral between clearing members enables customers to easily terminate a relationship with one clearing member and initiate a relationship with another. This may facilitate competition between clearing members by ensuring customers are free to move their accounts from one clearing member to another based on their preferences, without being unduly limited by operational barriers.[739]

Segregation and portability may be especially important in the event of participant default. By requiring that customer collateral and positions remain segregated, covered clearing agencies can facilitate, in the event of a clearing member's insolvency, the recovery of customer collateral and the movement of customer positions to one or more other clearing members. Further, portability of customer positions may facilitate the orderly wind down of a defaulting member if customer positions may be moved to a non-defaulting member. Porting of positions in a default scenario may yield benefits for customers if the alternative is closing-out positions at one clearing member and reestablishing them at another clearing member. The latter strategy would cause customers to bear transactions costs, which might be especially high in times of financial stress.

The Commission notes that, in its preliminary view, these proposed rules are flexible in their approach to implementing segregation and portability requirements. The most efficient means of implementing these requirements may depend on the products that a covered clearing agency clears as well as other business practices at a covered clearing agency. For example, a clearing agency's decision whether or not to collect margin on a gross or net basis may bear on its decision to port customer positions and collateral on an individual or omnibus basis, and while an individual account structure may provide a higher degree of protection from a default by another customer, it may be operationally and resource intensive for a covered clearing to implement and may reduce the efficiency of its operations.

As a result, the costs and benefits of proposed Rule 17Ad–22(e)(14) will depend on specific rules implemented by covered clearing agencies as well as how much these rules differ from current practice. Based on its supervisory experience, the Commission preliminarily believes that the current practices at covered clearing agencies to which the proposed rule would apply already meets segregation requirements under the proposed rule, so any costs and benefits for covered clearing agencies would flow from implementing portability requirements, though it potentially raises a barrier to entry for security-based swap clearing agencies or clearing agencies involved in activities with a more complex risk profile that seek to become covered clearing agencies.

x. Proposed Rule 17Ad–22(e)(15): General Business Risk

While proposed Rules 17Ad–22(e)(4) and 17Ad–22(e)(7) require that covered clearing agencies have policies and procedures reasonably designed to address credit risk and liquidity risk, proposed Rule 17Ad–22(e)(15) requires that covered clearing agencies have policies and procedures reasonably designed to address general business risk. The Commission preliminarily believes that general business losses experienced by covered clearing agencies represent a distinct risk to cleared markets, given limited competition and specialization of clearing agencies. In this regard, the loss of clearing services due to general business losses would likely result in major market disruption. The proposed rule requires a covered clearing agency to have policies and procedures reasonably designed to mitigate the risk that business losses result in the disruption of clearing services. Under these policies and procedures covered clearing agencies would hold sufficient liquid resources funded by equity to cover potential general business losses, which at a minimum would constitute six months of operating expenses. The Commission preliminarily believes that the benefits of such policies and procedures would flow primarily from covered clearing agencies that would be required to increase their holdings of liquid net assets funded by equity, enabling them to sustain their operations for sufficient time and achieve orderly wind-down if such action is eventually necessary.

The Commission could have proposed a higher or lower minimum level of resources, for example, corresponding to one quarter of operating expenses or one year of operating expenses. The Commission preliminarily believes, however, that the rules, as proposed, afford covered clearing agencies sufficient flexibility in determining the level of resources to hold while maintaining a minimum standard that supports continued operations in the event of general business losses. As another alternative, the Commission could have allowed covered clearing agencies additional flexibility in determine the nature of the financial resources held to mitigate the effects of general business risk or the means by which these resources are funded. The Commission preliminarily believes, however, that by specifying that these resources be liquid in nature, the proposed rule would limit any delays by covered clearing agencies that suffer business losses from paying expenses required for continued operations. Additionally, by specifically requiring that a covered clearing agency draw liquid net resources from members as equity capital, the proposed rules may also encourage members to more closely monitor the business operations of a covered clearing agency, which may reduce the likelihood of losses.

Based on its supervisory experience Commission preliminarily believes that certain covered clearing agencies would be required to establish and maintain policies and procedures providing for specified levels of equity capital and higher levels of liquid net assets than they would in the absence of proposed Rule 17Ad–22(e)(15).[740] Table 2 contains summary information from five

[739] *See, e.g.,* Paul Klemperer, Competition When Consumers Have Switching Costs: An Overview with Applications to Industrial Organization, Macroeconomics, and International Trade, 62 Rev. Econ. Stud. 515 (1995) (presenting an overview of switching costs and their effects on competition).

[740] Additional equity capital may be raised through share issuance or by retaining earnings.

registered clearing agencies and estimates, solely for purposes of evaluating the costs and benefits of proposed Rule 17Ad–22(e)(15), the amount of additional capital these entities would be required to establish and maintain to comply with the proposed rule. As the Commission has not previously had such a capital requirement, the estimate is based on one half of the average annual operating expenses for each covered clearing agency as reflected in their annual financial statements over the five-year period ending December 31, 2012.[741]

Table 2 identifies cash and cash equivalents as liquid assets and averages this over the same five-year period. A key shortcoming of using publicly available financial data is the difficulty in determining how much of a firm's cash and cash equivalents are funded by either equity or liabilities, or both. To this end, the Commission considered two different cases.[742] In Case 1, the Commission assumed that cash on each clearing agency's balance sheet was funded by liabilities first, with the residual funded by equity. In Case 2, the Commission assumed that cash on each clearing agency's balance sheet was funded pro-rata by equity and liabilities.[743] This procedure likely yields an upper bound for estimates of additional equity necessary to meet the minimum reserve requirements.

Table 2. Hypothetical Additional Equity Necessary to Meet Requirements Under Proposed Rule 17Ad–22(e)(15), in Millions of Dollars, Based on Years 2008–2012.[744]

	DTC	FICC	ICEEU	NSCC	OCC
Average Six Months Operating Expense	166	62	41	94	68
Average Cash and Cash Equivalents	3,151	8,259	129	3,838	64
Average Liabilities	3,364	8,471	84	3,833	155
Cash Funded by Equity	0	0	45	5	0
Average Total Equity	282	97	192	125	15
Average Net Income	21	16	119	26	2
Case 1, Additional Equity Needed	166	62	0	89	68
Case 2, Additional Equity Needed	0	0	0	0	63

Absent market frictions, a change in capital structure should have no effect on the value of a covered clearing agency.[745] The Commission acknowledges that market imperfections such as asymmetric information, moral hazard, and regulation may imply that covered clearing agencies that would need to raise additional equity capital incur opportunity costs for holding this additional capital rather than investing it in projects or distributing it back to equity holders who might, in turn, invest in projects.

To estimate these costs, the Commission applied the capital asset pricing model to observed returns for CME and ICE, two clearing agencies that have publicly-traded equity outstanding.[746] This methodology yielded an estimate of the cost of equity for these two clearing agencies of approximately 10%. Applying estimated cost of equity to the lower bound of additional equity required under the proposed rule suggests an annual cost of $16 million, while applying this cost to the upper bound of additional equity needed suggests an annual cost of $50 million.[747] These estimates are subject to a number of caveats. In particular, this exercise does not take into account the possibility that equity finance may reduce the cost of equity due to the resulting decrease in leverage,[748] or that clearing agencies might simultaneously raise equity while reducing liabilities. Both of these possibilities would likely reduce the cost to covered clearing agencies of increased equity capital. Finally, this analysis presumes that covered clearing agencies will choose to comply with the requirements in proposed Rule 17Ad–22(e)(15)(iii) at the lower bound of six months' operating expenses.

Clearing agencies that issue equity in order to satisfy the new requirements would additionally face costs related to issuance. The Commission preliminarily recognizes that the cost of maintaining additional equity resembles an insurance premium against the losses

[741] In the case of DTCC, to obtain an estimate of annual operating expense, the Commission made minor adjustments to the total expense by excluding expenses not related to DTCC's core operations, since its annual income statement does not explicitly show the operating expense.

[742] The Commission notes that these two cases are provided as estimates of cash and cash equivalents funded by equity for existing covered clearing agencies for limited purposes of the economic analysis but are not methods the Commission would necessarily accept if used by a covered clearing agency to comply with proposed Rule 17Ad–22(e)(15). Nor should the two cases presented be viewed as interpretive guidance regarding proposed Rule 17Ad–22(e)(15).

[743] For example, in Case 2, for DTC we arrive at a pro-rata allocation of cash by computing the ratio of Average Equity to the sum of Average Equity and Average Liabilities (282/3646 = 7.73%,) and applying this to Average Cash and Cash Equivalents (7.73% × 3151 = 243.71) to arrive at a proxy of the level of liquid net assets funded by equity.

[744] The figures in Table 2 are based on financial data taken from the 2008–2012 annual reports of DTC, FICC, ICEEU, NSCC, and OCC. The Commission notes that these figures are presented for the limited purposes of conducting this economic analysis and do not represent methods the Commission would necessarily accept if used by a covered clearing agency to comply with proposed Rule 17Ad–22(e)(15).

[745] *See* Franco Modigliani & Merton H. Miller, The Cost of Capital, Corporation Finance and the Theory of Investment, 48 Am. Econ. Rev. 261 (1958) (showing the irrelevance of capital structure in perfect markets).

[746] *See* Eugene F. Fama & Kenneth R. French, The Cross-Section of Expected Stock Returns, 47 J. Fin. 427 (1992). For CME, the Commission used monthly return data from January 2003 to December 2012, and for ICE, from December 2005 to December 2012.

The Commission calculated this data using Daily/Monthly U.S. Stock Files© 2012 Center for Research in Security Prices (CRSP), The University of Chicago Booth School of Business, and Thomson Reuters Datastream.

[747] The Commission based this estimate on the 2012 financial statements for DTC, CME, FICC, ICE, NSCC, and OCC. To ensure comparability, the Commission estimated leverage ratios for each of these clearing agencies by adjusting assets for clearing and guaranty funds and dividing by shareholders' equity. While DTC, NSCC, FICC, ICE, and CME all have estimated leverage ratios of between 1 and 2, the Commission computed a higher leverage ratio of 5 for OCC. As a result, the Commission computed OCC's cost of capital by first ''unlevering'' CME's estimated beta of 1.14 using 2012 financial statement information to arrive at an unlevered beta of 0.87 and levering this using OCC's 2012 financial statement information to arrive at a levered beta of 3.36. Finally, the Commission applied the current Fama-French monthly risk premium at a 10-year horizon, annualized, and added the current 10 year risk-free rate to arrive at a levered cost of equity of approximately 26% for OCC.

[748] *See e.g.,* Anat R. Admati, Peter M. DeMarzo, Martin F. Hellwig & Paul Pfleiderer, Fallacies, Irrelevant Facts, and Myths in the Discussion of Capital Regulation: Why Bank Equity is Not Expensive (Working Paper, Mar. 23, 2011), *available at http://www.coll.mpg.de/pdf_dat/2010_42online.pdf* (addressing the statement that ''[i]ncreased bank equity requirements increase the funding costs for banks because they must use more equity, which has a higher required return'').

associated by market disruption in the absence of clearing services.

xi. Proposed Rule 17Ad–22(e)(16): Custody and Investment Risks

Proposed Rule 17Ad–22(e)(16) requires a covered clearing agency to have policies and procedures reasonably designed to safeguard both their own assets as well as the assets of participants, broadening the requirement applicable to registered clearing agencies in Rule 17Ad–22(d)(3) to the protection of participants' assets.

The Commission preliminarily believes that this may have benefits in terms of protecting against systemic risk, to the extent that covered clearing agencies to this point have treated their own assets differently by applying greater safeguards to those assets than with respect to assets of their members and members' clients. Protection of member assets is important to cleared markets because, for example, the assets of a member in default serve as margin and represent liquidity supplies that a covered clearing agency may access to cover losses. If covered clearing agencies can quickly access these liquidity sources, they may be able to limit losses to non-defaulting members.

Participants may benefit from proposed Rule 17Ad–22(e)(16) in other ways. Requiring a covered clearing agency's policies and procedures to safeguard its assets and participant assets and to invest in assets with minimal credit, liquidity, and market risk may reduce uncertainty in the value of participant assets and participants' exposure to mutualized losses. This may allow participants to deploy their own capital more efficiently. Furthermore, easy access to their own capital enables members to more freely terminate their participation in covered clearing agencies.

Based on its supervisory experience, the Commission preliminarily believes that current practices at covered clearing agencies meet the requirements under proposed Rule 17Ad–22(e)(16) in most cases, so the additional costs and benefits flowing from these requirements would be generally limited to registered clearing agencies that may enter the set of covered clearing agencies in the future.

xii. Proposed Rule 17Ad–22(e)(17): Operational Risk Management

Because, as noted above, proposed Rule 17Ad–22(e)(17) would require substantially the same set of policies and procedures as Rule 17Ad–22(d)(4),[749] the Commission preliminarily believes that proposed Rule 17Ad–22(e)(17) would likely impose limited material additional costs on covered clearing agencies and produce limited benefits, in line with the general economic considerations discussed in Part IV.C.1.

xiii. Proposed Rules 17Ad–22(e)(18) Through (20): Membership Requirements, Tiered Participation, and Linkages

As discussed earlier, covered clearing agencies play an important role in the markets they serve. They often enjoy a central place in financial networks that enables risk sharing, but may also enable them to serve as conduits for the transmission of risk throughout the financial system. Proposed Rules (18) through (20) require covered clearing agencies to have policies and procedures reasonably designed to explicitly consider and manage the risks associated with the particular characteristics of their network of direct members, the broader community of customers, and other parties that rely on the services provided by the covered clearing agencies or other partners that the covered clearing agency is connected to through relevant linkages. The Commission preliminarily believes that these efforts carry benefits insofar as they reduce the extent to which covered clearing agencies may impose negative externalities on financial markets.

As economies of scale contribute to the business dynamics of clearing and settlement, there is often only one clearing agency or a small number of clearing agencies for a particular class of security. Consequently, membership in a clearing agency may influence competitive dynamics between members and indirect participants, such as intermediaries, in cleared markets. Members and indirect participants may compete for the same set of customers, but indirect participants must have relationships with members to access clearing services. Members, therefore, may have incentives in place to extract economic rents from indirect participants by imposing higher fees or restricting access to clearing services.

Permitting fair and open access to clearing agencies and their services may promote competition among market participants and may result in lower costs and efficient clearing and settlement services. Open access to clearing agencies may reduce the likelihood that credit and liquidity risk become concentrated among a small number of clearing members, each of which retain a large number of indirect participants through tiered arrangements. Further, links between clearing agencies may facilitate risk management across multiple security classes and improve the efficiency of collateral arrangements.

(1) Proposed Rule 17Ad–22(e)(18): Member Requirements

While fair and open access to clearing agencies may promote competition and enhance the efficiency of clearing and settlement services, these improvements should not come at the expense of prudent risk management. The soundness of clearing members contributes directly to the soundness of a clearing agency and mutualization of losses within clearing agencies expose each clearing member to the default risk of every other clearing member. Accordingly, it is important for clearing agencies to control and effectively manage the risks to which they are exposed by their direct and indirect participants by establishing risk-related requirements for participation.

Based on its supervisory experience, the Commission preliminarily believes that current practices among most covered clearing agencies involve a mix of objective financial and business requirements stipulated in publicly-available rulebooks and discretion exercised by the covered clearing agency. As a result and based on its supervisory experience, the Commission preliminarily believes that some changes to policies and procedures at covered clearing agencies may be required under the proposed rule.

(2) Proposed Rule 17Ad–22(e)(19): Tiered Participation Arrangements

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(19) may improve covered clearing agencies' ability to manage its exposure to market participants that are not clearing members, but access payment, clearing, or settlement facilities through their relationships with clearing members. A covered clearing agency that is able to effectively manage its exposure to its members but fails to identify, monitor, and manage its exposures to non-member firms may overlook dependencies that are critical to the stability of cleared markets. This is particularly true if indirect participants in the covered clearing agency are large and might potentially precipitate the default of one or more direct members.

[749] *See supra* Part II.B.14 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(17)); *see also* 17 CFR 240.17Ad–22(d)(4).

The data necessary to compute summary statistics that would be helpful in quantifying the costs and benefits of the proposed rule, including those that would indicate the size of indirect participants and the volume of transactions in which they are involved, are not available. Nevertheless, the Commission is sensitive to the fact that costs associated with the proposed rules may result in concentration of clearing services among fewer clearing members. Part of this process of consolidation may mean an increase in the volume of trading activity that involves indirect members, making identification of risks associated with indirect members even more critical. Based on its supervisory experience, however, the Commission preliminarily believes that certain covered clearing agencies already have policies and procedures in place that would satisfy the requirements of the proposed rule even in the absence of such explicit requirements under existing rules. Costs and benefits from the proposed rule would come from those other registered clearing agencies that require updates to their policies and procedures to come into compliance with the proposed rule.

The Commission is sensitive to the fact that indirect participants play a key role in maintaining competition in markets for intermediation of trading in securities insofar as they offer investors a broader choice of intermediaries to deal with in centrally cleared and settled securities markets. If elements of policies and procedures under this rule make indirect participation marginally more costly, then transactions costs for investors may increase.

(3) Proposed Rule 17Ad–22(e)(20): Links

Links between clearing agencies and their members are only one way that clearing agencies interface with the financial system. A clearing agency may also establish links with other clearing agencies and FMUs through a set of contractual and operational arrangements. For a clearing agency, the primary purpose of establishing a link would be to expand its clearing and settlement services to additional financial instruments, markets, and institutions. Established links among clearing agencies and FMUs may enable direct and indirect market participants to have access to a broader spectrum of clearing and settlement services.

Sound linkages between clearing agencies that provide CCP services may also provide their customers with more efficient collateral arrangements and cross-margining benefits. Cross-margining potentially relaxes liquidity constraints in the financial system by reducing total required margin collateral. Resources that would otherwise be posted as margin may be allocated to more productive investment opportunities.

A clearing agency that establishes a link or multiple links may also impose costs on participants in markets it clears by indirectly exposing them to systemic risk from linked entities. The Commission acknowledges that clearing agencies that form linkages may be exposed to additional risks, including credit and liquidity risks, as a consequence of these links. Links may, however, produce benefits for members to the extent that diversification and hedging across their combined portfolio reduces their margin requirements. At the same time, because such an agreement requires the linked clearing agencies to each guarantee cross-margining participants' obligations to the other clearing agency, cross-margining potentially exposes members of one clearing agency to default risk from members of the other.

By requiring that covered clearing agencies have policies and procedures reasonably designed to identify, monitor, and manage risks related to any link, proposed Rule 17Ad–22(e)(20), like Rule 17Ad–22(d)(7), reduces the likelihood that such links serve as channels for systemic risk transmission. Because proposed Rule 17Ad–22(e)(20) differs only marginally from Rule 17Ad–22(d)(7), the Commission preliminarily believes that the costs and benefits flowing from the proposed rule will be incremental, to the extent that the additional specificity in proposed Rule 17Ad–22(e)(20) causes covered clearing agencies to modify current practices. The Commission has aggregated these costs below.

xiv. Proposed Rule 17Ad–22(e)(21): Efficiency and Effectiveness

Proposed Rule 17Ad–22(e)(21) would impose on covered clearing agencies requirements in addition to those currently applied to registered clearing agencies under Rule 17Ad–22(d)(6) by also requiring covered clearing agencies to have policies and procedures that ensure that a covered clearing agency's management review efficiency and effectiveness in four key areas:

- Efficiency and effectiveness in clearing and settlement arrangements may reduce participants' transaction costs and enhance liquidity by reducing the amount of collateral that customers must provide for transactions and the opportunity cost associated with providing such collateral. Where appropriate, net settlement arrangements can reduce collateral requirements. Similarly, clearing arrangements that include a broad scope of products enable clearing members to take advantage of netting efficiencies across positions.
- Efficient and effective operating structures, including risk management policies, procedures, and systems, may reduce the likelihood of failures that may lead to impairment of a clearing agency's capacity to complete settlement and interfering with its ability to monitor and manage credit exposures.
- An efficient scope of products that a clearing agency clears, settles, or records may provide its participants and customers with more efficient collateral arrangements and cross-margining benefits that ultimately reduce transaction costs and improve liquidity in cleared markets.
- Efficient and effective use of technology and communication procedures facilitates effective payment, clearing and settlement, and recordkeeping.

The Commission preliminarily believes that requirements related to efficient operation of covered clearing agencies are appropriate given the market power enjoyed by these entities, as discussed in Part IV.C.1.d. Limited competition in the market for clearing services may blunt incentives for covered clearing agencies to cost effectively provide high quality services to market participants in the absence of regulation.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies would be required to make updates to their policies and procedures as a result of the proposed rule. As a result, the Commission expects incremental costs and benefits to flow from the proposed rule only to the extent that this additional specificity causes covered clearing agencies to modify current practices.

xv. Proposed Rule 17Ad–22(e)(22): Communication Procedures and Standards

Based on its supervisory experience, the Commission preliminarily believes that some changes to policies and procedures would be necessary to meet requirements under proposed Rule 17Ad–22(e)(22).[750] These costs are included as a part of implementation costs, as discussed below. However, the Commission understands that covered

[750] *See supra* Parts II.B.19 and VII (discussing the requirements for communication procedures and standards under Rule 17Ad–22(e)(22) and providing the rule text, respectively).

clearing agencies already accommodate internationally accepted communication procedures and standards and preliminarily anticipates only incremental costs resulting from the proposed rule, in addition to the above discussed benefits. Registered clearing agencies that may enter into the set of covered clearing agencies in the future may need to conform their practices to internationally accepted communication procedures and standards, as well as adopt new policies and procedures as a result of the proposed rule, resulting in more substantial costs.

xvi. Proposed Rule 17Ad–22(e)(23): Disclosure of Rules, Key Procedures, and Market Data

Enhanced disclosure may also improve the efficiency of transactions in cleared products and improve financial stability more generally by improving the ability of members of covered clearing agencies to manage risks and assess costs. Additional information would reduce the potential for uncertainty on the part of clearing members regarding their obligations to covered clearing agencies. Proposed Rule 17Ad–22(e)(23) requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require specific disclosures. As in Rules 17Ad–22(d)(9) and (11), covered clearing agencies would be required under proposed Rule 17Ad–22(e)(23) to disclose default procedures to the public and disclose sufficient information to participants to allow them to manage the risks, fees, and other material costs associated with membership.

Under proposed Rule 17Ad–22(e)(23), a covered clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to update, on a biannual basis, public disclosures that describe the covered clearing agency's market and activities, along with information about the agency's legal, governance, risk management, and operating frameworks, including specifically covering material changes since the last disclosure, a general background on the covered clearing agency, a rule-by-rule summary of compliance with proposed Rules 17Ad–22(e)(1) through (22), and an executive summary. The proposed rule adds a new requirement, relative to existing requirements for registered clearing agencies under Rule 17Ad–22(d)(9), to update the disclosure biannually and to include, among other things, specific data elements, including details about system design and operations, transaction values and volumes, average intraday exposure to participants, and statistics on operational reliability.

Additional transparency may have benefits for participants and cleared markets more generally. For example, if information about the systems that support a covered clearing agency is public, investors may be more certain that the market served by this agency is less prone to disruption and more accommodating of trade. Furthermore, public disclosure of detailed operating data may facilitate evaluation of each covered clearing agency's operating record by market participants. Further, under proposed Rule 17Ad–22(e)(23)(iv), these disclosures would be made about specific categories that potentially facilitate comparisons between covered clearing agencies. Additional availability of information on operations may increase the likelihood that clearing agencies compete to win market share from participants that value operational stability. This additional market discipline may provide additional incentives for covered clearing agencies to maintain reliability. Finally, updating the public disclosure every two years or more frequently following certain changes as required pursuant to proposed Rule 17Ad–22(e)(23)(v) would support the benefits of enhanced public disclosures by ensuring that information provided to the public remains up-to-date. The Commission preliminarily believes this would reduce the likelihood that market participants are forced to evaluate covered clearing agencies on the basis of stale data.

Clearing members, in particular, may benefit from additional disclosure of risk management and governance arrangements. These details potentially have significant bearing on clearing members' risk management because they may remove uncertainty surrounding members' potential obligations to a covered clearing agency. In certain circumstances, additional disclosures may reveal to members that the expected costs of membership exceed the expected benefits of membership, and that exit from the clearing agency may be privately optimal. In addition to the costs of concentration among members discussed in earlier sections, the Commission also recognizes the potential for systemic benefits from termination. Member exit on the basis of more precise information may reduce the risk posed to other financial market participants by members who, given additional information, might prefer to terminate their membership, due to an inability to manage the risks to which a covered clearing agency exposes them. While exit from clearing agencies may have consequences for competition among clearing members, the Commission preliminarily believes that encouraging the participation of firms that are not able to bear the risks of membership is not an appropriate means of mitigating the effects of market power on participants in cleared markets.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies will require changes to policies and procedures as a result of the proposed rules. Compliance costs associated with changes to policies and procedures, biannual review and disclosure of additional data are included in implementation costs, below.

b. Proposed Rule 17Ab2–2

Proposed Rule 17Ad–22(e) would subject covered clearing agencies to requirements that are in many instances more specific than requirements under Rule 17Ad–22(d) and in some cases produce new obligations to establish, implement, maintain and enforce written policies and procedures reasonably designed to test, report, and disclose key elements of a covered clearing agency's performance, risk management, and operations.

Proposed Rule 17Ab2–2 provides procedures for the Commission to determine on its own initiative, or upon voluntary application by a registered clearing agency, whether a registered clearing agency is a covered clearing agency and therefore is subject to proposed Rule 17Ad–22(e). It also provides procedures for the Commission to determine whether a covered clearing agency is systemically important in multiple jurisdictions or has a complex risk profile and therefore should be subject to stricter risk management standards under proposed Rule 17Ad–22(e).

Proposed Rule 17Ab2–2(a) provides procedures for the Commission to determine whether a registered clearing agency that is otherwise not a designated clearing agency or a complex risk profile clearing agency is a covered clearing agency on the basis of the products it clears or other characteristics the Commission may deem appropriate under the circumstances. While the Commission preliminarily believes the current scope of proposed Rule 17Ad–22(e) is appropriate,[751] proposed Rule 17Ab2–

[751] *See supra* Part IV.C.3.a (discussing the appropriateness of the proposed scope of Rule 17Ad–22(e)).

2(a) would provide the Commission with latitude in adjusting the scope of proposed Rule 17Ad–22(e) in response to financial innovation and changing economic circumstances. Proposed Rule 17Ab2–2(a) contemplates voluntary application of registered clearing agencies to become covered clearing agencies.

Proposed Rule 17Ab2–2(b) includes criteria the Commission may consider in determining whether a covered clearing agency is systemically important in multiple jurisdictions. Two of these criteria are based on input from a set of other bodies comprised of FSOC and regulators in other jurisdictions. As a result, it is possible that the flow of costs and benefits from proposed Rule 17Ad–22(e) may be partially determined by the decisions of other regulatory bodies.

Proposed Rule 17Ab2–2(c), by contrast, suggests characteristics of the financial products that a clearing agency clears as a basis upon which the Commission may determine that a clearing agency's activity has a complex risk profile.

The impact of proposed rules that determine the application of enhanced requirements could have direct costs on registered clearing agencies in the form of legal or consulting costs incurred as a result of seeking a determination from the Commission. In instances where these clearing agencies choose to apply to the Commission for status as a covered clearing agency under proposed Rule 17Ab2–2(a), the Commission preliminarily believes that a registered clearing agency's voluntary application would suggest that the applicant's private benefits from regulation under proposed Rule 17Ad–22(e) justify its costs.

Quantifiable costs related to determinations under proposed Rule a17Ab2–2 are noted in Part IV.C.3.d.

Indirect effects of the determination process may have important economic effects on the ultimate volume of clearing activity, beyond the economic effects of the proposed requirements themselves. An important feature of proposed Rule 17Ab2–2 is providing transparency for the determinations process. On one hand, transparency may allow clearing agencies to plan for new obligations under proposed Rule 17Ad–22(e); on the other, transparency may allow clearing agencies to restructure their business to avoid falling within the scope of proposed Rule 17Ad–22(e).

To the extent that proposed Rule 17Ad–22(e), if adopted as proposed, may increase costs relative to their peers for covered clearing agencies, clearing agencies whose activities have a more complex risk profile, and clearing agencies systemically important in multiple jurisdictions, clearing agencies may have incentives to restructure their businesses strategically to avoid these Commission determinations or otherwise exit any services made prohibitively expensive by such determinations. Such potential consequential effects would be among the considerations for the Commission to review in connection with any specific decision under proposed Rule 17Ab2–2. Restructuring may involve spinning off business lines into separate entities, limiting the scope of clearing activities to certain markets, or limiting the scale of clearing activities within a single market.[752]

Any one of these responses could result in inefficiencies. As suggested in Part IV.C.2.b, registered clearing agencies may incur costs as a result of attempts to restructure. Clearing agencies that break up along product lines or fail to consolidate when consolidation is efficient may fail to take advantage of economies of scope and result in inefficient use of collateral.[753] Similarly, clearing agencies that limit their scale may provide lower levels of clearing services to the markets that they serve.

c. Proposed Rule 17Ad–22(f)

Proposed Rule 17Ad–22(f) includes a provision that specifies Commission authority over designated clearing agencies for which it is the supervisory agency. Since this provision codifies existing statutory authority, the Commission does not anticipate any economic effects from this proposed rule.

d. Quantifiable Costs and Benefits

As discussed above, the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 would impose certain costs on covered clearing agencies. As discussed in Part IV.C.3.a.ii, if a covered clearing agency is required to recruit new directors, the Commission preliminarily estimates a cost per director of $73,000.[754] As discussed in Part IV.C.3.a.iv(4), the Commission preliminarily estimates costs associated with liquidity resources under proposed Rules 17Ad–22(e)(7) and (a)(15) would likely fall between $133 million and $225 million per year across all covered clearing agencies. As discussed in Part IV.C.3.a.iv(5), the Commission preliminarily believes that startup costs related to financial risk management systems for existing covered clearing agencies, related to new testing and model validation requirements to be between $5 million to $25 million. The Commission also estimates a lower bound on ongoing costs related to these requirements of $1 million per year. If covered clearing agencies were to hire external consultants for the purposes of performing model validation required under proposed Rules 17Ad–22(e)(4) and (7) through policies and procedures, the Commission preliminarily estimates the ongoing cost associated with hiring such consultants would be about $4,388,160 in the aggregate.[755] As discussed in Part IV.C.3.a.x, the Commission expects quantifiable economic costs as a result of proposed Rule 17Ad–22(e)(15) to be between $16 million and $50 million per year across covered clearing agencies.

In addition, proposed Rules 17Ad–22(e)(3), (4), (6), (7), (15) and (21) all include elements of review by either a covered clearing agency's board or its management on an ongoing basis. The Commission preliminarily estimates the cost of ongoing review for these proposed rules at approximately $39,312 per year.[756] The proposed rules would also impose certain implementation burdens and related costs on covered clearing agencies.[757]

[752] *See* Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881, 65919 & n.206 (Oct. 26, 2010).

[753] *See, e.g.,* Darrell Duffie & Haoxiang Zhu, Does a Central Clearing Counterparty Reduce Counterparty Risk?, 1 Rev. Asset Pricing Stud. 74 (2011) (addressing potential inefficiencies resulting from fragmented clearing along product lines).

[754] *See supra* note 705.

[755] *See supra* Part IV.C.3.a.iv(5), in particular note 734.

[756] To monetize the cost of board review, the Commission used a recent report by Bloomberg stating that the average director works 250 hours and earns $251,000, resulting in an estimated $1000 per hour for board review. As a proxy for the cost of management review, the Commission is estimating $457 per hour, based upon the Director of Compliance cost data from the SIFMA table, *see infra* note 778. The Commission estimates the total cost of review for each clearing agency as follows: ((Board Review for 32 hours at $1000 per hour) + (Management Review for 16 hours at $457 per hour)) = $39,312. The Commission requests comment on this estimate.

[757] To monetize the internal costs the Commission staff used data from the SIFMA publications, Management and Professional Earnings in the Security Industry—2012, and Office Salaries in the Securities Industry—2012, modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. Commission staff also estimated an hourly rate for a Chief Financial Officer. The Web site *www.salary.com* reports that median CFO annual salaries in 2012 were $307,554. A Grant Thornton LLP survey estimated that in 2012 public company CFOs received an average annual salary of $286,500. Using an approximate midpoint of these two estimates of $300,000 per year, and dividing by an 1800-hour work year and

Continued

These costs generally include assessment costs to determine compliance with the proposed rules and costs related to new policies and procedures and updates to existing policies and procedures required by the proposed rules. In Part III, the Commission estimated the burdens of these implementation requirements for covered clearing agencies.

For a new entrant into the set of covered clearing agencies from the set of registered clearing agencies, the Commission preliminarily estimates the startup compliance costs associated with policies and procedures to be $592,215,[758] and compliance costs associated with the determinations process under proposed Rule 17Ab2–2 to be $9,148.[759] Based on its supervisory experience, the Commission preliminarily believes that in many cases registered clearing agencies are already in compliance with many of the requirements included in the proposed rules, so this cost represents an upper bound on upfront costs. Conditioned on its current understanding of current market practice at covered clearing agencies, the Commission preliminarily estimates that the total costs across all existing covered clearing agencies will be $4,032,720.[760] The Commission preliminarily estimates that in the aggregate existing covered clearing agencies would be subject to ongoing costs associated with the proposed rule in the amount of approximately $801,980 per year.[761]

A benefit of the proposed rules that the Commission is able to quantify is the impact of QCCP status of OCC to non-U.S. bank clearing members at OCC. This benefit comes as a result of lower capital requirements against exposures to QCCPs relative to non-qualifying CCPs. In Part IV.C.1.e, the Commission provided an estimate of the upper bound of this benefit, $600 million per year, or 0.60% of the aggregate 2012 net income reported by bank clearing members at OCC. The Commission preliminarily believes that the actual benefits flowing from QCCP status would likely be higher due to benefits for foreign bank members of FICC and ICEEU, in addition to the benefits with respect to OCC discussed above.[762]

The Commission preliminarily believes that the proposed rules will result in an increase in financial stability insofar as they result in minimum standards at covered clearing agencies that are higher than those standards implied by current practices at covered clearing agencies. Some of this increased stability may come as a result of lower activity as the proposed rules cause participants to internalize a greater proportion of the costs that their activity imposes on the financial system, reducing the costs of default, conditional on a default event occurring. Increased stability may also come as a result of higher risk management standards at covered clearing agencies that effectively lower the probability that either covered clearing agencies or their members default.

The Commission preliminarily believes that clearance and settlement of securities and security-based swaps is fundamental to the stability of financial markets. As discussed above, clearing agencies may not fully consider the costs they could impose on financial market participants.[763] As a result of the potential negative externalities associated with their activities, enhanced risk management standards are particularly important for those clearing agencies that pose the greatest risk to financial markets and the U.S. financial system.

D. Request for Comments

The Commission generally requests comment about its preliminary analysis of the economic effects of the proposed rules and any qualitative and quantitative data that would facilitate an evaluation and assessment of the economic effects of this proposal. In addition, the Commission requests comment on the following specific issues:

- Has the Commission appropriately identified the relevant costs and benefits associated with each requirement under proposed Rule 17Ad–22(e)? Why or why not?
- Are there any provisions of proposed Rule 17Ad–22(e) for which the costs of enhanced risk management standards appear inappropriate relative to the benefits of such standards, particularly given existing requirements under Rule 17Ad–22(d)? Please explain.
- Would particular provisions of proposed Rule 17Ad–22(e) improve or diminish competition between covered clearing agencies? Which provisions are likely to have such effects and through what transmission channels?
- Would the scope of proposed Rule 17Ad–22(e) have implications for competition between covered clearing agencies and registered clearing agencies that are not covered clearing agencies?
- Would particular provisions of proposed Rule 17Ad–22(e) improve or diminish competition between members of covered clearing agencies? Are there any provisions that would allow a subset of members to compete on better terms than other members?
- How would the effects of QCCP status will be allocated across members? Can market participants provide any qualitative or quantitative data to help the Commission evaluate the effects of QCCP status on clearing members and any heterogeneity in trade exposures and default fund exposures to covered

multiplying by the 5.35 factor which normally is used to include benefits but here is used as an approximation to offset the fact that New York salaries are typically higher than the rest of the country, the result is $892 per hour. The Commission requests comment on this estimate.

[758] The total initial cost for an entrant that is not a CSD and does engage in activities with a more complex risk profile was calculated as follows: ((Assistant General Counsel for 428 hours at $467 per hour) + (Compliance Attorney for 365 hours at $310 per hour) + (Administrative Assistant for 2 hours at $72 per hour) + (Computer Operations Department Manager for 300 hours at $361 per hour) + (Senior Business Analyst for 85 hours at $245 per hour) + (Senior Risk Management Specialist for 114 hours at $249 per hour) + (Chief Compliance Office for 102 hours at $441 per hour) + (Senior Programmer for 53 hours at $282 per hour) + (Chief Financial Officer for 50 hours at $892 per hour) + (Financial Analyst for 70 hours at $245 per hour)) = $592,215.

[759] The total cost associated with determinations under proposed Rule 17Ab2–2 was calculated as follows: ((Assistant General Counsel for 2 hours at $467 per hour) + (Compliance Attorney for 4 hours at $310 per hour) + (Outside Counsel for 6 hours at $400 per hour)) x 2 registered clearing agencies = $9,148.

[760] The total initial cost was calculated as follows: ((Assistant General Counsel for 2,906 hours at $467 per hour) + (Compliance Attorney for 2,475 hours at $310 per hour) + (Administrative Assistant for 14 hours at $72 per hour) + (Computer Operations Department Manager for 2,030 hours at $361 per hour) + (Senior Business Analyst for 565 hours at $245 per hour) + (Senior Risk Management Specialist for 773 hours at $249 per hour) + (Chief Compliance Office for 699 hours at $441 per hour) + (Senior Programmer for 361 hours at $282 per hour) + (Chief Financial Officer for 350 hours at $892 per hour) + (Financial Analyst for 490 hours at $245 per hour) + (Intermediate Accountant for 15 hours at $155 per hour)) = $4,032,720.

[761] The total ongoing cost was calculated as follows: ((Compliance Attorney for 1,851 hours at $310 per hour) + (Administrative Assistant for 137 hours at $72 per hour) + (Senior Business Analyst for 151 hours at $245 per hour) + (Senior Risk Management Specialist for 70 hours at $249 per hour) + (Risk Management Specialist for 1,251 hours at $131 per hour)) = $801,980.

[762] *See supra* note 686 and accompanying text.

[763] *See* Duffie, Li & Lubke, *supra* note 563 (noting that the failure of a CCP could suddenly expose many major market participants to losses); *see also* Cecchetti, Gyntelberg & Hollanders, *supra* note 19 (''[A] CCP concentrates counterparty and operational risks and the responsibilities for risk management. Therefore it is critical that CCPs have both effective risk control and adequate financial resources.''); *supra* note 278 and accompanying text (asserting that delays and breakdowns in the payments and clearance process and the perception that the clearing system might not be able to meet obligations may have contributed to price declines during the October 20, 1987 market crash).

clearing agencies across bank and non-bank clearing members?

• Would bank clearing members to be constrained by the Basel III capital requirements? Do bank clearing members typically target tier one or total capital ratios as a business practice?

• In areas where existing requirements under Rule 17Ad–22(d) could be viewed as being consistent with the PFMI, and so could potentially earn QCCP status for covered clearing agencies, do the costs of additional requirements under proposed Rule 17Ad–22(e) appear appropriate relative to benefits of these requirements, aside from QCCP status? Please explain.

• Does the Commission's proposed definition of qualifying liquid resources adequately reflect the ability with which covered clearing agency assets may be used to meet funding obligations? Has the Commission adequately assessed the costs and benefits of requiring funding arrangements before considering non-cash resources ''qualifying''?

• What would be the potential costs and benefits of requiring covered clearing agencies to hold liquid net assets in accordance with proposed Rule 17Ad–22(e)(15)? Can you provide qualitative and quantitative data to aid the Commission in evaluating these potential costs and benefits?

• Has the Commission adequately assessed the risks posed by indirect participation at covered clearing agencies? Can you provide qualitative and quantitative data to aid the Commission in evaluating the level of indirect participation in cleared markets, the heterogeneity of indirect participation across clearing members and the implications for networks of exposures in cleared markets?

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[764] Section 603(a) of the Administrative Procedure Act,[765] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small entities.'' [766] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[767]

A. Registered Clearing Agencies

The proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 would apply to covered clearing agencies, which would include registered clearing agencies that are designated clearing agencies, complex risk profile clearing agencies, or clearing agencies that otherwise have been determined to be covered clearing agencies by the Commission. For the purposes of Commission rulemaking and as applicable to the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[768]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission,[769] the Commission preliminarily believes that such entities exceed the thresholds defining ''small entities'' set out above. While other clearing agencies may emerge and seek to register as clearing agencies, the Commission preliminarily does not believe that any such entities would be ''small entities'' as defined in Exchange Act Rule 0–10.[770] In any case, clearing agencies can only become subject to the new requirements under proposed Rule 17Ad–22(e) should they meet the definition of a covered clearing agency, as described above. Accordingly, the Commission preliminarily believes that any such registered clearing agencies will exceed the thresholds for ''small entities'' set forth in Exchange Act Rule 0–10.

B. Certification

For the reasons described above, the Commission certifies that the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission requests comment regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, including clearing agencies and counterparties to security and security-based swap transactions, and provide empirical data to support the extent of the impact.

VI. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996,[771] a rule is considered ''major'' where, if adopted, it results or is likely to result in (i) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effect on competition, investment, or innovation. The Commission requests comment on the potential impact of the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data

[764] *See* 5 U.S.C. 601 *et seq.*

[765] 5 U.S.C. 603(a).

[766] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

[767] *See* 5 U.S.C. 605(b).

[768] *See* 17 CFR 240.0–10(d).

[769] In 2012, DTCC processed $1.6 quadrillion in financial transactions, subsidiary DTC settled $110.3 trillion of securities and held securities valued at $37.2 trillion, subsidiary NSCC processed an average daily value of $742.7 billion in equity securities, subsidiary FICC cleared $1.116 quadrillion in government securities, and FICC's Mortgage-Backed Securities Division cleared $104 trillion of transactions in agency mortgage-backed securities. *See* DTCC, 2012 Annual Report, *available at http://www.dtcc.com/about/annual-report.aspx* and *http://www.dtcc.com/annuals/2012/br-settlement-and-asset-services.html*; FSOC, 2013 Annual Report, *supra* note 39, at 99.

In addition, OCC cleared more than 4 billion contracts and held margin of $78.8 billion at the end of 2012. *See* OCC, 2012 Annual Report, *available at http://www.optionsclearing.com/components/docs/about/annual-reports/occ_2012_annual_report.pdf.* CME Group had total contract volume of 2.89 billion contracts (in round turn trades) with a total notional value of $806 trillion. *See* CME Group, 2012 Annual Report, *available at http://files.shareholder.com/downloads/CME/2635449816x0x653543/02DB7C7F-ACF0-4D73-9AD7-1ACCEF68559A/CME_Group_2012_Annual_Report.pdf.* ICE and ICEEU together cleared CDS with a total notional value of $10.24 trillion. *See* Intercontinental Exchange, Inc., 2012 Annual Report, *available at http://files.shareholder.com/downloads/ICE/2623237906x0x649669/DFB49A9C-152C-4287-848C-7CCDDA42D61E/ICE_2012_Annual_Report_FINAL.pdf.*

[770] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about registered clearing agencies and lifecycle event service providers for OTC derivatives.

[771] Public Law 104–121, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

and other factual support for their views to the extent possible.

VII. Statutory Authority and Text of Amended Rule 17Ad–22 and Proposed Rule 17Ab2–2

Pursuant to the Exchange Act, particularly Section 17A thereof, 15 U.S.C. 78q–1, and Section 805 of the Clearing Supervision Act, 12 U.S.C. 5464, the Commission proposes to amend Rule 17Ad–22 and proposes new Rule 17Ab2–2.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE

■ 1. The general authority citation for Part 240 continues to read, and the sectional authority for § 240.17Ad–22 is revised to read, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et. seq.; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

Section 240.17Ad–22 is also issued under 12 U.S.C. 5461 *et seq.*

* * * * *

■ 2. Section 240.17Ab2–2 is added to read as follows:

§ 240.17Ab2–2 Determinations affecting covered clearing agencies.

(a) The Commission may, if it deems appropriate, upon application by any clearing agency or member of a clearing agency, or on its own initiative, determine whether a registered clearing agency should be considered a covered clearing agency. In determining whether a clearing agency should be considered a covered clearing agency, the Commission may consider:

(1) Characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults; or

(2) Such other characteristics as it deems appropriate in the circumstances.

(b) The Commission may, if it deems appropriate, upon application by any clearing agency or member of a clearing agency, or on its own initiative, determine whether a covered clearing agency is systemically important in multiple jurisdictions. In determining whether a covered clearing agency is systemically important in multiple jurisdictions, the Commission may consider:

(1) Whether the covered clearing agency is a designated clearing agency;

(2) Whether the clearing agency has been determined to be systemically important by one or more jurisdictions other than the United States through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system; or

(3) Such other factors as it may deem appropriate in the circumstances.

(c) The Commission may, if it deems appropriate, determine whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile. In determining whether a clearing agency's activity has a more complex risk profile, the Commission may consider:

(1) Characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults; or

(2) Such other characteristics as it deems appropriate in the circumstances, as factors supporting a finding of a more complex risk profile.

(d) The Commission shall publish notice of its intention to consider making a determination under paragraph (a), (b), or (c) of this section, together with a brief statement of the grounds under consideration therefor, and provide at least a 30-day public comment period prior to any such determination, giving all interested persons an opportunity to submit written data, views, and arguments concerning such proposed determination. The Commission may provide the clearing agency subject to the proposed determination opportunity for hearing regarding the proposed determination.

(e) Notice of determinations under paragraph (a), (b), or (c) of this section shall be given by prompt publication thereof, together with a statement of written reasons therefor.

(f) For purposes of this rule, the terms *central counterparty, covered clearing agency, designated clearing agency,* and *systemically important in multiple jurisdictions* shall have the meanings set forth in § 240.17Ad–22(a).

■ 3. Amend § 240.17Ad–22 by:

■ a. Revising paragraph (a) and the introductory text of paragraph (d); and

■ b. Adding paragraphs (e) and (f).

The revisions and additions read as follows:

§ 240.17Ad–22 Standards for clearing agencies.

(a) *Definitions.* For purposes of this section:

(1) *Backtesting* means an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models.

(2) *Central counterparty* means a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer.

(3) *Central securities depository services* means services of a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act (15 U.S.C. 78c(a)(23)(A)).

(4) *Clearing agency involved in activities with a more complex risk profile* means a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1) and that:

(i) Provides central counterparty services for security-based swaps;

(ii) Has been determined by the Commission to be involved in activities with a more complex risk profile at the time of its initial registration; or

(iii) Is subsequently determined by the Commission to be involved in activities with a more complex risk profile pursuant to § 240.17Ab2–2(c).

(5) *Conforming model validation* means an evaluation of the performance of each material risk management model used by a covered clearing agency (and the related parameters and assumptions associated with such models), including initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements, performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated.

(6) *Conforming sensitivity analysis* means a sensitivity analysis that:

(i) Considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market

conditions. Sensitivity analysis must use actual and hypothetical portfolios that reflect the characteristics of proprietary positions and, where applicable, customer positions;

(ii) When performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency; and

(iii) Tests the sensitivity of the model to stressed market conditions, including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.

(7) *Covered clearing agency* means a designated clearing agency, a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*), or any clearing agency determined to be a covered clearing agency by the Commission pursuant to § 240.17Ab2–2.

(8) *Designated clearing agency* means a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1) that is designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*) and for which the Commission is the supervisory agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*).

(9) *Financial market utility* has the same meaning as defined in Section 803(6) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5462(6)).

(10) *Link* means, for purposes of paragraph (e)(20) of this section, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading venues that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business.

(11) *Net capital* as used in paragraph (b)(7) of this section means net capital as defined in § 240.15c3–1 for broker-dealers or any similar risk adjusted capital calculation for all other prospective clearing members.

(12) *Normal market conditions* as used in paragraphs (b)(1) and (2) of this section means conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time.

(13) *Participant family* means that if a participant directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another participant then the affiliated participants shall be collectively deemed to be a single participant family for purposes of paragraphs (b)(3), (d)(14), (e)(4), and (e)(7) of this section.

(14) *Potential future exposure* means the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99% with respect to the estimated distribution of future exposure.

(15) *Qualifying liquid resources* means, for any covered clearing agency, the following, in each relevant currency:

(i) Cash held either at the central bank of issue or at creditworthy commercial banks;

(ii) Assets that are readily available and convertible into cash through prearranged funding arrangements without material adverse change provisions, such as:

(A) Committed arrangements, including:

(*1*) Lines of credit,

(*2*) Foreign exchange swaps, and

(*3*) Repurchase agreements; or

(B) Other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and

(iii) Other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank that permits said pledges or other transactions by the covered clearing agency.

(16) *Security-based swap* means a security-based swap as defined in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)).

(17) *Sensitivity analysis* means an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs.

(18) *Stress testing* means the estimation of credit or liquidity exposures that would result from the realization of extreme but plausible price changes or changes in other valuation inputs and assumptions.

(19) *Systemically important in multiple jurisdictions* means, with respect to a covered clearing agency, a covered clearing agency that has been determined by the Commission to be systemically important in more than one jurisdiction pursuant to § 240.17Ab2–2.

(20) *Transparent* means, for the purposes of paragraphs (e)(1), (2), and (10) of this section, to the extent consistent with other statutory and Commission requirements on confidentiality and disclosure, that relevant documentation is disclosed, as appropriate, to the Commission and to other relevant authorities, to clearing members and to customers of clearing members, to the owners of the covered clearing agency, and to the public.

* * * * *

(d) Each registered clearing agency that is not a covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

* * * * *

(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

(2) Provide for governance arrangements that:

(i) Are clear and transparent;

(ii) Clearly prioritize the safety and efficiency of the covered clearing agency;

(iii) Support the public interest requirements in Section 17A of the Exchange Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants; and

(iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.

(3) Maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which:

(i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency,

that are subject to review on a specified periodic basis and approved by the board of directors annually;

(ii) Includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses;

(iii) Provides risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors;

(iv) Provides risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an audit committee of the board of directors, respectively; and

(v) Provides for an independent audit committee.

(4) Effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:

(i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency not subject to paragraph (e)(4)(ii) of this section, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iv) Including prefunded financial resources, excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under paragraphs (e)(4)(i) through (iii) of this section, as applicable;

(v) Maintaining the financial resources required under paragraphs (e)(4)(i) through (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds;

(vi) Testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements under paragraphs (e)(4)(i) through (iii) of this section, as applicable, by:

(A) Conducting a stress test of its total financial resources once each day using standard predetermined parameters and assumptions;

(B) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current and evolving market conditions;

(C) Conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, and when the size or concentration of positions held by the covered clearing agency's participants increases significantly; and

(D) Reporting the results of its analyses under paragraphs (e)(4)(iv)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management framework, in supporting compliance with the minimum financial resources requirements set forth in paragraphs (e)(4)(i) through (iii) of this section; and

(vii) Performing a conforming model validation for its credit risk models to be performed not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section.

(5) Limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure; and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually.

(6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum:

(i) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market;

(ii) Marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances;

(iii) Calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;

(iv) Uses reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable;

(v) Uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products;

(vi) Is monitored by management on an ongoing basis and regularly reviewed, tested, and verified by:

(A) Conducting backtests of its margin resources at least once each day using standard predetermined parameters and assumptions;

(B) Conducting a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of the covered clearing agency's margin resources;

(C) Conducting a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting more frequently than monthly during periods of time when the products cleared or markets served display high volatility or become less liquid, and when the size or concentration of positions held by the covered clearing agency's participants increases or decreases significantly; and

(D) Reporting the results of its analyses under paragraphs (e)(6)(vi)(B) and (C) of this section to appropriate decision makers at the covered clearing

agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management framework; and

(vii) Requires a conforming model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section.

(7) Effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following:

(i) Maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions;

(ii) Holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under paragraph (e)(7)(i) of this section in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members;

(iii) Using the access to accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(a)), or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk;

(iv) Undertaking due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has:

(A) Sufficient information to understand and manage the liquidity provider's liquidity risks; and

(B) The capacity to perform as required under its commitments to provide liquidity to the covered clearing agency;

(v) Maintaining and testing with each liquidity provider, to the extent practicable, the covered clearing agency's procedures and operational capacity for accessing each type of relevant liquidity resource under paragraph (e)(7)(i) of this section at least annually;

(vi) Determining the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under paragraph (e)(7)(i) of this section by, at a minimum:

(A) Conducting a stress test of its liquidity resources at least once each day using standard and predetermined parameters and assumptions;

(B) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the clearing agency's identified liquidity needs and resources in light of current and evolving market conditions;

(C) Conducting a comprehensive analysis of the scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, when the size or concentration of positions held by the clearing agency's participants increases significantly and in other appropriate circumstances described in such policies and procedures; and

(D) Reporting the results of its analyses under paragraphs (e)(6)(vii)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its liquidity risk management methodology, model parameters, and any other relevant aspects of its credit risk management framework;

(vii) Performing a conforming model validation of its liquidity risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section;

(viii) Addressing foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations;

(ix) Describing the covered clearing agency's process to replenish any liquid resources that the clearing agency may employ during a stress event; and

(x) Undertaking an analysis at least once a year that evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides central counterparty services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.

(8) Define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.

(9) Conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.

(10) Establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.

(11) When the covered clearing agency provides central securities depository services:

(i) Maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities;

(ii) Implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains; and

(iii) Protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.

(12) Eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs if the covered clearing agency settles transactions that involve the settlement of two linked obligations.

(13) Ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, doing the following:

(i) Addressing allocation of credit losses the covered clearing agency may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers;

(ii) Describing the covered clearing agency's process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated; and

(iii) Requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.

(14) Enable, when the covered clearing agency provides central counterparty services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant.

(15) Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:

(i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;

(ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:

(A) Shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraphs (e)(4)(i) through (iii) of this section, as applicable, and the liquidity risk standard in paragraphs (e)(7)(i) and (ii) of this section; and

(B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions; and

(iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.

(16) Safeguard the covered clearing agency's own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.

(17) Manage the covered clearing agency's operational risks by:

(i) Identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls;

(ii) Establishing and maintaining policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and

(iii) Establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.

(18) Establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

(19) Identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.

(20) Identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.

(21) Be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency's management regularly review the efficiency and effectiveness of its:

(i) Clearing and settlement arrangements;

(ii) Operating structure, including risk management policies, procedures, and systems;

(iii) Scope of products cleared, settled, or recorded; and

(iv) Use of technology and communication procedures.

(22) Use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.

(23) Maintain clear and comprehensive rules and procedures that provide for the following:

(i) Publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures;

(ii) Providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency;

(iii) Publicly disclosing relevant basic data on transaction volume and values;

(iv) Providing a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management, accurate in all material respects at the time of publication, that includes:

(A) *Executive summary.* An executive summary of the key points from paragraphs (e)(23)(iv)(B), (C), and (D) of this section;

(B) *Summary of material changes since the last update of the disclosure.* A summary of the material changes since the last update of paragraph (e)(23)(iv)(C) or (D) of this section;

(C) *General background on the covered clearing agency.* A description of:

(*1*) The covered clearing agency's function and the markets it serves,

(*2*) Basic data and performance statistics on the covered clearing agency's services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability, and

(*3*) The covered clearing agency's general organization, legal and regulatory framework, and system design and operations; and

(D) *Standard-by-standard summary narrative.* A comprehensive narrative disclosure for each applicable standard set forth in paragraphs (e)(1) through (22) of this section with sufficient detail and context to enable a reader to understand the covered clearing agency's approach to controlling the risks and addressing the requirements in each standard; and

(v) Updating the public disclosure under paragraph (e)(23)(iv) of this section every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary to ensure statements previously provided under paragraph (e)(23)(iv) of this section remain accurate in all material respects.

(f) For purposes of enforcing the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*), a designated clearing agency for which the Commission acts as supervisory agency shall be subject to, and the Commission shall have the authority under, the provisions of paragraphs (b) through (n) of Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if such designated clearing agency were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.

By the Commission.

Dated: March 12, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05806 Filed 3–25–14; 8:45 a.m.]

Editorial Note: Proposed rule document 2014–05806 was originally published on pages 16865 through 16975 in the issue of Wednesday, March 26, 2014. In that publication the footnotes contained erroneous entries. The corrected document is republished in its entirety.

[FR Doc. R1–2014–05806 Filed 5–21–14; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL REGISTER

Vol. 79 Thursday,

No. 99 May 22, 2014

Part III

Office of Management and Budget

Standard Occupational Classification (SOC)—Revision for 2018; Notice

OFFICE OF MANAGEMENT AND BUDGET

Standard Occupational Classification (SOC)—Revision for 2018; Notice

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of solicitation of comments for the 2018 SOC revision.

SUMMARY: Under 31 U.S.C. 1104(d) and 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) announces the review of the *2010 Standard Occupational Classification* (*SOC*) *Manual* for possible revision in 2018 and solicits public comment on: the proposed revision of the 2010 SOC Classification Principles; the intention to retain the 2010 SOC Coding Guidelines; the intention to retain the 2010 SOC Major Group Structure; the correction, change, or combination of selected 2010 SOC detailed occupations, and inclusion of new detailed occupations. This review and possible revision of the 2010 SOC is intended to be completed by the end of 2016 and then released to begin use in reference year 2018. Details about these topics are available in the **SUPPLEMENTARY INFORMATION** section below.

DATES: To ensure consideration, all comments must be received in writing on or before July 21, 2014. Comments received with subject ''2018 SOC'' by the date specified above will be included as part of the official record. Please be aware that mail processing at Federal facilities may be delayed by security screening. Respondents are encouraged to send comments via email, FAX, or via *http://www.regulations.gov* (discussed in **ADDRESSES** below).

ADDRESSES: As indicated in the *SOC Manual 2010,* OMB established the SOC Policy Committee (SOCPC), chaired by the Bureau of Labor Statistics (BLS), to ensure that the SOC remains relevant and meets the needs of individuals and organizations. Accordingly, comments may be sent to: Standard Occupational Classification Policy Committee, U.S. Bureau of Labor Statistics, Suite 2135, 2 Massachusetts Avenue NE., Washington, DC 20212. Telephone number: (202) 691–6500; fax number: (202) 691–6444; or emailed to *soc@BLS.gov* with the subject ''2018 SOC.'' Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communication methods. Comments may be sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents published in the **Federal Register** that are open for comment. Simply type ''2018 SOC'' (in quotes) in the search box for ''Rules, Comments, Adjudications or Supporting Documents'' and follow the instructions.

Electronic availability. This document is available on the Internet from the SOC Web site at *http://www.bls.gov/soc* under the section titled ''*2018 SOC Revision Process.*'' To obtain this document via email, send a message to *soc@bls.gov.* The SOC Web site contains information on the purpose, background, and structure of the SOC, as well as additional guidance on providing input to the SOCPC for consideration by OMB during the SOC revision for 2018.

Availability of comment materials. OMB and the SOCPC welcome comments related to any aspect of occupational classification, the 2010 SOC, or the revision process. All comments received will be available to the public through relevant Web sites or by visiting the BLS during normal business hours, 8:15 a.m. to 4:45 p.m., in Suite 2135, 2 Massachusetts Avenue NE., Washington, DC 20212. Please call BLS at (202) 691–6500 to make an appointment if you wish to physically view the comments received in response to this notice. Because all comments will be available to the public, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, Office of Information and Regulatory Affairs, OMB, 10201 New Executive Office Building, 725 17th Street NW., Washington, DC 20503; email: *pbugg@omb.eop.gov;* telephone number: (202) 395–3095; fax number: (202) 395–7245.

SUPPLEMENTARY INFORMATION:

History of the 2010 SOC Revision

The U.S. Federal statistical system is decentralized, with 13 statistical agencies that have data collection as their primary mission and over 100 other agencies that collect data along with carrying out another primary mission. OMB coordinates the Federal statistical system by developing and overseeing the implementation of Government-wide principles, policies, standards, and guidelines concerning the presentation and dissemination of statistical information. The Standard Occupational Classification (SOC) is one of several standard classification systems established by OMB to ensure coordination of Federal statistical activities. All Federal agencies that publish occupational data for statistical purposes are required to use the SOC to increase data comparability (and thus, data utility) across Federal programs.

The SOC classifies all occupations in the economy, including private, public, and military occupations, in order to provide a means to compare occupational data produced for statistical purposes across agencies. It is designed to reflect the current occupational work structure in the U.S. and to cover all occupations in which work is performed for pay or profit. Information about occupations—employment levels, trends, pay and benefits, demographic characteristics, skills required, and many other items—is widely used by individuals, businesses, researchers, educators, and public policy-makers. The SOC helps ensure that occupational data produced across the Federal statistical system are comparable and can be used together in analysis. It is important to note that the SOC is designed and maintained solely for statistical purposes. Consequently, although the classification may also be used for various nonstatistical purposes (e.g., for administrative, regulatory, or taxation functions), the requirements of government agencies or private users that choose to use the SOC for nonstatistical purposes play no role in its development or revision.

To reflect changes in the economy and in the nature of work, the revision of the SOC must be considered periodically. The SOC was first issued in 1977, with a subsequent revision in 1980. Although the 1980 SOC was the basis for the occupational classification system used in the Census of Population and Housing in 1980 and 1990, neither the 1977 nor the 1980 SOC was widely used for other Federal data sources. With the implementation of the 2000 SOC, for the first time all major occupational data sources produced by the Federal statistical system provided comparable data, greatly improving the utility of the data. The 2010 SOC revision structured data collection, improved comparability, and maintained currency.

The SOCPC, comprised of representatives from nine Federal

agencies, was originally chartered in 2005 by OMB to coordinate the revision of the SOC for 2010. Beginning in 2006, OMB published notices in the **Federal Register** to solicit public comment, questions, and suggestions for the 2010 SOC. The notices resulted in hundreds of comments. Based on these comments, the SOCPC formulated recommendations to OMB. Working with the SOCPC, OMB made its final decisions on the 2010 SOC, published these decisions in the **Federal Register** in January 2009, and then published final definitions for all detailed 2010 SOC occupations in the *SOC Manual 2010.*

The 2010 SOC revision resulted in both major and minor changes to the 2000 SOC. Although the 2010 SOC retained the basic 2000 SOC major group structure, its revisions increased clarity, corrected errors, and accounted for changes in technology and in the nature or organization of work in our economy. The 821 detailed occupations in the 2000 SOC expanded to 840 in 2010—a net increase that combined some occupations with others and added new ones as well. Meanwhile, almost half of the detailed occupations in the 2010 SOC remained the same as in 2000. However, there were significant updates to information technology, healthcare, and human resource occupations.

The 2010 SOC formalized a set of Coding Guidelines to help data collectors code occupations more consistently and to help data users better understand how occupations are classified. The Direct Match Title File was also introduced as a new feature. The Direct Match Title File lists associated job titles for detailed SOC occupations. Each of these titles is directly matched to a single SOC occupation. All workers with a job title listed in the Direct Match Title File are classified in only one detailed SOC occupation code. Documents related to the Direct Match Title File are available at *http://www.bls.gov/soc/home.htm#DMTF.* The Direct Match Title File serves as the source for the revamped, illustrative examples provided for each occupation in the 2010 SOC Manual.

OMB charged the SOCPC to continue as a standing committee to facilitate smooth processes for supporting the use of the SOC and for conducting future SOC revisions.

Review of the 2010 SOC and Request for Comments

OMB has requested that the SOCPC review the 2010 SOC for possible revision for 2018. Given the multiple interdependent programs that rely on the SOC, coordinating the decennial revisions of the SOC with these programs is best accomplished by timing revisions of the SOC for the year following North American Industry Classification System revisions, which occur for years ending in 2 and 7. The next such year is 2018, which has the additional benefit of coinciding with the beginning year of the American Community Survey five-year set of surveys that bracket the 2020 Decennial Census. Thus, OMB is soliciting comments for revision of the SOC for 2018 and plans to do so every 10 years thereafter.

OMB and the SOCPC solicit and welcome comments related to any aspect of occupational classification, especially comments concerning the following items which are described in more detail below:

- The proposed revision to the 2010 SOC Classification Principles;
- the intention to retain the 2010 SOC Coding Guidelines;
- the intention to retain the 2010 SOC Major Group structure;
- the correction, change, or combination of 2010 SOC detailed occupations; and
- proposals for new detailed occupations.

The Proposed Revision to the 2010 SOC Classification Principles

The SOC Classification Principles form the basis on which the SOC is structured and provide a foundation for classification decisions. The SOCPC proposes to modestly revise the 2010 SOC Classification Principles, available at *http://www.bls.gov/soc/soc_2010_class_prin_cod_guide.pdf,* and to add a new principle. Specifically, the SOCPC proposes: (1) To change the term ''lowest'' in the last sentence of Classification Principle 1 to ''most detailed'' for clarification; (2) to delete the last 4 words, ''at a competent level'' in Classification Principle 2 because they are unnecessary; (3) to add language clarifying that managers direct ''resources'' in Classification Principle 3; and (4) to add a principle related to maintaining time series continuity (Classification Principle 10) to emphasize its importance.

Accordingly, the proposed revisions to the 2010 Classification Principles for use in the 2018 SOC would result in the following set of SOC Classification Principles:

1. The SOC covers all occupations in which work is performed for pay or profit, including work performed in family-operated enterprises by family members who are not directly compensated. It excludes occupations unique to volunteers. Each occupation is assigned to only one occupational category at the most detailed level of the classification.

2. Occupations are classified based on work performed and, in some cases, on the skills, education and/or training needed to perform the work.

3. Workers primarily engaged in planning and the directing of resources are classified in management occupations in Major Group 11–0000. Duties of these workers may include supervision.

4. Supervisors of workers in Major Groups 13–0000 through 29–0000 usually have work experience and perform activities similar to those of the workers they supervise, and therefore are classified with the workers they supervise.

5. Workers in Major Group 31–0000 Healthcare Support Occupations assist and are usually supervised by workers in Major Group 29–0000 Healthcare Practitioners and Technical Occupations, and therefore there are no first-line supervisor occupations in Major Group 31–0000.

6. Workers in Major Groups 33–0000 through 53–0000 whose primary duty is supervising are classified in the appropriate first-line supervisor category because their work activities are distinct from those of the workers they supervise.

7. Apprentices and trainees are classified with the occupations for which they are being trained, while helpers and aides are classified separately because they are not in training for the occupation they are helping.

8. If an occupation is not included as a distinct detailed occupation in the structure, it is classified in an appropriate ''All Other,'' or residual, occupation. ''All Other'' occupations are placed in the structure when it is determined that the detailed occupations comprising a broad occupation group do not account for all of the workers in the group. These occupations appear as the last occupation in the group with a code ending in ''9'' and are identified in their title by having ''All Other'' appear at the end.

9. The U.S. Bureau of Labor Statistics and the U.S. Census Bureau are charged with collecting and reporting data on total U.S. employment across the full spectrum of SOC major groups. Thus, for a detailed occupation to be included in the SOC, either the Bureau of Labor Statistics or the Census Bureau must be able to collect and report data on that occupation.

10. To maximize the comparability of data, time series continuity is maintained to the extent possible.

The Intention To Retain the 2010 SOC Coding Guidelines

The SOC Coding Guidelines are intended to assist users when assigning SOC codes and titles to survey responses, and in other coding activities. The SOCPC does not propose any revisions to the Coding Guidelines that governed the 2010 SOC; however, suggestions from the public are welcome.

1. A worker should be assigned to an SOC occupation code based on work performed.

2. When workers in a single job could be coded in more than one occupation, they should be coded in the occupation that requires the highest level of skill. If there is no measurable difference in skill requirements, workers should be coded in the occupation in which they spend the most time. Workers whose job is to teach at different levels (e.g., elementary, middle, or secondary) should be coded in the occupation corresponding to the highest educational level they teach.

3. Data collection and reporting agencies should assign workers to the most detailed occupation possible. Different agencies may use different levels of aggregation, depending on their ability to collect data. For more information on data produced using the SOC, see the Frequently Asked Questions (FAQs) section of the 2010 SOC User Guide, available at *http://www.bls.gov/soc/soc_2010_faqs_and_acknowledgements.pdf.*

4. Workers who perform activities not described in any distinct detailed occupation in the SOC structure should be coded in an appropriate ''All Other'' or residual occupation. These residual occupational categories appear as the last occupation in a group with a code ending in ''9'' and are identified by having the words ''All Other'' appear at the end of the title.

5. Workers in Major Groups 33–0000 through 53–0000 who *spend 80 percent or more of their time performing supervisory activities* are coded in the appropriate first-line supervisor category in the SOC. In these same Major Groups (33–0000 through 53–0000), persons with supervisory duties who *spend less than 80 percent of their time supervising are coded with the workers they supervise.*

6. Licensed and non-licensed workers performing the same work should be coded together in the same detailed occupation, except where specified otherwise in the SOC definition.

The Intention To Retain the 2010 SOC Major Group Structure

The 2010 SOC classifies workers at four levels of aggregation: (1) Major Group; (2) Minor Group; (3) Broad Occupation; and (4) Detailed Occupation.

All occupations are clustered into one of the following 23 Major Groups:

11–0000 Management Occupations
13–0000 Business and Financial Operations Occupations
15–0000 Computer and Mathematical Occupations
17–0000 Architecture and Engineering Occupations
19–0000 Life, Physical, and Social Science Occupations
21–0000 Community and Social Service Occupations
23–0000 Legal Occupations
25–0000 Education, Training, and Library Occupations
27–0000 Arts, Design, Entertainment, Sports, and Media Occupations
29–0000 Healthcare Practitioners and Technical Occupations
31–0000 Healthcare Support Occupations
33–0000 Protective Service Occupations
35–0000 Food Preparation and Serving Related Occupations
37–0000 Building and Grounds Cleaning and Maintenance Occupations
39–0000 Personal Care and Service Occupations
41–0000 Sales and Related Occupations
43–0000 Office and Administrative Support Occupations
45–0000 Farming, Fishing, and Forestry Occupations
47–0000 Construction and Extraction Occupations
49–0000 Installation, Maintenance, and Repair Occupations
51–0000 Production Occupations
53–0000 Transportation and Material Moving Occupations
55–0000 Military Specific Occupations

In order to ensure consistency and satisfy a strong user preference for time series continuity in occupational employment and wage data, the SOCPC proposes that no changes be made to the current Major Groups as denoted in the *SOC Manual 2010.* However, comments are welcome on the proposal to retain the 2010 Major Groups. Commenters may also submit proposals to update the 2010 Major Group titles to reflect current industry terminology.

Proposals for Changes to Existing 2010 SOC Detailed Occupations

Generally, the definitions for SOC detailed occupations contain the minimum description needed to determine which workers would be classified in a particular occupation. Comments are welcome on corrections concerning typographical or definitional errors and other changes to the existing detailed occupations, including the combination of occupations. Suggested changes to existing detailed occupations may address the occupational title, definition, or its placement in the structure.

In addition, each SOC occupation has one or more Illustrative Examples, drawn from the Direct Match Title File, referenced above. Comments are invited on Illustrative Examples or Direct Match Titles that should be added, moved, or deleted. Detailed information on the purpose, structure, and the components of SOC definitions is available on the BLS SOC Web site at *http://www.bls.gov/soc.* For a description of the elements of an SOC definition, please see ''Revising the Standard Occupational Classification'' available at *http://www.bls.gov/soc/revising_the_standard_occupational_classification_2018.pdf.* In particular, Figure 1 and the accompanying text in that document describe the elements of a detailed SOC occupation. Additional guidance on the type of information that the SOCPC will find critical in making recommendations to OMB appears in the section ''Public Input Requested'' below.

Proposals for New Detailed Occupations

The SOCPC also invites proposals for new detailed occupations or the splitting of occupations, as warranted by changes in the economy, technology, and business practices that affect how employers structure work. Suggestions should be guided by the 2010 SOC Classification Principles and the proposed changes to the Classification Principles, above. In particular, suggestions should specifically address Classification Principles 2 and 9, as discussed below.

Classification Principle 2 dictates that the nature of the work performed is the main criterion for classifying a detailed occupation and determining where to place it in the structure. Thus, the SOCPC needs specific information describing the work performed by workers in the occupation, such as specific duties and tasks. This information is useful in evaluating whether the work performed in a recommended new occupation is sufficiently different from work performed in existing occupations, and to determine where in the classification structure a new occupation should be

placed. As noted in Classification Principle 2, skills, education, or training are occasionally used to guide the classification decisions; primarily, however, classification decisions are based on the nature of the work performed.

Classification Principle 9 pertains to collectability—that is, whether data can actually be collected on the occupation. For a detailed occupation to be included in the SOC, either BLS or the Census Bureau must be able to collect and report data on the occupation. BLS and the Census Bureau are responsible for producing data across the entire range of occupations in the U.S. labor market, and conduct comprehensive household and business surveys that collect occupational data.

Collectability is partly a function of the size of the occupation—it must be large enough to be detected in sample household or business surveys. However, the SOCPC will not use a specific employment size cut-off to determine its recommendations to OMB. This is because small occupations that are concentrated in certain industries or geographic areas may be collectable, while occupations of similar or larger employment that are spread throughout the economy may not be collectable. Therefore, size is not the only consideration in collectability. Collectability is also related to the type of data collection used, specifically the comprehensive household and business surveys conducted by BLS and the Census Bureau.

In general, household surveys collect less information on the occupation of individuals than is possible in business surveys. For example, the Current Population Survey (CPS) and the American Community Survey (ACS)—both of which are household surveys—measure occupation by collecting the individual's job title and a very brief description of the person's most important activities or duties. In most household surveys, coders are not able to recontact the respondent for clarification. Since less information is available for assigning classification codes, household surveys generally provide less occupational detail than business surveys. Thus, occupational categories with fine distinctions from one another may not be collectable in household surveys. However, household surveys, such as the CPS and ACS, are the main sources of demographic information on workers by occupation, especially educational attainment, gender, age, and race/ethnicity. In addition, the CPS and ACS are the main sources of occupational data for parts of the workforce not covered by business surveys, namely the self-employed, unpaid family workers, and workers in private households and most agricultural industries. Occupations that are primarily comprised of these types of workers or mainly found in private households or agriculture therefore must be collectable on household surveys.

Business surveys collect data on occupations directly from employers. These surveys rely on the employer for information about the workers' duties, and often coders may recontact the employer to obtain clarifications. Thus, it is often possible to obtain detailed information about the work performed, providing occupational coders with more detail than is possible in most household surveys. Business surveys provide data on employment, wages, and benefits by occupation, and sometimes on other characteristics of the job or worker. In general, however, business surveys do not provide demographic information, nor do they include the self-employed, unpaid family workers, workers in private households, or workers in most agricultural industries.

Suggestions for new detailed occupations should also consider the proposed Classification Principle 10, above. To maintain the utility of the SOC, the SOCPC's recommendations to OMB will reflect the importance of maintaining time series continuity. To the extent possible, new occupations proposed for the 2018 SOC should be easily cross-walked to the 2010 SOC.

Job vs. Occupation

When reviewing and evaluating individual proposals, the SOCPC will consider the degree to which a proposed addition relates to a *job* rather than an *occupation.* In many cases, job titles intrinsically represent *jobs,* rather than true *occupations* as defined in the SOC. Specifically, a *job* is a set of work activities performed by an individual. The exact set of activities varies depending on the size and organization of the establishment and is often, but not always, unique to that individual worker. An *occupation* is a grouping of a number of individual jobs. Thus, an occupational definition is a collective description of a number of similar individual jobs performed, with minor variations, in different establishments. Occupational classification schemes such as the SOC organize millions of jobs into discrete occupations on the basis of their similarities as determined by the schemes' classification principles (please see the section above on ''The Proposed Revision to the 2010 SOC Classification Principles''). For example, in the 2010 SOC, workers with the *job* title 'Coronary Care Unit Staff Nurse' are classified in the 2010 SOC *occupation* Registered Nurses (29–1141).' Likewise, workers with the *job* title 'Automotive Fuel Injection Servicer' are classified in the 2010 SOC *occupation* Automotive Service Technicians and Mechanics (49–3023).

Public Input Requested

The following information will assist the SOCPC in its consideration of comments on the review and possible revision of the 2010 SOC (particularly, for proposals of new detailed occupations):

1. *Nature of the work performed.* What duties do the workers in the occupation perform? Which duties are common to all jobs in the occupation and would therefore appear in the ''required duties'' statement in the occupation definition. (For a description of the elements of an SOC definition, please see ''Revising the Standard Occupational Classification'' available at *http://www.bls.gov/soc/revising_the_standard_occupational_classification_2018.pdf.* In particular, Figure 1 and the accompanying text in that document describe the elements of a detailed SOC occupation.) What duties are frequent but not performed by all workers and might be identified in ''may'' statements in the occupation definition? Are there supervisory or management duties? If so, what types of workers are supervised and what types of management activities are performed? For revisions to existing occupations, is the work described in the SOC definition accurate and up to date? Addressing the nature of the work performed is the most important type of information the SOCPC will use when considering comments.

2. *Attributes of the work performed that make the occupation distinct from other detailed occupations in the SOC.* Does the same or similar work appear in other SOC occupations? If so, how is the proposed occupation distinct? What changes should be made to existing SOC occupations that have the same or similar work?

3. *Job titles.* What job titles are commonly used by workers in this occupation? Are these titles unique to the proposed occupation? Are titles listed in the Direct Match Title File actually in use? Are there other titles that should be included in the file?

4. *Indications of the number of jobs or workers in the occupation.* Employment size and expected growth are helpful in evaluating collectability. Please provide references for the sources of this information.

5. *Types of employers.* In what industries does this occupation occur? This information can help clarify the nature of the work performed and assist evaluation of collectability.

6. *Education and training.* What education and training are typically required for workers to be able to perform this occupation? What types of schools or training providers offer this education or training? How long does the education or training take? What degrees or other credentials are generally required, if any? Identification of specific education and training programs and institutions is helpful.

7. *Licensing.* Are licenses usually required? Identification of specific licenses and licensing agencies is helpful.

8. *Tools and technologies.* What tools and technologies are generally used by workers in performing the occupation? Are the tools and technologies mentioned in existing SOC occupation definitions accurate and up to date?

9. *Professional or trade associations and unions.* Are there professional or trade associations or labor unions related to the proposed occupation? Identification of specific associations or unions is helpful.

Instructions for Providing SOC Comments

Public comments in response to this and related **Federal Register** notices are likely to comprise the bulk of the information the SOCPC will use in developing recommendations to OMB. Commenters are strongly encouraged to conduct the following activities:

1. Carefully review the Classification Principles and Coding Guidelines, as these guide the SOCPC's recommendations. Comments that reflect these principles and guidelines are likely to be more pertinent to the SOCPC's deliberations.

2. Carefully review the elements of an SOC detailed occupation as described in ''Revising the Standard Occupational Classification'' available at *http://www.bls.gov/soc/revising_the_standard_occupational_classification_2018.pdf.* In particular, Figure 1 and the accompanying text in that document describe the elements of a detailed SOC occupation. Review the ''Public Input Requested'' section above and provide the specific information requested.

3. Provide information on the nature of the work performed, including specific activities and tasks. This is the most important type of information for new occupations. Indications of activities that are required, and those that ''may'' be performed, by the worker are also helpful. Suggestions for a potential 2018 SOC code, title, and definition would be useful.

4. Prepare well-organized and concise comments. The SOCPC expects to receive hundreds of comments.

5. Include in the proposals a detailed description of the occupation together with an estimate of employment, and address the ability to collect data on the occupation, along with comments indicating how suggested changes will better reflect the current occupational structure in the U.S. economy.

OMB expects to consider the final recommendations and approve the final 2018 SOC by spring 2017. After the 2018 SOC is approved, the SOCPC will prepare the 2018 SOC Manual and supporting materials, make them available to the public, and continue its role of maintaining the classification leading up to the next revision.

Howard A. Shelanski,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2014–11913 Filed 5–21–14; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 99 May 22, 2014

Part IV

Office of Management and Budget

2012 North American Industry Classification System (NAICS)—Updates for 2017; Notices

OFFICE OF MANAGEMENT AND BUDGET

2012 North American Industry Classification System (NAICS)—Updates for 2017

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of Solicitation for Proposals To Revise Portions of NAICS for 2017.

SUMMARY: Under the authority of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1104(d)) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(e)), the Office of Management and Budget (OMB), through its Economic Classification Policy Committee (ECPC), is soliciting proposals from the public for changes to the structure and content of the North American Industry Classification System (NAICS) for inclusion in a potential 2017 revision. There are six parts in the **SUPPLEMENTARY INFORMATION** section below. Part I provides background on NAICS. Part II includes a solicitation of proposals for new and emerging industries. Part III solicits public comments on electronic dissemination of the potential revision of NAICS for 2017. Part IV solicits public comments on updating the structure of the oil and gas industries in NAICS 2012. Part V provides an update on the classification of manufacturing units that outsource. Part VI presents notification of a method to publicize corrections for errors and omissions that are identified in NAICS.

In soliciting comments about revising NAICS, the ECPC does not intend to open the entire classification for substantial change in 2017. The ECPC will consider public comments and proposals for changes or modifications that advance the goals of NAICS as outlined in Part I of the **SUPPLEMENTARY INFORMATION** section below. The ECPC is also seeking and will consider comments related to consistent classification in an era of greater specialization and globalization.

DATES: To ensure consideration of your comments or proposals related to the potential revision of NAICS for 2017 as detailed in this notice, comments must be in writing and received no later than July 21, 2014. Please be aware of delays in mail processing at Federal facilities due to tightened security. Respondents are encouraged to send both a hard copy and a second copy via fax or email (discussed in **ADDRESSES** below).

ADDRESSES: Correspondence concerning the ECPC's intent to review and possibly revise NAICS for 2017, comments on the business organization clarifications, and all proposals for new industries in NAICS for 2017 should be sent to John Murphy, Chair, Economic Classification Policy Committee, Census Bureau, Room 8K157, Washington, DC 20233–6500. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to also submit comments by email to *John.Burns.Murphy@census.gov* or by fax at (301) 763–8744. Mr. Murphy can be reached at (301) 763–5172.

Comments may also be sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''NAICS for 2017'' (in quotes) in the Rules, Comments, Adjudications or Supporting Documents search box, click Search, click Comment Now!, and follow the instructions for submitting comments.

All comments regarding this notice received via the Web site, email, fax, hardcopy, or other means, are part of the public record as submitted. For this reason, do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Please consider including contact information and a phone number or email address with your comments to facilitate follow-up if necessary.

Electronic Availability: This document is available on the Census Bureau Web site at *http://www.census.gov/naics*. This site contains previous NAICS United States **Federal Register** notices, ECPC Issues Papers, ECPC Reports, the structure and industry definitions for NAICS United States 2012, 2007, 2002, and 1997, and related documents.

Public Review Procedure: All comments and proposals received in response to this notice will be available for public inspection at the Census Bureau, Suitland, Maryland. Please telephone the Census Bureau at (301) 763–5172 to make an appointment to enter the Federal Center. OMB will publish all ECPC recommendations for changes to NAICS for 2017 resulting from this notice in the **Federal Register** for review and comment prior to final action.

FOR FURTHER INFORMATION CONTACT: John Murphy, Chair, Economic Classification Policy Committee, Census Bureau, Room 8K157, Washington, DC 20233–6500. Mr. Murphy can be reached at (301) 763–5172, by fax at (301) 763–8744, or by email at *John.Burns.Murphy@census.gov*.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section of this notice is divided into six parts. Part I provides background on NAICS; Part II includes a solicitation for proposals for new and emerging industries; Part III requests public input on electronic-only dissemination of *the potential revision of* NAICS for 2017; Part IV requests public input on updating the structure of the oil and gas industries; Part V provides an update on the classification of units that outsource manufacturing transformation activities; and Part VI notifies the public of the location where corrections of identified errors or omissions in NAICS will be publicized.

Part I. Background of NAICS

NAICS is a system for classifying establishments (individual business locations) by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments; and (2) to promote uniformity and comparability in the presentation and analysis of statistical data describing the North American economy. Federal statistical agencies use NAICS to collect or publish data by industry. It is also widely used by State agencies, trade associations, private businesses, and other organizations.

Mexico's *Instituto Nacional de Estadística y Geografía* (INEGI), Statistics Canada, and the United States Office of Management and Budget (OMB), through its Economic Classification Policy Committee (ECPC), collaborated on NAICS to make the industry statistics produced by the three countries comparable. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification. NAICS also reflects changes in technology and in the growth and diversification of services in recent decades. Industry statistics presented using NAICS 2012 are comparable, to a large extent, with statistics compiled according to the

latest revision of the United Nations' International Standard Industrial Classification (ISIC, Revision 4).

For these three countries, NAICS provides a consistent framework for the collection, tabulation, presentation, and analysis of industry statistics used by government policy analysts, by academics and researchers, by the business community, and by the public. Please note that NAICS is designed and maintained solely for statistical purposes to improve and keep current this Federal statistical standard. Consequently, although the classification may also be used for various nonstatistical purposes (e.g., for administrative, regulatory, or taxation functions), the requirements of government agencies or private users that choose to use NAICS for nonstatistical purposes play no role in its development or revision.

The four principles that guided the initial development of NAICS were:

(1) NAICS is erected on a production-oriented conceptual framework. This means that producing units that use the same or similar production processes are grouped together in NAICS.

(2) NAICS gives special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity is maintained to the extent possible.

(4) The system strives for compatibility with the two-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC, Rev. 3) of the United Nations.

The ECPC is committed to maintaining the principles of NAICS as it develops further refinements. NAICS uses a hierarchical structure to classify establishments from the broadest level to the most detailed level using the following format:

Sector	2-digit	Sectors represent the highest level of aggregation. There are 20 sectors in NAICS.
Subsector	3-digit	Subsectors represent the next, more detailed level of aggregation. There are 99 subsectors in NAICS.
Industry Group	4-digit	Industry groups are more detailed than subsectors. There are 312 industry groups in NAICS 2012.
NAICS Industry	5-digit	NAICS industries, in most cases, represent the lowest level of three-country comparability. There are 713 five-digit industries in NAICS 2012.
National Industry	6-digit	National industries are the most detailed level, and represent the national level detail. There are 1,065 national industries in NAICS United States 2012.

The implementation of the first vintage of NAICS—NAICS 1997—affected almost half of the industries that were available for use under the 1987 Standard Industrial Classification (SIC). OMB's final decisions for the adoption of NAICS for the United States were published in the **Federal Register** on April 9, 1997 (62 FR 17288–17337). Subsequent NAICS revisions in 2002, 2007, and 2012 were more modest. Complete details of those revisions were published in the **Federal Register**. Revisions for 2002 were published on April 20, 2000 (65 FR 21242–21282), revisions for 2007 were published on March 16, 2006 (71 FR 28532–28533), and revisions for 2012 were published on August 17, 2011 (76 FR 51240–51243).

The development of NAICS represented a significant improvement over the previous industry classification systems used in North America. To ensure the accuracy, timeliness, and relevance of the classification, NAICS is reviewed every five years to determine what, if any, changes are required. The ECPC recognizes the costs involved when implementing industry classification revisions in statistical programs and the costs for data users when there are disruptions in the availability of data. The ECPC also recognizes the economic, statistical, and policy implications that arise when the industry classification system does not identify and account for important economic developments. Balancing the costs of change against the potential for more accurate and relevant economic statistics requires significant input from data producers, data providers, and data users.

Part II. New and Emerging Industries

NAICS was developed to be a dynamic industry classification. Every five years, the classification is reviewed to determine the need to identify new and emerging industries. The ECPC is soliciting public comments on the advisability of revising NAICS for new and emerging industries in 2017 and soliciting proposals for these new industries.

When developing proposals for new and emerging industries, please note that there are two separate economic classification initiatives underway in the United States. NAICS, the industry classification, is the subject of this notice, while the complementary North American Product Classification System (NAPCS) initiative is currently in development. The NAPCS product system described below will complement the NAICS industry system and provide an alternate way of classifying output.

NAICS was developed to classify units according to their production function. NAICS results in industries that group units undertaking similar activities using similar resources but does not necessarily group all similar products or outputs. NAPCS is being developed to classify the outputs of units, or in other words their products or transactions, within a demand-based conceptual framework. For example, the hypothetical product of a flu shot can be provided by a doctor's office, a hospital, or a walk-in clinic. Because these three units are classified to three different NAICS industries, data users who want information about all flu shots provided must be able to identify the individual products coming out of the units, which NAPCS is designed to do. Thus, in many cases, the need for specific statistical data can be met by aggregating product data across industries rather than by creating a new industry. This is particularly true with NAICS, which groups establishments into industries based on their primary production function. Proposals for new industries in NAICS for 2017 will be evaluated within the context of the industry classification system to determine the most appropriate resolution. For a detailed description of the NAPCS initiative, see the April 16, 1999, **Federal Register** notice (64 FR 18984–18989) available at *http://www.census.gov/napcs*.

Proposals for new industries will be evaluated using a variety of criteria. As previously mentioned, each proposal will be evaluated based on the

application of the production function concept, its impact on comparability within North America and with other regions, and its impact on time series. For any proposals that cross three-country levels of agreement, negotiations with Canada and Mexico, our partners in NAICS, will also influence the ECPC's recommendations on those proposals. In addition, other criteria may affect recommendations for adoption. From a practical standpoint, industries must be of appropriate size. At the national level, this is generally not a major concern but there are a variety of statistical programs that produce industry data at the regional, State, metropolitan area, or even county or local level. Proposed industries must include a sufficient number of establishments so that Federal agencies can publish industry data without disclosing information about the operations of individual firms. The ability of government agencies to classify, collect, and publish data on the proposed basis will also be taken into account. Proposed changes must be such that they can be applied by agencies within their normal processing operations. Any recommendations for change forwarded by the ECPC for consideration will also take into account the cost of making the changes. These costs can be considerable and the availability of funding to make changes is critical. The budgetary environment will be considered when the ECPC makes recommendations. As mentioned above, certain proposals may be more adequately addressed through the identification and collection of product data.

Proposals for new or revised industries should be consistent with the production-oriented conceptual framework incorporated into the principles of NAICS. When formulating proposals, please note that an industry classification system groups the economic activities of producing units, which means that the activities of similar producing units cannot be separated in the industry classification system.

Proposals must be in writing and include the following information:

(a) Specific economic activities to be covered by the proposed industry, the proposed industry's production processes, its specialized labor skills, and any unique materials used. This detail should demonstrate that the proposed industry will group establishments with similar production processes that are unique and clearly separable from the production processes of other industries.

(b) Relationship of the proposed industry to existing NAICS United States 2012 six-digit national industries.

(c) Documentation of the size and importance of the proposed industry in the United States.

(d) Information about the proposed industry in Canada and Mexico if available.

Proposals will be collected, reviewed, and analyzed. As necessary, proposals for change will be negotiated with our partners in Canada and Mexico. When this process is complete, the OMB will publish a **Federal Register** notice that contains the ECPC recommendations for additional public comment prior to a final determination of changes to NAICS for 2017.

Part III. Electronic Dissemination of NAICS 2017

Due to increasing printing costs and the accessibility of information on the Internet, the ECPC is considering disseminating NAICS United States 2017 electronically on the official NAICS Web site (*http://www.census.gov/naics*) and discontinuing printed publications. The ECPC believes that this is an appropriate time to solicit public input on the advisability of such a change.

Part IV. Updating the Structure of the Oil and Gas Industries

The ECPC is soliciting proposals for updating the structure of the oil and gas industries in Subsector 211, Oil and Gas Extraction. Since first defined in NAICS 1997, these industries continue to advance in the equipment and processes employed to produce oil and gas. With these changes, the ECPC is soliciting proposals on how the NAICS structure in this area can better reflect these advancements. Of particular interest are comments concerning onshore and offshore extraction, as well as conventional and unconventional methods of extraction. Proposals for change will be negotiated with our partners in Canada and Mexico, as trilateral agreement extends to the 5-digit NAICS industry level in this area of the structure.

Part V. Update on the Treatment of Manufacturing Units That Outsource Transformation

Recent years have witnessed rapid and widespread specialization in goods manufacturing as global competition has motivated producers to seek more efficient production methods. This has resulted in outsourcing manufacturing transformation activities (i.e., the actual physical, chemical or mechanical transformation of inputs into new outputs) to specialized establishments, both foreign and domestic. NAICS 2007 did not provide clear guidance on classification of units that control the entire process but subcontract out all manufacturing transformation activities. To address this shortcoming, the ECPC chartered a subcommittee to study the issue and provide classification guidance that would result in consistent classification of outsourcing establishments and comparable data for these outsourcing establishments across various statistical programs. As a result of that research, the ECPC recommended to OMB a classification of establishments that bear the overall responsibility and risk for bringing together all processes necessary for the production of a good in the manufacturing sector, even if the actual transformation is 100 percent outsourced.

OMB recognized that, from a conceptual standpoint, at the most aggregate level, goods producers arrange for and bring together all of the factors of production necessary to produce a good. Goods producers accept the entrepreneurial risk of producing and bringing goods to market. When individual steps in the complete process are outsourced, an establishment should remain classified in the manufacturing sector. Accordingly, OMB accepted the ECPC recommendation that factoryless goods producers (FGPs) be classified in manufacturing.

Implementing the guidance to classify establishments that outsource manufacturing transformation in the manufacturing sector of NAICS will potentially affect multiple agencies and programs within those agencies. Variations in classification from differing interpretations prior to OMB's guidance will result in differing impacts.

It is important to both statistical agencies and other data users to be able to distinguish between definitional and economic changes so that they can create continuous time series and accurately analyze data changes over time. The inclusion of revenues from FGP activities in manufacturing will effectively change the traditional definition of manufacturing, and is expected to affect statistical estimates at the national, State and regional levels. This includes statistical outputs such as the value of shipments for manufacturing industries, value of sales for wholesale trade industries, product data, material costs and other expenses, price indexes, labor and multifactor productivity series, and the national accounts. The ability to consistently identify establishments as FGPs and the

potential impact on various programs are currently being evaluated.

The following paragraphs present a partial list of the statistics that are subject to change based on this decision.

Bureau of Labor Statistics (BLS)

Quarterly Census of Employment and Wages (QCEW), Current Employment Statistics (CES), Job Openings and Labor Turnover Survey (JOLTS), Producer Price Index Program (PPI), Major Sector Productivity, Industry Productivity, Occupational Employment Statistics (OES), and other BLS programs that produce estimates using the NAICS classification system.

Bureau of Economic Analysis (BEA)

Industry Accounts (including Input-Output tables), International Area, National Income and Product Accounts, Regional Accounts, and other BEA programs that produce estimates using the NAICS classification system.

Census Bureau

Industry statistics from the Economic Census; Annual and Monthly Wholesale Trade Surveys; the Annual Survey of Manufacturers; Monthly Manufacturers' Inventories, Shipments, and Orders (M3); Manufacturing and Energy Consumption Survey (MECS); County Business Patterns (CBP); Quarterly Survey of Plant Capacity Utilization (QPC); Annual Capital Expenditures Survey (ACES); Business R&D and Innovation Survey (BRDIS); Business Expense Survey (BES); Quarterly Financial Report (QFR); and other series that are published using NAICS.

The level of impact will vary across programs and agencies based on the intensity of outsourcing.

The decision to classify FGPs in manufacturing was included in the *NAICS United States 2012 Manual*. OMB understood the considerable cost and lead-time required to implement this decision consistently across statistical programs using statistically sound methods. Thus, statistical programs were allowed to delay implementation while studying and analyzing the issue. If FGP identification and data collection are determined to be feasible, statistical programs are expected to implement this change for data reference year 2017.

While research is continuing, the ECPC is soliciting additional public comments on the advisability of classifying FGPs in the manufacturing sector of NAICS. A more complete discussion of the recommendation is available at: *http://www.census.gov/eos/www/naics/fr2010/ECPC_Recommendation_for_Classification_of_Outsourcing.pdf*. To the extent possible, comments should address the conceptual conclusions presented in the recommendation referenced above. While the final impact of this recommendation is not yet known, the scope of program and data changes, including breaks in time series, must be weighed against the value of more comparable statistics related to this phenomenon. The ECPC is also soliciting public comments on the balance between change and comparability.

Part VI. Changes to Account for Errors and Omissions in NAICS

No significant errors or omissions have been identified in NAICS 2012. Any errors or omissions that are identified in NAICS in the future will be corrected and posted on the official NAICS Web site at *http://www.census.gov/naics*.

Howard A. Shelanski,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2014–11914 Filed 5–21–14; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 99 May 22, 2014

Part V

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedures for High-Intensity Discharge Lamps; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2010–BT–TP–0044]

RIN 1904–AC37

Energy Conservation Program: Test Procedures for High-Intensity Discharge Lamps

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On December 15, 2011, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to establish test procedures (TP) for high-intensity discharge (HID) lamps (herein referred to as the December 2011 TP NOPR). In this supplemental notice of proposed rulemaking (SNOPR), DOE updates the industry standards proposed to be incorporated by reference in the December 2011 TP NOPR and proposes to revise or eliminate certain definitions relevant to HID lamps. DOE also provides clarification and additional background information on ambient temperature conditions, and revises proposed ambient air speed requirements. DOE revises its proposed sampling plan as well. In addition, DOE removes the directional lamp requirements and proposed lumen maintenance test method included in the December 2011 TP NOPR. The other provisions of the December 2011 TP NOPR are unaffected by this SNOPR.

DATES: DOE will accept comments, data, and information regarding this SNOPR submitted no later than June 23, 2014. See section IV, ''Public Participation,'' for details.

ADDRESSES: Any comments submitted must identify the SNOPR for test procedures for high-intensity discharge lamps and provide docket number EERE–2010–BT–TP–0044 and/or regulatory information number (RIN) 1904–AC37. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: HIDLamps-2010-TP-0044@ee.doe.gov.* Include the docket number (EERE–2010–BT–TP–0044) and/or RIN (1904–AC37) in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disk CD, in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Phone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No facsimiles (faxes) will be accepted.

A link to the docket Web page can be found at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/21.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page will contain instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment and review other public comments, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

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

Ms. Johanna Hariharan, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Hariharan@hq.doe.gov.*

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I. Authority and Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (Pub. L. 94–163, 42 U.S.C. 6291, *et seq.* ''EPCA'' or ''the Act'') sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles.[1] Part C of title III, ''Certain Industrial Equipment'' (42 U.S.C. 6311–6317), establishes an energy conservation program for such equipment.[2] Although HID lamps are defined in 42 U.S.C. 6291(46), DOE is required to set standards for HID lamps in 42 U.S.C. 6317(a)(1). Therefore, DOE has determined that the provisions of Part C are applicable to HID lamps.

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s) and 6316(a)), and (2) making representations about the efficiency of those products (42 U.S.C. 6315(b)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA (42 U.S.C. 6295(s) and 6316(a)(1)).

EPCA requires DOE to prescribe testing requirements for HID lamps within 30 months after issuance of a positive determination that energy conservation standards are technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(a)(1)) DOE published a positive final determination for HID lamps on July 1, 2010. 75 FR 37975.

General Test Procedures Rulemaking Process

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product or equipment during a representative average use cycle or period of use, as determined by the Secretary of Energy, and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Background

DOE published a NOPR on December 15, 2011 (herein referred to as the December 2011 TP NOPR) proposing test procedures for HID lamps to measure efficacy, color characteristics, and lumen maintenance. 76 FR 77914. DOE presented the December 2011 TP NOPR at a public meeting on January 19, 2012 (herein referred to as the January 2012 TP public meeting). Comments received in response to the December 2011 TP NOPR and a transcript of the public meeting are available at *www.regulations.gov.* DOE received comments from interested parties suggesting that the DOE HID lamps test procedures should be aligned with similar international standards and test procedures, and that DOE should pursue using test data already collected in accordance with international requirements. DOE also received comments on its proposals to measure lamp color characteristics, lumen maintenance, and directional lamp characteristics. Other comments were received on the proposed sampling plan, laboratory accreditation requirements, and the instrumentation requirements for test apparatuses.

Based on comments received on the December 2011 TP NOPR, and subsequent additional research, DOE proposes to revise and clarify the proposed HID lamp test procedures. In this SNOPR, DOE provides interested parties with an opportunity to comment on these revised and new proposals, described in section II.

II. Discussion of the Supplemental Notice of Proposed Rulemaking

In this SNOPR, DOE updates the industry standards proposed to be incorporated by reference in the December 2011 TP NOPR and proposes revisions to three elements of the December 2011 TP NOPR: (1) Definitions; (2) ambient testing conditions for temperature and air speed; and (3) sampling plan. These revisions address comments from interested parties and incorporate recent research on HID lamps. This SNOPR also removes the directional lamp and lumen maintenance testing requirements included in the December 2011 TP NOPR.

In this SNOPR, DOE revises the December 2011 TP NOPR proposed definitions relevant to HID lamps in 10 CFR part 431 for ''basic model,'' ''directional lamp,'' ''lamp efficacy,'' and ''lamp wattage,'' and proposes to eliminate the terms ''beam angle,''

[1] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[2] For editorial reasons, Parts B and C were re-designated as Parts A and A–1 on codification in the U.S. Code.

''lamp electrical power input,'' and ''lumen maintenance.'' DOE also proposes to add a definition for ''initial lumen output.'' DOE also clarifies the proposed requirements for ambient temperature conditions and provides additional background information in support of these requirements. In addition, DOE revises its proposed ambient air speed requirements to eliminate as unwarranted an explicit air speed limit. Finally, DOE revises its sampling plan requirements for sample size and statistical representation.

A. Industry Standards and Test Procedures

In the December 2011 TP NOPR, DOE proposed to incorporate by reference six industry standards and test procedures. 77 FR 77914, 77916 (Dec. 15, 2011). These references were American National Standards Institute (ANSI) C78.379–2006, ''For Electric Lamps—Classification of the Beam Patterns of Reflector Lamps''; ANSI C78.389–R2009, ''For Electric Lamps—High Intensity Discharge—Methods of Measuring Characteristics'' (sections 1.0, 2.0, 3.0, and Figure 1); International Commission on Illumination (CIE) 13.3–1995, ''Technical Report: Method of Measuring and Specifying Colour Rendering Properties of Light Sources''; CIE 15:2004, ''Technical Report: Colorimetry''; Illuminating Engineering Society of North America (IES) LM–51–00, ''Approved Method for the Electrical and Photometric Measurements of High Intensity Discharge Lamps'' (sections 1.0, 3.2, 9.0, 10.0, 11.0, and 12.0); and IES LM–47–01, ''Approved Method for Life Testing of High Intensity Discharge Lamps.'' In today's SNOPR, DOE proposes to update its references to incorporate IES LM–51–13, ''Approved Method for the Electrical and Photometric Measurements of High Intensity Discharge Lamps.'' DOE also proposes to incorporate by reference one additional standard: IES LM–78–07, ''IESNA Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.''

During the January 2012 HID TP public meeting, Intertek commented that IES LM–47–01 was more than 10 years old and had been updated. (Intertek, Public Meeting Transcript, No. 5 at p. 121) [3] IES subsequently released LM–47–12. DOE no longer proposes to measure lumen maintenance; therefore, DOE no longer proposes to incorporate by reference in this SNOPR LM–47–12.

Intertek also commented during the January 2012 HID TP public meeting that IES LM–51–00 was expected to be revised in the latter part of 2012. (Intertek, Public Meeting Transcript, No. 5 at p. 121) DOE notes that a revised version of IES LM–51 (IES LM–51–13) has been released, which DOE proposes to incorporate by reference in this SNOPR.

The National Electrical Manufacturers Association (NEMA) expressed general support for LM–51, but requested more specificity related to instrumentation, and suggested that DOE incorporate by reference IES LM–78–07. (NEMA, No. 6 at p. 8) [4] DOE reviewed this test method and proposes to incorporate by reference IES LM–78–07, ''IESNA Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,'' sections 3.1 and 6.3, in this SNOPR.

B. Definitions

In the December 2011 TP NOPR, DOE proposed definitions for the following terms based on the EPCA definitions of these terms: ''Ballast'' (42 U.S.C. 6291(58)), ''color rendering index'' (42 U.S.C. 6291(30)(J)), ''correlated color temperature'' (42 U.S.C. 6291(30)(K)), ''high-intensity discharge lamp'' (42 U.S.C. 6291(46)), ''mercury vapor lamp'' (42 U.S.C. 6291(47)(A)), and ''metal halide lamp'' (42 U.S.C. 6291(63)). 76 FR 77914, 77917–18 (Dec. 15, 2011). These EPCA definitions remain unchanged by this SNOPR.

As explained in section II.B.1 of this SNOPR, DOE proposed to establish definitions of ''beam angle,'' ''directional lamp,'' ''high-pressure sodium lamp,'' ''lamp electrical power input,'' ''lamp efficacy,'' ''lamp wattage,'' ''lumen maintenance,'' ''rated luminous flux or rated lumen output,'' and ''self-ballasted lamp'' in the December 2011 TP NOPR. Many of the proposed definitions were identical or very similar to the definitions set forth in 10 CFR part 430 for consumer products. Since the publication of the December 2011 TP NOPR, DOE has determined that changes are warranted for some of the proposed definitions, and that others are not necessary (''beam angle,'' ''lamp electrical power input,'' ''lumen maintenance,'' and ''rated luminous flux or rated lumen output'') to include in the test procedures for HID lamps.

As discussed in sections II.B.2 and II.B.3 of this SNOPR, respectively, DOE also proposed in the December 2011 TP NOPR to amend the definition of ''ballast efficiency'' and to establish a definition of ''basic model'' for HID lamps. In this SNOPR, DOE withdraws the amendment proposed in the December 2011 TP NOPR and proposes to retain the existing definition of ''ballast efficiency.'' In addition, DOE proposes revisions to the definition of ''basic model'' for HID lamps set forth in the December 2011 TP NOPR.

1. Definitions Relevant to High-Intensity Discharge Lamps

a. Beam Angle

In the December 2011 TP NOPR, DOE proposed to define ''beam angle'' as ''the beam angle (or angles) as measured according to the requirements of ANSI C78.379, including complex beam angles as described in ANSI C78.379.'' 76 FR 77914, 77917 (Dec. 15, 2011). In comments on the NOPR, NEMA agreed with the proposed definition of beam angle (NEMA, No. 6 at p. 4), and DOE received no other comments supporting or opposing this proposed definition. DOE notes, however, that, as stated in the April 2013 HID lamps energy conservation standards (ECS) Interim Analysis public meeting. DOE is not considering standards for directional lamps in the HID lamps energy conservation standards (Docket No. EERE–2010–BT–STD–0043, DOE, Public Meeting Transcript, No. 23, at p. 18).[5] For this reason, in this SNOPR, DOE withdraws the proposed definition of ''beam angle'' in the HID test procedures.

b. Color Rendering Index

In the December 2011 TP NOPR, DOE proposed to adopt a definition of ''color rendering index'' (CRI) based on the EPCA definition of the same term. 76 FR 77914, 77917 (Dec. 15, 2011); *see also* 42 U.S.C. 6291(30)(J). The proposed definition was adopted from 10 CFR

[3] A notation in the form ''Intertek, Public Meeting Transcript, No. 5 at p. 121'' identifies a comment that DOE has received during a public meeting and has included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by Intertek; (2) transcribed from the public meeting in document number 5 of the docket, and (3) appearing on page 121 of that document.

[4] A notation in the form ''NEMA, No. 6 at p. 8'' identifies a written comment that DOE has received and included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by National Electric Manufacturer's Association; (2) in document number 6 of the docket; and (3) on page 8 of that document.

[5] A notation in this form provides a reference for information that is in the docket of DOE's ''Energy Conservation Program for Certain Commercial and Industrial Equipment: Energy Conservation Standards for High-Intensity Discharge Lamps'' (Docket No. EERE–2010–BT–STD–0043), which is maintained at *www.regulations.gov.* This notation indicates that the statement preceding the reference is document number 00023 in the docket for the metal halide lamp ballasts test procedures rulemaking, and appears at page 18 of that document.

430.2, which defines CRI as ''the measured degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.'' [6]. DOE received no comments supporting or opposing this proposed definition and maintains the proposal for this SNOPR.

c. Correlated Color Temperature

In the December 2011 TP NOPR, DOE proposed to adopt the EPCA definition of ''correlated color temperature'' (CCT) (42 U.S.C. 6291(30)(K)), which defines the term as ''the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.'' 76 FR 77914, 77917 (Dec. 15, 2011). DOE received no comments supporting or opposing this proposed definition and maintains the proposal for this SNOPR.

d. Directional Lamp

In the December 2011 TP NOPR, DOE proposed to define ''directional lamp'' as ''a lamp emitting at least 80 percent of its light output within a solid angle of π steradians (corresponding to a cone with an angle of 120 degrees).'' 76 FR 77914, 77917 (Dec. 15, 2011). NEMA agreed with the proposed definition of directional lamp. (NEMA, No. 6 at p. 4) DOE received no other comments supporting or opposing the proposed definition. DOE proposes to modify the definition to also incorporate the construction of the lamp. DOE proposes a revised definition of ''directional lamp'' as ''a lamp with an integral reflector, emitting at least 80 percent of its light output within a solid angle of π steradians (corresponding to a cone with an angle of 120 degrees)'' in this SNOPR to clarify the lamp type that DOE is considering excluding from coverage in the ongoing HID lamps standards rulemaking (Docket No. EERE–2010–BT–STD–0043).

e. Initial Lumen Output

In this SNOPR, DOE proposes to add a definition of ''initial lumen output'' to provide additional clarity. Initial lumen output is the measured amount of light that a lamp provides at the beginning of its life. An initial lumen output measurement is required to calculate lamp efficacy. Therefore, DOE proposes a definition of ''initial lumen output'' as ''the measured lumen output after the lamp is seasoned, then initially energized and stabilized, using the lamp seasoning and stabilization procedures in section 10 CFR 431.454(b)(1).'' [7]

f. High-Pressure Sodium Lamp

In the December 2011 TP NOPR, DOE proposed to define ''high-pressure sodium lamp'' (HPS) as ''a high-intensity discharge lamp in which the major portion of the light is produced by radiation from sodium vapor operating at a partial pressure of about 6,670 pascals (approximately 0.066 atmospheres or 50 torr) or greater.'' 76 FR 77914, 77917 (Dec. 15, 2011). NEMA agreed with the proposed definition of ''high-pressure sodium lamp'' (NEMA, No. 6 at p. 5), and DOE received no other comments supporting or opposing this proposed definition. Therefore, DOE retains this definition in this SNOPR.

g. Lamp Efficacy

In the December 2011 TP NOPR, DOE proposed a definition for ''lamp efficacy'' similar to that set forth at 10 CFR part 430, subpart B, appendix R,[8] where ''lamp efficacy'' is defined as ''the ratio of measured lamp lumen output in lumens to the measured lamp electrical power input in watts, rounded to the nearest tenth, in units of lumens per watt.'' DOE proposed to replace ''lamp lumen output'' with ''rated luminous flux or rated lumen output'' and to add the abbreviation ''lm/W'' after ''lumens per watt.'' DOE further stated that the term ''rated luminous flux or rated lumen output'' is consistent with DOE's proposed definition for ''lumen maintenance,'' and means the same thing as ''lamp lumen output.'' Therefore, DOE proposed a definition for ''lamp efficacy'' as follows: ''the ratio of rated lumen output (or rated luminous flux) to the measured lamp electrical power input in watts, rounded to the nearest tenth, in units of lumens per watt (lm/W).'' 76 FR 77914, 77918 (Dec. 15, 2011).

NEMA disagreed with DOE's use of ''rated luminous flux or rated lumen output'' as an equivalent to ''measured lamp lumen output,'' stating that the terms ''rated'' and ''measured'' are not interchangeable. (NEMA, No. 6 at pp. 2, 5) NEMA suggested that DOE instead use the definition for lamp efficacy in IES RP–16–10, ''Nomenclature and Definitions for Illuminating Engineering'' (RP–16). (NEMA, No. 6 at p. 5) NEMA refined its comments during the March 2012 framework public meeting for the HID lamps energy conservation standards (herein referred to as the March 2012 ECS public meeting), stating that upon a second review of RP–16, ''lamp efficacy'' is not defined, but ''luminous efficacy'' is defined, and encouraged DOE to use ''luminous efficacy'' as the appropriate term. (Docket No. EERE–2010–BT–STD–0043, NEMA, Public Meeting Transcript, No. 6 at p. 40) The RP–16 definition for ''luminous efficacy of a source of light'' is ''. . . the quotient of the luminous flux emitted by the total lamp power input. It is expressed in lm/W.''

DOE acknowledges that ''lamp efficacy'' is not defined in RP–16, but notes that ''lamp efficacy,'' rather than ''luminous efficacy,'' is used for all other covered lamps and is the common term in the lighting industry. Therefore, in this SNOPR, DOE proposes to keep the term ''lamp efficacy,'' but to revise the definition proposed in the December 2011 TP NOPR.

DOE acknowledges NEMA's statement that a rated value is a value declared by the manufacturer to represent the long-term average of any given parameter. (NEMA, No. 6 at p. 2) DOE proposes to revise the definition of ''lamp efficacy'' to be consistent with the definition of ''lamp efficacy'' in EPCA and simply use the terms ''lumen output'' and ''wattage.'' DOE includes additional language in its test procedures that qualifies lamp lumen output and wattage as ''measured.''

The proposed definition for ''lamp efficacy'' in the December 2011 TP NOPR specified that efficacy values (lumens per watt) be rounded to the nearest tenth. Lamp manufacturers OSRAM SYLVANIA and Philips Electronics (Philips) commented that HID lamp measurements vary widely because of the lamp chemistry used in HID lamps, the operating characteristics of high-lumen-output HID lamps, and the sheer light output of HID lamps (ranging from a few thousand to over a hundred thousand lumens), and stated that rounding calculated efficacies to the nearest tenth implies a measurement accuracy that is not achievable. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at p. 32; Philips, Public Meeting Transcript, No. 5 at p.

[6] The definitions of ''color rendering index'' in EPCA and 10 CFR 430.2 are substantively identical, excluding a minor wording difference. The EPCA definition uses the phrase ''measure of the degree of color shift'' whereas the CFR definition uses the phrase ''measured degree of color shift.'' 42 U.S.C. 6291(30)(J); 10 CFR 430.2.

[7] 10 CFR 431.454(b)(1) is a new section proposed by this SNOPR.

[8] 10 CFR 430.2 defines lamp efficacy as ''the measured lumen output of a lamp in lumens divided by the measured lamp electrical power input in watts expressed in units of lumens per watt (LPW).'' 10 CFR part 430, subpart B, appendix R defines ''lamp efficacy'' as ''the ratio of measured lamp lumen output in lumens to the measured lamp electrical power input in watts, rounded to the nearest tenth, in units of lumens per watt.'' The primary difference between the definitions is the rounding of the values.

32) NEMA agreed with OSRAM SYLVANIA and Philips that rounding to the nearest tenth (of a lumen per watt) is inappropriate for HID lamps because of the large potential for measurement variation. NEMA also commented that rounding of lamp efficacy values should be addressed in reporting requirements rather than the definition. (NEMA, No. 6 at p. 5)

DOE's proposed definition for ''lamp efficacy'' was based on the definition in the test procedures for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps (GSFL/GSIL/IRL) at 10 CFR part 430, subpart B, appendix R. For GSFL/GSIL/IRL, rounding lamp efficacy values to the nearest tenth is appropriate given the equipment and instrumentation used to measure lumen output and lamp wattage for these lamp types. Because the same equipment and instrumentation is used to measure these quantities for HID lamps, DOE believes lamp efficacy for HID lamps should also be rounded to the nearest tenth of a lumen per watt. DOE agrees with NEMA, however, that rounding requirements should not be part of the definition of lamp efficacy, and believes that rounding should instead be addressed in any future reporting requirements for HID lamps.

DOE notes that manufacturers have commented that HID lamps exhibit more measurement variation than other lighting technologies. DOE plans to account for measurement variation in the energy conservation standards rulemaking for HID lamps and welcomes comments on sources of measurement variation and any supporting data in that rule process.

DOE reviewed comments received on the December 2011 TP NOPR as well as alternative definitions of lamp efficacy. To be consistent with EPCA, DOE proposes to revise the definition of ''lamp efficacy'' for HID lamps as follows: ''the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).''

h. Lamp Electrical Power Input

In the December 2011 TP NOPR, DOE proposed to define ''lamp electrical power input'' as ''the total electrical power input to the lamp, including both arc and cathode power where appropriate, at the reference condition, in units of watts.'' 76 FR 77914, 77918 (Dec. 15, 2011). This definition is the same as that set forth at 10 CFR part 430, subpart B, appendix R.

NEMA disagreed with the proposed definition, noting that HID lamps do not have cathodes (or use cathode power), and that arc power constitutes total lamp input power. (NEMA, Public Meeting Transcript, No. 5 at pp. 44–45) DOE received no other comments related to the proposed definition.

DOE acknowledges that arc power constitutes total lamp electrical power input for HID lamps. ''Lamp electrical power input'' is therefore the same as ''lamp wattage,'' which DOE also defined in the December 2011 TP NOPR. 76 FR 77914, 77918 (Dec. 15, 2011). As discussed earlier in this document, DOE proposes to use the term ''lamp wattage'' instead of ''lamp electrical power input'' in its revised definition for ''lamp efficacy.'' Therefore, in this SNOPR, DOE withdraws the proposed definition of ''lamp electrical power input'' for HID lamps as proposed in the December 2011 TP NOPR. *Id.*

i. Lamp Wattage

In the December 2011 TP NOPR, DOE proposed to define ''lamp wattage'' as ''the total electrical power required by a lamp in watts, measured following the initial aging period referenced in the relevant industry standard.'' The proposed definition interpreted the EPCA definition of ''lamp wattage'' for this rulemaking. 76 FR 77914, 77918 (Dec. 15, 2011); *see also* 42 U.S.C. 6291(30)(O).[9] NEMA agreed with the proposed definition of lamp wattage. (NEMA, No. 6 at p. 5) DOE received no other comments supporting or opposing this proposed definition.

In this SNOPR, DOE proposes to modify its original proposed definition of ''lamp wattage'' to more closely parallel the EPCA definition of ''lamp wattage,'' and to reference the applicable IES lamp seasoning provisions required to support lamp wattage measurements. Specifically, DOE proposes to replace ''measured following the initial aging period referenced in the relevant industry standard'' with ''after the initial seasoning period referenced in section 6.2.1 of IES LM–51–13.''

Therefore, DOE proposes in this SNOPR to define ''lamp wattage'' as ''the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in section 6.2.1 of IES LM–51–13.''

As previously discussed in this SNOPR, DOE is proposing a new definition of ''lamp efficacy'' in which the term ''measured lamp electrical power in watts'' is replaced with ''wattage.'' DOE defined ''lamp wattage'' in the December 2011 TP NOPR and interprets it as equivalent to the term ''wattage.''

j. Lumen Maintenance

In the December 2011 TP NOPR, DOE proposed to define ''lumen maintenance'' as ''the luminous flux or lumen output at a given time in the life of the lamp and expressed as a percentage of the rated luminous flux or rated lumen output, respectively.'' 76 FR 77914, 77918 (Dec. 15, 2011). This definition is the same as that set forth for medium-base compact fluorescent lamps (CFLs) at 10 CFR part 430, subpart B, appendix W, section (2)(c).

Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Gas Company, and Southern California Edison (herein referred to as the California Investor Owned Utilities (CA IOUs)), together with the Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, and the Natural Resources Defense Council jointly filed a comment (herein referred to as the Joint Comment) that supported measuring lumen maintenance for HID lamps, but did not comment specifically on the proposed definition. (CA IOUs, No. 8 at p. 1; Joint Comment, No. 9 at p. 1) NEMA disagreed with the definition, citing inconsistent references to measured and rated values. NEMA disagreed with DOE's use of ''rated luminous flux or rated lumen output'' as an equivalent to ''measured lamp lumen output,'' stating that the terms ''rated'' and ''measured'' are not interchangeable. According to NEMA, because measured values were expected to be reported, possible confusion and misreporting could arise if rated values were reported instead. (NEMA, No. 6 at pp. 2, 5–6)

DOE no longer proposes to measure lumen maintenance. Therefore, in this SNOPR, DOE withdraws the proposed definition of ''lumen maintenance'' for HID lamps as proposed in the December 2011 TP NOPR. 76 FR 77914, 77918 (December 15, 2011).

k. Rated Luminous Flux or Rated Lumen Output

In the December 2011 TP NOPR, DOE proposed to define ''rated luminous flux or rated lumen output'' as ''the initial lumen rating (100 hour) declared by the manufacturer, which consists of the lumen rating of a lamp at the end of 100 hours of operation.'' This is the same definition set forth for medium-base CFLs at 10 CFR part 430, subpart B, appendix W, section (2)(d), and proposed in the December 2011 TP

[9] The EPCA definition for ''lamp wattage'' is ''the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedures and including, for fluorescent, arc watts plus cathode watts.''

NOPR. 76 FR 77914, 77918 (Dec. 15, 2011). NEMA agreed with the proposed definition of ''rated luminous flux or rated lumen output.'' (NEMA, No. 6 at p. 4) DOE received no other comments supporting or opposing this proposed definition.

DOE has removed the term ''rated luminous flux or rated lumen output'' from the proposed definition of ''lamp efficacy'' in this SNOPR. Therefore, in this SNOPR, DOE proposes to withdraw the proposed definition of ''rated luminous flux or rated lumen output'' for HID lamps as proposed in the December 2011 TP NOPR. 76 FR 77914, 77918 (Dec. 15, 2011).

l. Self-Ballasted Lamp

In the December 2011 TP NOPR, DOE proposed to define ''self-ballasted lamp'' as ''a lamp unit that incorporates all elements that are necessary for the starting and stable operation of the lamp in a permanent enclosure and that does not include any replaceable or interchangeable parts.'' 76 FR 77914, 77918 (Dec. 15, 2011).[10] NEMA agreed with the proposed definition, and DOE received no other comments supporting or opposing this proposed definition. (NEMA, No. 6 at p. 4) Therefore, DOE retains the December 2011 TP NOPR proposed definition in this SNOPR.

2. Definition of ''Ballast Efficiency'' for Metal Halide Lamp Fixtures

In the December 2011 TP NOPR, DOE proposed an amended definition of ''ballast efficiency'' for HID fixtures, currently set forth at 10 CFR 431.322. 76 FR 77914, 77918 (Dec. 15, 2011). Currently, ''ballast efficiency'' for an HID fixture means, in relevant part, ''the efficiency of a lamp and ballast combination, expressed as a percentage, and calculated in accordance with the following formula:

Efficiency = P_{out}/P_{in}

Where:

(1) P_{out} equals the measured operating lamp wattage;

(2) P_{in} equals the measured operating input wattage . . .''

10 CFR 431.322

In the December 2011 TP NOPR, DOE noted that the definition of the term ''P_{out}'' is the same as the definition DOE proposed for ''lamp electrical power input.'' In order to avoid possible confusion between ''P_{out}'' and ''lamp electrical power input,'' DOE proposed in the December 2011 TP NOPR to amend the definition of ''ballast efficiency'' as follows: '' 'Ballast efficiency' means, in the case of a high-intensity discharge fixture, the efficiency of a lamp and ballast combination, expressed as a percentage, and calculated in accordance with the following formula:

Efficiency = Lamp electrical power input/ballast power input

Where:

(1) Lamp electrical power input means the total electrical power input to the lamp, including both arc and cathode power where appropriate, at the reference condition, in units of watts;

(2) Ballast power input equals the measured operating input wattage . . .''

76 FR 77914, 77198 (Dec. 15, 2011).

NEMA commented that the proposed definition would produce inaccurate results for ballast efficiency because the lamp and ballast power inputs are measured at reference and non-reference conditions, respectively. (NEMA, No. 6 at pp. 6–7) DOE received no other comments related to the proposed definition of ''ballast efficiency.''

Upon review, DOE determined that HID lamp testing and MH lamp ballast testing are conducted separately, which effectively eliminates any overlap and confusion of electrical power terms. As discussed earlier in this document, DOE proposes to use the term ''wattage'' instead of ''lamp electrical power input'' in its revised definition for ''lamp efficacy.'' Therefore, in this SNOPR, DOE withdraws the proposed definition of ''lamp electrical power input'' for HID lamps. In addition, DOE acknowledges that testing inaccuracies could arise from the proposed definition for ''ballast efficiency,'' which was intended to prevent confusion between the terms ''P_{out}'' and ''lamp electrical power input.'' Because HID lamp testing and MH lamp ballast testing are conducted separately and DOE no longer proposes to define ''lamp electrical power input,'' this potential confusion should not materialize. Therefore, DOE is not proposing to amend the current definition of ''ballast efficiency'' at 10 CFR 431.322 in this SNOPR.

3. Definition of ''Basic Model'' for High-Intensity Discharge Lamps

In the December 2011 TP NOPR, DOE proposed defining ''basic model'' for the HID lamp test procedures as follows: '' 'Basic model' with respect to HID lamps means all units of a given type of covered equipment (or class thereof) manufactured by one manufacturer, having the same primary energy source and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency, and are rated to operate a given lamp type and wattage.'' 76 FR 77914, 77918 (Dec. 15, 2011).[11]

NEMA commented that the definition of ''basic model'' should be addressed in the HID lamps standards, and not the test procedures. (NEMA, Public Meeting Transcript, No. 5 at p. 32) Because provisions regarding the definition of basic model relate closely to the sampling plan and test burdens that the test procedures address, DOE addresses the definition of basic model in its test procedures rulemaking. DOE will consider comments submitted to the ongoing HID lamps standards rulemaking (Docket No. EERE–2010–BT–STD–0043) to develop the definition of ''basic model,'' and DOE will use the same definition of ''basic model'' in the standards rulemaking.

At the January 2012 TP public meeting, General Electric (GE) commented that the terms ''hydraulic'' or ''water consumption'' in the definition of ''basic model'' for HID lamps are potentially confusing and should be removed. (GE, Public Meeting Transcript, No. 5 at p. 33) In response to GE's comment, DOE reviewed the definition of ''basic model'' for MH lamp fixtures at 10 CFR 431.322. The definition of ''basic model'' at 10 CFR 431.322 is the same as the definition that DOE proposed in the December 2011 TP NOPR. DOE also reviewed the ''basic model'' definition for GSFL/GSIL/IRL at 10 CFR 430.2 and notes that this definition of basic model is general and applies to faucets and showerheads in addition to the various lamp types. But DOE acknowledges that the terms identified by GE may cause confusion with respect to HID lamps. DOE also notes that the definition of ''basic model'' proposed in the December 2011 TP NOPR contains the phrase ''and are rated to operate a given lamp type and wattage,'' which applies to lamp ballasts (*i.e.,* for MH lamp fixtures in 10 CFR 431.322), but does not apply to HID lamps. Further, DOE notes that ''efficacy'' is a more appropriate term for describing the energy efficiency of HID lamps than the term ''energy efficiency'' used in the proposed definition of ''basic model.'' To more accurately

[10] This definition is based in part on the definition of ''self-ballasted CFL lamp'' found at 10 CFR part 430, subpart B, appendix W, section (2)(h).

[11] DOE discussed the concept of ''basic model'' extensively in the September 2010 NOPR for certification, compliance, and enforcement (September 2010 CC&E NOPR). 75 FR 56796, 56798–99 (Sept. 16, 2010). DOE provided additional discussion and responded to comments received related to the September 2010 CC&E NOPR in the March 2011 certification, compliance, and enforcement final rule. 76 FR 12422, 12428–30 (March 7, 2011).

characterize HID lamps, DOE proposes to remove the phrase ''and are rated to operate a given lamp type and wattage'' from the definition of ''basic model,'' and revise the remaining text by replacing the term ''energy efficiency'' with the term ''efficacy.''

Therefore, in this SNOPR, DOE proposes to define ''basic model'' for HID lamp test procedures to read as follows: '' 'Basic model' means all units of a given type of covered equipment (or class thereof) manufactured by one manufacturer, that have the same primary energy source, and that have essentially identical electrical, physical, and functional characteristics that affect energy consumption or efficacy.''

C. Test Procedures for Measuring Energy Efficiency of High-Intensity Discharge Lamps

1. Test Setup and Conditions

DOE has determined that changes are warranted for certain test setup and condition requirements proposed in the December 2011 TP NOPR. In the discussion that follows, DOE describes the December 2011 TP NOPR proposals for ambient conditions, power supply characteristics, reference ballasts, and instrumentation. DOE also describes the changes being proposed in this SNOPR and notes those provisions that remain unaffected.

a. Ambient Conditions

In the December 2011 TP NOPR, DOE proposed a requirement that the test apparatus be operated in a location where ambient conditions (*e.g.,* ambient temperature) are stable. 76 FR 77914, 77919 (Dec. 15, 2011). As described in the following paragraphs, in this SNOPR, DOE proposes to revise certain specifications necessary to meet the requirement for stable ambient conditions.

i. Ambient Test Temperature

In the December 2011 TP NOPR, DOE proposed an ambient temperature requirement of 25 °C ±5 °C for HID lamp testing in accordance with ANSI C78.389. 76 FR 77914, 77919 (Dec. 15, 2011). This is the industry standard temperature for testing most ballasted and non-ballasted light sources (both HID and other lamp types). It is also the temperature required by the MH lamp ballast TP final rule, wherein DOE stated that ambient temperature is not critical to MH lamp operation and light output, but can affect lamp electrical performance. 75 FR 10950, 10956 (March 9, 2010).

NEMA agreed with the proposed ambient test temperature for HID lamps (25 °C ±5 °C), but noted that other lamp types have a ±1 °C tolerance for photometric testing. (NEMA, No. 6 at p. 7) OSRAM SYLVANIA commented that, unlike fluorescent lamps, HID lamps are not significantly affected by ambient temperature. OSRAM SYLVANIA also stated that the ambient temperature required in IES standard LM–51 is intended to benefit the measurement instrumentation, which is more sensitive to ambient temperature variations than the HID lamps being tested. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at pp. 49, 54)

DOE reviewed applicable ANSI and IES documents for testing discharge lamps (fluorescent and HID) and fixtures. Table II.1 compares the recommended ambient test temperatures from these documents.

TABLE II.1—COMPARISON OF RECOMMENDED AMBIENT TEST TEMPERATURES

Document	Light source	Ambient test temperature
LM–51–13, ''IESNA Approved Method for the Electrical and Photometric Measurements of High-Intensity Discharge Lamps''.	HID	25 °C ±5 °C
LM–73–04 (R2010), ''IESNA Approved Method for Photometric Testing of Entertainment Lighting Luminaires Using Incandescent Filament Lamps or High Intensity Discharge Lamps''.	HID	25 °C ±5 °C
ANSI C78.389, ''American National Standard for Electric Lamps—High Intensity Discharge—Methods of Measuring Characteristics''.	HID	25 °C ±5 °C
LM–09–09, ''Electrical and Photometric Measurements of Fluorescent Lamps''	Fluorescent	25 °C ±1 °C
LM–66–11, ''Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps''	Fluorescent	25 °C ±1 °C
ANSI C78.375—1997, ''American National Standard for Fluorescent Lamps—Guide for Electrical Measurements''.	Fluorescent	25 °C ±1 °C

DOE acknowledges that for fluorescent sources, the tolerance in these documents for ambient test temperature is ±1 °C. DOE also agrees with OSRAM SYLVANIA that ambient temperature is not critical to HID lamp operation and light output. Therefore, in this SNOPR, DOE retains the ambient temperature and tolerance of 25 °C ±5 °C proposed in the December 2011 TP NOPR. However, as discussed in section II.C.1.a.ii, DOE proposes referencing the 25 °C ±5 °C requirement in IES LM–51–13 based on the absence of the associated maximum air speed requirement.

ii. Air Speed

In the December 2011 TP NOPR, DOE proposed a specific air speed limit of ≤0.5 meters per second (m/s) for HID lamp testing because the ANSI C78.389 requirement for ''draft-free'' conditions is unclear because no definition of the term ''draft-free'' is provided in the standard. In the MH lamp ballast TP final rule, DOE researched different air speed limits from different test procedures and adopted an air speed limit of ≤0.5 m/s. 75 FR 10950, 10956 (March 9, 2010). In its comments on the December 2011 TP NOPR, OSRAM SYLVANIA stated that air speed is relevant for ballast measurements, but not for HID lamps. OSRAM SYLVANIA elaborated by stating that the typical ''lamp within a lamp'' construction of HID lamps (*i.e.,* arc tube within an outer glass envelope) makes them insensitive to ambient air movement. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at pp. 47–50) NEMA agreed with this assessment. (NEMA, No. 6 at p. 8)

In the December 2011 TP NOPR, DOE reviewed LM–51–13, ANSI C78.389, and LM–73–04 for the ambient test temperature requirements discussed previously. Table II.2 provides the review of air speed limits for HID lamp and fixture testing.

TABLE II.2—COMPARISON OF AIR SPEED LIMITS FOR HID LAMP AND FIXTURE TESTING

Document	Air Speed Requirements
LM–51–13, ''IESNA Approved Method for the Electrical and Photometric Measurements of High-Intensity Discharge Lamps''.	No special precautions against normal room air movement are necessary.
LM–73–04 (R2010), ''IESNA Approved Method for Photometric Testing of Entertainment Lighting Luminaries Using Incandescent Filament Lamps or High Intensity Discharge Lamps''.	None specified.
ANSI C78.389, ''American National Standard for Electric Lamps—High Intensity Discharge—Methods of Measuring Characteristics''.	Draft free.

DOE agrees with OSRAM SYLVANIA and NEMA that HID lamps are typically insensitive to ambient air movement because the light-generating component of the lamp (*i.e.,* the arc tube) is physically isolated from the surrounding environment by an outer glass envelope, effectively eliminating any convection cooling. Therefore, in this SNOPR, DOE proposes not to prescribe an explicit air speed limit in the HID lamps test procedures. Instead, DOE proposes to incorporate by reference section 4.3 of LM–51–13, which specifies that no special precautions against normal air movement are necessary in HID lamp test procedures.

b. Power Supply Characteristics

In the December 2011 TP NOPR, DOE proposed power supply characteristics (voltage waveshape, voltage regulation, and power supply impedance) for the HID lamps test procedures based on ANSI C78.389 and LM–51. 76 FR 77914, 77919 (Dec. 15, 2011). NEMA agreed with DOE's proposal (NEMA, No. 6 at p. 8), and DOE received no other comments on these characteristics. As a result, the power supply characteristics are not affected by this SNOPR.

c. Reference Ballasts

In the December 2011 TP NOPR, DOE proposed to adopt the reference ballast requirements of ANSI C78.389 for HID lamp testing. Based on a review of industry literature, communication with independent testing laboratories, and comments from industry, DOE determined that reference ballasts are readily available and that their use is likely to provide repeatable and consistent measurements. 76 FR 77914, 77920 (Dec. 15, 2011). In this SNOPR, DOE addresses several comments and questions received in response to the December 2011 TP NOPR regarding: (1) Lamps for electronic ballasts only; (2) self-ballasted lamps; (3) multi-start type ballasts; and (4) effects of lamp orientation (position) on reference ballasts. Each of these items is discussed herein.

i. Lamps for Electronic Ballasts Only

In a written comment, the CA IOUs suggested that DOE develop reference specifications for lamps that can operate only on electronic ballasts. (CA IOUs, No. 8 at p. 3) During the January 2012 TP public meeting, GE commented that HID lamps currently designed to operate only on electronic ballasts do not have reference ballasts. (GE, Public Meeting Transcript, No. 5 at p. 63) NEMA encouraged DOE not to attempt to define reference ballasts where they do not exist because of potential conflicts with ongoing industry efforts. NEMA also stated that lamps for which there are no ANSI standard ballasts should be measured in accordance with the manufacturer's guidance. (NEMA, No. 6 at p. 8)

DOE acknowledges that currently there are no reference ballasts for lamps operating only with electronic ballasts. HID lamps operating only with electronic ballasts are a new and emerging technology and represent an insignificant portion of the market. Current manufacturer guidance for testing these types of lamps is inconsistent or incomplete, and the industry has not yet developed standard testing guidance. Therefore, in this SNOPR DOE does not propose test procedures for lamps that only can be operated with electronic ballasts.

ii. Self-Ballasted Lamps and Reference Ballasts

During the January 2012 TP public meeting, GE commented that self-ballasted lamps do not have reference ballasts. (GE, Public Meeting Transcript, No. 5 at p. 63). In the December 2011 TP NOPR, DOE did not require reference ballasts for self-ballasted HID lamps. DOE further notes that in the April 2013 HID lamps ECS Interim Analysis public meeting, DOE is not considering standards for self-ballasted HID lamps (Docket No. EERE–2010–BT–STD–0043, DOE, Public Meeting Transcript, No. 23, at p. 18). Therefore, DOE is not proposing test procedures for self-ballasted HID lamps.

iii. Reference Ballasts for Multi-Start Type Metal Halide Lamps

During the January 2012 TP public meeting, the CA IOUs questioned whether the December 2011 TP NOPR provided enough guidance for testing multi-start type HID lamps that can operate on multiple ballast types (*e.g.,* pulse-start or probe-start). (CA IOUs, Public Meeting Transcript, No. 5 at p. 69–70). OSRAM SYLVANIA explained that the lamp type indicates usage. For example, a pulse-start MH lamp designed as a direct replacement for probe-start lamps may have a reference ballast with probe-start characteristics. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at p. 70) In this SNOPR, DOE provides clarification on reference ballast characteristics for multi-start type MH lamps.

DOE reviewed manufacturer catalog data sheets and found that manufacturers of multi-start type MH lamps identify the ANSI lamp designations that the lamps have been designed to replace (*e.g.,* M58, M138, M153, C184). ANSI lamp designation data sheets include the characteristics of reference ballasts to be used with the specific lamp (*i.e.,* rated input voltage, reference current, and impedance).

DOE also reviewed independent testing of multi-start type MH lamps conducted by the California Lighting Technology Center (CLTC), which directly compared the measured performance of ten 205-watt multi-start type MH lamps operated by a pulse-start ballast (for lamps designated M153) and ten 205-watt multi-start type MH lamps operated by a probe-start ballast (for lamps designated M58). The results of CLTC testing indicated that, for pulse-start operation, the mean values for lamp power and light output were 7 percent and 6 percent higher, respectively, than for probe-start operation. The mean value for lamp efficacy for pulse-start operation was within 1 percent of that for probe-start operation (see Table II.3).[12]

[12] California Energy Commission's Public Interest Energy Research Program, *Philips Energy*

Continued

TABLE II.3—COMPARISON OF 205-W MULTI-START LAMP OPERATED ON BOTH A PROBE-START AND PULSE-START BALLAST

Operating type ballast	Light output *lumens*	Lamp power *watts*	Lamp efficacy *lm/W*
Pulse-Start Ballast	21,524	221	97
Probe-Start Ballast	20,344	207	98

CLTC's limited testing of multi-start type lamps suggests that these lamps provide nearly identical efficacy with probe-start and pulse-start operation. However, DOE recognizes that clear guidance is needed for selecting reference ballast characteristics from multiple compatible ANSI lamp designations. In this SNOPR, DOE proposes that multi-start type HID lamps be tested using the characteristics for a compatible probe-start ballast. DOE proposes that the probe-start ANSI lamp designation data sheets be the primary source of reference ballast characteristics used for testing multi-start type HID lamps, due to the greater prevalence of existing probe-start MH systems.[13] Given that multi-start type MH lamps are primarily intended for use in existing systems, DOE believes that probe-start operation is most representative of actual operation for multi-start type MH lamps.

Most of the ANSI lamp designation codes referenced in the manufacturer literature for multi-start type MH lamps are included in ANSI C78.43–2013, ''ANSI Standard for Electric Lamps: Single-Ended Metal Halide Lamps.'' These lamp designations (*e.g.,* M58, M138, M165, C185) are assigned sequentially, with lower numbers indicating older lamp types. DOE proposes that multi-start type MH lamps be tested on a reference ballast compatible with a probe-start ANSI lamp designation with the lowest ANSI lamp designation. DOE believes this proposed approach best encompasses and represents actual operation on a variety of older and newer probe-start ballast types. If no probe-start ANSI lamp designation is listed by the manufacturer, DOE proposes the lamps be tested on a reference ballast with characteristics of the lowest ANSI lamp designation listed. For example, if a lamp is advertised as a multi-start type lamp, but the catalog or data sheet only lists compatible ballast codes of M128, M135, and M172 (all pulse-start ballasts), the lamp would be tested with a reference ballast with characteristics matching M128 (the lowest code listed).

In summary, DOE proposes in this SNOPR that the multi-start type MH lamps be tested on a reference ballast with the characteristics defined in the equivalent probe-start ANSI lamp designation as listed in the lamp catalog or manufacturer data sheets with the lowest ANSI lamp designation. If no probe-start ANSI lamp designation is listed by the manufacturer, DOE then proposes that the lamp be tested on a reference ballast with the characteristics defined in the lowest ANSI lamp designation listed.

iv. Lamp Orientation and Reference Ballasts

The CA IOUs commented that it was unclear in ANSI C82.5 whether lamp orientation had any bearing on the selection of reference ballasts. (CA IOUs, Public Meeting Transcript, No. 5 at p. 72) Philips noted that lamp orientation does not affect the choice of reference ballast to be used since the lamp operating position does not change the HID lamp wattage. (Philips, Public Meeting Transcript, No. 5 at p. 74) The electrical properties of the lamp are intrinsic to the lamp; as a result, they should not differ based on lamp orientation. Because lamp orientation does not affect lamp wattage, DOE does not propose to specify lamp orientation for the selection of reference ballasts.

d. Instrumentation

In the December 2011 TP NOPR, DOE proposed to adopt the electrical and photometric instrumentation requirements of ANSI C78.389 and LM–51, respectively, for its HID lamp test procedures. 76 FR 77914, 77920 (Dec. 15, 2011). The instruments proposed for electrical measurements are described in ANSI C78.389, section 3.8. DOE received no comments on these requirements, and they are unaffected by this SNOPR. The instruments proposed for photometric instruments are described in LM–51–13, section 7.0, which includes the same instruments described in LM–51–00, section 9.0, as referenced in the December 2011 TP NOPR. The proposed instrumentation requirements for photometric measurements are detailed in the following sections.

In the December 2011 TP NOPR, DOE proposed that the photometer have a relative spectral responsivity that approximates that of the human eye (*i.e.,* the V-lambda (V(λ)) function). 76 FR 77914, 77920 (Dec. 15, 2011). DOE proposed to allow the use of either an integrating sphere or a goniophotometer for the photometric measurements. *Id.* DOE further proposed that photometric measurements of color characteristics be specified in terms of the CIE colorimetry system and CRI. *Id.*

As described in the following paragraphs, DOE proposes additional specificity for these measurements in this SNOPR, and proposes to allow only the use of an integrating sphere for the photometric measurements. DOE also clarifies, as discussed further in section II.D.3, that CRI is being considered in the HID lamps ECS rulemaking (Docket No. EERE–2010–BT–STD–0043) only to define the CRI above which standards will not be considered for HID lamps. (Docket No. EERE–2010–BT–STD–0043, DOE, Public Meeting Transcript, No. 23 at pp. 15–18)

i. Integrating Sphere

For integrating sphere measurements, DOE stated in the December 2011 TP NOPR that the spectral responsivity would take into account the relative spectral throughput of the sphere and detector spectral responsivity.[14] 76 FR 77914, 77920 (Dec. 15, 2011). DOE also stated that the detector used in an integrating sphere measurement must have a wide field of view (approximating a cosine response) to maximize the sampled area of the sphere wall during measurement. *Id.* If

Advantage CDM lamps with AllStart™ Technology. June 2011. Sacramento, CA. *http://cltc.ucdavis.edu/sites/default/files/files/publication/20110600-pier-philips-hid-lamp-test.pdf.*

[13] Probe-start represents the majority of MH lamp shipments in 2008, and then starts to decline. Based on NEMA's historical lamp shipments, the DOE shipments model estimates that the installed stock of probe-start MH systems remain in the majority in 2017. See sections 10.2.1 and 10.3.1.3 of chapter 10 (shipments) of the HID ECS interim analysis TSD at: *http://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0043-0016.*

[14] The relative spectral throughput of an integrating sphere is the ratio of the spectral irradiance on the detector port of the sphere by a reference light source and the spectral irradiance of the same source measured outside the integrating sphere.

a diffuser is used on the detector, DOE proposed that its surface would need to be mounted flush with the sphere wall. *Id.*

DOE also proposed that an integrating sphere for luminous flux measurements must be large enough to allow the sphere's interior temperature to reach thermal equilibrium at the specified ambient temperature and to permit the internal baffle(s) to be small relative to the size of the integrating sphere. 76 FR 77914, 77920 (Dec. 15, 2011).

GE commented that NEMA members needed more detailed specifications for the integrating sphere diameter, and suggested that CIE standards might provide guidance. (GE, Public Meeting Transcript, No. 5 at p. 77) NEMA stated that it accepted DOE instrumentation requirements in principle, but requested more detailed guidance on integrating sphere diameter, suggesting that DOE reference IES LM–78–07, ''IESNA Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.'' (NEMA, No. 6 at pp. 8–9) DOE reviewed LM–78 and notes that sections 3.1, ''Size of the Sphere,'' and 6.3, ''Sources of Errors and Corrections,'' provide detailed guidance on integrating sphere diameter. DOE also reviewed CIE 84, ''Measurement of Luminous Flux,'' and determined that those sphere size specifications are already incorporated into LM–78. Therefore, DOE proposes that luminous flux be determined as specified in section 7.0 of IES LM–51–13 and, when using an integrating sphere, determined as specified in sections 3.1 and 6.3 of IES LM–78–07.

ii. Goniophotometer

In the December 2011 TP NOPR, DOE proposed that for measurements using a goniophotometer, the detector required for intensity distribution would have a cosine response. 76 FR 77914, 77920 (Dec. 15, 2011). DOE did not receive any comments related to the use of goniophotometers in response to the 2011 TP NOPR. Because directional HID lamps are not covered in this SNOPR (see section II.C.3), DOE is revising its proposed test procedures to omit intensity measurements for directional lamps. Upon review of measurement correlation, testing burden, and relative incidence of use between goniophotometers and integrating spheres, DOE also proposes using an integrated sphere, rather than a goniometer system, to carry out all photometric measurements of HID lamps.

While DOE recognizes that the integrating sphere and goniophotometer (a goniometer fitted with a photometer as the light detector) are both valid means of photometric measurement, DOE is concerned about the potential for a difference in the measured values. A test procedure that yields more than one possible value depending on instrumentation presents problems for certification and enforcement. If DOE and the manufacturer use different test methods, DOE could find that a lamp certified as compliant could be tested as non-compliant during a verification or enforcement proceeding. IES LM–51–13 does not explicitly specify the scanning resolution (*i.e.,* quantity and location of measurements around the lamp). DOE also determined that further specification of the goniophotometer method is unreasonable, because the scanning resolution specification would need to be adequate for the lamp that requires the finest resolution. This would likely present an overly burdensome test method for many other lamps that could be measured at a lower resolution. In contrast, use of an integrating sphere enables photometric characteristics of the HID lamp to be determined with a single measurement. Therefore, integrating spheres are the preferred method for photometric measurement due to the reduction in time required for testing.

In consideration of the lack of measurement correlation between goniophotometers and integrating spheres and the reduced burden and much higher incidence of use of integrating spheres, DOE proposes in the SNOPR to require all photometric measurements for HID lamps to be carried out in an integrating sphere and that goniometer systems must not be used. DOE invites interested parties to comment on the proposal to require all photometric values be measured by an integrating sphere (via photometer or spectroradiometer).

2. Lamp Selection and Setup

a. Basic Model

In the December 2011 TP NOPR, DOE proposed test procedures for HID lamp testing to determine the energy efficiency characteristics of each basic model. 76 FR 77914, 77921 (Dec. 15, 2011). As discussed in section III.A.3 of the December 2011 TP NOPR, a ''basic model'' is a group of lamp models that are essentially identical in design and performance. *Id.* The revised definition of ''basic model'' proposed in today's SNOPR does not change these relevant aspects. The performance characteristics proposed to be measured (*e.g.,* lumen output, power, and CCT) must be similar for all of the lamps represented by a basic model. 76 FR 77914, 77918 (Dec. 15, 2011).

b. Sampling Plans

In the December 2011 TP NOPR, DOE proposed a HID lamp sampling method similar to that used for GSFL/GSIL/IRL at 10 CFR 429.27(a)(2)(i)–(ii), as follows.

For each basic model of HID lamps, samples of production lamps from a minimum sample size of 21 lamps are to be tested, and the results for all samples are to be averaged over a consecutive 12-month period. The manufacturer is to randomly select a minimum of three lamps from each month of production for a minimum of 7 months out of the 12-month period. If production occurs during fewer than 7 of the 12 months, the manufacturer is to randomly select three or more lamps from each month of production, and the number of lamps selected for each month is to be distributed as evenly as practicable among the months of production to obtain a minimum sample of 21 lamps. Due to inherent uncertainty in any sample measurement, the confidence limit is set to 95 percent based on the sample's statistical t-test.[15] Any represented characteristic value of a basic model is to be based on this sample, and this characteristic value is to be no greater than the lower of:

(A) The mean of the sample,

Where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and $\bar{x}$ is the sample mean,[16]
n is the number of samples, and
x_i is the ith sample;

Or,

(B) The lower 95-percent confidence limit of the characteristic value true mean divided by 0.97,

Where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean,
s is the sample standard deviation,
n is the number of samples, and
$t_{0.95}$ is the t statistic for a 95-percent one-tailed confidence interval with n-1

[15] A t-test is used to determine if two sample groups from the same population are ''statistically'' different, *e.g.,* variability of distribution about the sample mean. The t-test evaluates this statistical difference by calculating the ratio of sample group mean difference to group variance. This ratio is analogous to a signal to noise ratio: The higher the ratio, the less likely it is that the difference between the two groups is random.

[16] The characteristic value represents the individual observations within a sample.

degrees of freedom (from statistical tables).

76 FR 77914, 77921 (Dec. 15, 2011).

In the paragraphs that follow, DOE discusses its proposals in the December 2011 TP NOPR for sample size, statistical representation, and the divisor. DOE proposes changes to the sampling rate and lower confidence limit (LCL) as a result of comments received on the December 2011 TP NOPR.

i. Sample Size

In formulating the proposed sampling plan requirements, DOE reviewed sample size requirements for European Union (EU) testing and sample size requirements for other HID and fluorescent lighting technologies, as well as US testing and sample size regulations for other lighting technologies.

EU sample size requirements are set forth in Commission Regulation (EC) No. 245, published in the *Official Journal of the European Union* in 2009 (herein referred to as Commission Regulation (EC) No. 245/2009). This document includes both energy efficiency standards and testing requirements for fluorescent and HID lamps. Annex IV of the regulation defines the sample size for all lamps as a total of 20 lamps of the same model and from the same manufacturer, randomly selected. The sample must be considered to comply with the regulation if the average results of the sample do not vary from the limit, threshold, or declared values by more than 10 percent.

DOE surveyed the sample size for other covered lamps. Table II.4 compares the sample size for each of the covered lamps and the different metrics that are tested.

TABLE II.4—COMPARISON OF SAMPLE SIZE FOR COVERED LAMPS

CFR citation	Lamp type	Metric	Sample size
10 CFR 429.27	General service incandescent and fluorescent lamps.	Lamp efficacy	≥21
		CRI.	
		Watts input.	
		Lumens.	
	General service incandescent lamps	Watts input	≥21
		CRI.	
		Lumen.	
		Rated lifetime.	
	Incandescent reflector lamps	Lamp efficacy	≥21
10 CFR 429.35	Medium-base compact fluorescent lamps	Efficacy	≥5
		1,000-hour lumen maintenance	≥5
		Lumen maintenance	≥5
		Rapid-cycle stress test	≥6
		Average rated lamp life	≥10
10 CFR 429.40	Candelabra base and intermediate base incandescent lamps.	Lamp wattage	≥21

Based on its review of sample size requirements, DOE proposed in the December 2011 TP NOPR to use a sample size of 21 for HID lamps. 76 FR 77914, 77921 (Dec. 15, 2011). NEMA stated that a sample size of 21 lamps is not appropriate for HID lamps because of the significant capital investment and electricity costs for long-term lumen maintenance testing, and that having to test 21 samples of numerous basic models (200 basic models by Philips' estimate) would further compound these costs. NEMA provided best and worst case cost estimates of $150,000 to $450,000 for testing the DOE proposed 21 samples for 50 basic models—this cost range is for both initial efficacy measurements and lumen maintenance measurements. (NEMA, No. 6 at p. 10) NEMA noted that lamp production can be interrupted based on changing demand, which could compel manufacturers to sample as many as 21 lamps from a first production run, as well as lamps from any additional runs within a 12-month reporting period. NEMA stated that because of demand fluctuations for certain lamps, some lamps may not have continuous (or multiple) production runs within the same calendar year. Therefore, manufacturers might test 21 lamps in the first production run to meet the proposed sample size requirement, in case future production runs of that lamp type did not occur in that year. NEMA suggested that, to meet DOE's proposed monthly sampling rate requirements, manufacturers might then have to test another sample of three or more lamps later in that same year if customer demand required additional production runs.

NEMA also raised the logistical concern of lumen maintenance testing, which NEMA stated requires many thousands of hours with staggered start times. (NEMA, No. 6 at p. 10) To mitigate this ongoing testing requirement, NEMA proposed an initial sample of 21 lamps for lumen maintenance testing with an additional 2 lamps per production run sampled over the rest of the reporting year for 100-hour confirmation testing. (NEMA, No. 6 at p. 10) In response to the February 2012 HID lamps ECS Framework document, Venture Lighting (Venture) supported a bifurcated approach of testing a large initial sample set for initial values and then using the same sample for lumen maintenance testing, performing supplemental efficacy testing with a smaller additional sample set(s). Venture also noted that NEMA's working group for lamp statistics was still determining optimal sample sizes. (Docket No. EERE–2010–BT–STD–0043, Venture, Public Meeting Transcript, No. 6 at pp. 167–168)

DOE reviewed NEMA's concerns regarding sample size, which can be categorized as follows: (1) Sampling rate; (2) sample size required for lamp efficacy, CCT, and CRI testing; and (3) sample size required for lumen maintenance testing. DOE notes it has withdrawn the proposal to establish a test method for lumen maintenance and has withdrawn the proposal to establish a sampling plan for CRI measurements. However, DOE's review includes those elements because NEMA based their concerns, cost scenarios, and examples on their inclusion in the testing requirements.

Sampling Rate

In the December 2011 TP NOPR, DOE proposed a sampling rate of three lamps per month for a minimum of 7 months in a given reporting year. 76 FR 77914, 77921 (Dec. 15, 2011). NEMA proposed a sampling rate based on production runs, but did not define a production run. Based on its review of business terminology, DOE understands a production run to be a group of similar or related equipment produced using particular manufacturing procedures, processes, or conditions. Production run size will depend on customer demand for lamps produced, as well as the costs to set up production and carry excess inventory. This general description underscores some of the challenges manufacturers might face in balancing costs and inventory with changes in customer demand and challenges for DOE to administer regulations based on production runs.

DOE surveyed the sampling rate for other covered lamps. Table II.5 compares the sample size and sampling rate for each of the covered lamps and related metrics.

TABLE II.5—COMPARISON OF SAMPLE SIZE AND SAMPLING RATE FOR COVERED LAMPS

CFR citation	Lamp type	Metric	Sample size
10 CFR 429.27	General service incandescent and fluorescent lamps.	Lamp efficacy	Randomly select three lamps from each month of production for a minimum of 7 months.
		CRI	
		Watts input	
		Lumens	
	General service incandescent lamps	Watts input	Randomly select three lamps from each month of production for a minimum of 7 months.
		CRI	
		Lumen	
		Rated lifetime	
	Incandescent reflector lamps	Lamp efficacy	Randomly select three lamps from each month of production for a minimum of 7 months.
10 CFR 429.35	Medium-base compact fluorescent lamps.	Efficacy	Randomly selected.
		1,000-hour lumen maintenance	
		Lumen maintenance	
		Rapid-cycle stress test	None specified.
		Average rated lamp life	None specified.
10 CFR 429.40	Candelabra base and intermediate base incandescent lamps.	Lamp wattage	Randomly selected.

In its comments on the December 2011 TP NOPR, NEMA expressed concern about different sample size requirements in the United States and Europe, and expressed its desire to use existing testing data for domestic and international reporting where possible. (NEMA, Public Meeting Transcript, No. 5 at pp. 43, 79–80) Commission Regulation (EC) No. 245/2009 requires a minimum sample size of 20 HID lamps, but does not specify the frequency or rate at which the 20 lamps are to be sampled during a reporting year.

LSD 63–2012 recommends a sampling plan for lamps not regulated (as of the year 2012) in the *Code of Federal Regulations,* stating that the samples must be ''randomly selected from at least four different manufacturing dates. If the manufacturing dates of the samples are not available, the samples are recommended to be procured from at least four different locations.'' As discussed previously, HID lamp production may be intermittent based on demand, with fewer than four manufacturing dates within a calendar year. Production may also be limited to fewer than four different manufacturing locations, depending on the manufacturer. Therefore, DOE does not propose adoption of the sampling rate requirements of LSD 63–2012.

Because of the fluctuating demand for certain HID lamp types and the challenge of defining production runs for this equipment, DOE proposes a sampling rate requirement for HID lamps that allows random selection. This is consistent with the sampling rate requirements of the EU, as well as for some other covered lamp types, and would allow manufacturer discretion in sampling rate, *e.g.,* a single sampling event or multiple sampling events.

Sample Size Required for Lamp Efficacy and Correlated Color Temperature, Testing

DOE originally proposed a total sample size of 21 lamps in the December 2011 TP NOPR. 76 FR 77914, 77921 (Dec. 15, 2011). NEMA objected to the proposed sample size, citing potentially prohibitive electricity costs and capital investment for testing facilities (particularly for lumen maintenance testing). (NEMA, No. 6 at p. 10)

The LSD 63–2012 recommended sampling plan for lamps not covered in the *Code of Federal Regulations* states, ''The minimum sample size for verification testing of lamps shall be 21 samples randomly selected from at least four different manufacturing dates. If the manufacturing dates of the samples are not available, the samples are recommended to be procured from at least four different locations.'' Thus, NEMA's LSD 63–2012 supports DOE's original proposed sample size of 21.

DOE understands that electricity costs are a component of testing burden, and are affected by sample size. (Testing burden for HID lamps is discussed in section III.B of this SNOPR.) DOE notes that it no longer proposes lumen maintenance testing for potential energy conservation standards for HID lamps. Because DOE no longer proposes testing for lumen maintenance, NEMA's comment related to testing burden over a subsequent period of time is moot.

DOE proposed a sample size of 21 lamps for CCT testing in the December 2011 TP NOPR. 76 FR 77914, 77921 (Dec. 15, 2011). DOE received no comments supporting or opposing this proposal. DOE proposes that the sample size for CCT be the same as it is for lamp efficacy for potential energy conservation standards. Therefore, DOE proposes a minimum sample size of 21 for CCT for potential energy conservation standards.

In this SNOPR, DOE does not propose a sample size requirement for CRI because CRI is being considered in the standards rulemaking only to define an exemption for lamps.

Review of Sample Sizes

In review, for the HID lamps that have the potential to be subject to future energy conservation standards, DOE proposes the sample sizes shown in Table II.6.

TABLE II.6—DOE PROPOSED SAMPLE SIZES

Measurement/calculation	Minimum number of samples
Lamp Efficacy	21
Correlated Color Temperature	21

ii. Statistical Representation

In the December 2011 TP NOPR, DOE proposed that any represented value of lamp efficacy or color characteristics for a basic model be based on a sample of 21 lamps and be less than or equal to the lower of either the sample mean or the LCL of the characteristic value true mean [17] divided by 0.97. 76 FR 77914, 77921 (Dec. 15, 2011). NEMA commented that DOE's proposed statistical approach is an application of the statistical t-test that results in more stringent tolerances than EU requirements, and could unnecessarily put U.S. manufacturers at a competitive disadvantage in the EU marketplace. (NEMA, No. 6 at p. 9)

DOE reviewed its application of the t-test and interprets NEMA's concerns about application of the t-test as applying to instances where the sample mean is less than the quotient of the LCL and divisor (currently set at 0.97). DOE recognizes that in the absence of a divisor, the LCL of a sample will always be lower than the sample mean. However, as the divisor decreases from 1.00 to 0, the resulting quotient (LCL divided by the divisor) can be greater than the sample mean. Based on this calculation, DOE proposed in the December 2011 TP NOPR that any represented characteristic value be the lower of either (1) the sample mean or (2) the LCL of the characteristic value true mean divided by the divisor. 76 FR 77914, 77921 (Dec. 15, 2011).

[17] ''True mean'' is the population mean of all manufacturer-produced lamps. This characterizes the mean (average) value of all lamps of the same basic model produced by the manufacturer. In contrast, the sample mean refers to the mean (average) of the sample set and the sample size is defined accordingly in the proposed rule.

The EU requires the average (mean) of the sample to be within 10 percent of the limit, threshold, or declared values. Under EU requirements, a significant portion of the sample could be less than the declared (or required standard) value and still be considered compliant because mean values can be skewed by outliers or extreme values. In contrast, DOE proposed in the December 2011 TP NOPR to use the confidence interval of 95 percent to calculate the LCL, which approximates the proportion of a sample that may be expected to contain the true mean. 76 FR 77914, 77921 (Dec. 15, 2011). To better represent differences in manufacturing variability between HID lamp types, DOE revises its proposed confidence intervals in this SNOPR (as discussed in section II.C.2.b.iii).

NEMA also commented that the sample mean calculation does not provide tolerance for manufacturing and measurement uncertainties. NEMA stated that there is inherent variation in HID lamp manufacturing and measurement uncertainties across different National Voluntary Laboratory Accreditation Program (NVLAP)-accredited laboratories. (NEMA, No. 6 at p. 9)

DOE acknowledges that there are uncertainties related to both lamp manufacturing and testing. DOE addressed this issue previously in the May 1997 fluorescent and incandescent lamp test procedures rulemaking (herein referred to as the May 1997 FL/IL TP final rule). 62 FR 29222 (May 29, 1997). During the rulemaking process for the May 1997 FL/IL TP final rule, NEMA and other manufacturers proposed different derating values for both the sample mean and the LCL. 62 FR 29222, 29230 (May 29, 1997). DOE, NEMA, and NIST met during the rulemaking process to discuss the sampling plan, variability, and uncertainties. 62 FR 29222, 29230 (May 29, 1997). In the May 1997 FL/IL TP final rule, DOE stated that all variability was accounted for by the confidence limit equation using the ''t-test'' and the derating factor (divisor) applied only to the LCL, and not to the mean. 62 FR 29222, 29230 (May 29, 1997).

The LCL is a function of the sample mean and encompasses manufacturing variations. Historically, DOE has not applied the divisor to the sample mean lumen per watt value. *Id.* at 29229–30. However, sample mean lumen per watt is not derated because the NIST uncertainty in the lumen output of the standard lamps is randomly distributed. *Id.* at 29230, DOE based its December 2011 TP NOPR proposal on the method adopted in the May 1997 FL/IL TP final rule and applied the divisor only to the LCL and not to the mean. This proposal is unchanged in today's SNOPR.

iii. Lower Confidence Limit

In the December 2011 TP NOPR, DOE proposed a confidence interval of 95 percent to calculate the LCL, which reflects the inherent uncertainty in any sample measurement resulting from manufacturing variations. This proposal included the same certification requirements that were used in 10 CFR 429.27 for GSFLs (a related gas-discharge lamp). Based on comments received and additional research, DOE proposes in this SNOPR to specify two separate confidence intervals applicable to: (1) MH lamps; and (2) MV and HPS lamps.

In response to the December 2011 TP NOPR, GE commented that the tolerances in DOE's statistical approach should be modified because HID lamps have much wider manufacturing tolerances for lumen output than fluorescent and incandescent lamps. (GE, Public Meeting Transcript, No. 5 at p. 82) OSRAM SYLVANIA agreed, noting that it is difficult to report HID lamp lumen output beyond the nearest 100 lumens. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at pp. 31–32). During the March 2012 ECS public meeting, Venture commented that the physical complexity of metal halide (*e.g.,* containing 10 components as opposed to 1–2 components for other lamp types) contributes to manufacturing variation. (Docket No. EERE–2010–BT–STD–0043, Venture, Public Meeting Transcript, No. 8 at p. 91)

NEMA provides long-term manufacturing data variability as a ratio of the observed long term standard deviation (s_{LT}) compared to the mean (μ) (written as s_{LT}/μ) in LSD 63–2012 based on industry consensus for many lamp and ballast types, including HID lamps. Table II.7 provides an excerpt of the incandescent, fluorescent, and HID variability values from LSD 63–2012.

TABLE II.7—INDUSTRY CONSENSUS LONG-TERM MANUFACTURING DATA VARIABILITY (s_{LT}/μ)

Lamp type	Luminous flux	Lamp efficacy	CRI	CCT
Tungsten filament lamp	0.040	0.047		0.030
Medium-base CFL	0.060	0.096	0.040	0.045
Double-based fluorescent lamp	0.050	0.056	0.040	0.025
Pulse-start quartz metal halide lamp	0.070	0.070	0.045	0.065
Pulse-start ceramic metal halide lamp	0.065	0.065	0.040	0.050
High-pressure sodium lamp	0.040	0.040	0.020	0.025

There is significant variability in luminous flux for HID lamps, with pulse-start quartz MH lamps showing the highest variability for all HID lamp types discussed in LSD 63–2012. LSD 63–2012 does not provide variability values for MV lamps, but DOE believes these values would be comparable to those of HPS lamps because MV lamps have similar, comparatively simple lamp chemistry. Because HID lamps are measured at a fixed power value (per LM–51–13), this variation in lumens correlates to the same variation in lamp efficacy.

DOE agrees with the findings of LSD 63–2012, which indicate less manufacturing variability for HPS lamps than for MH lamps. Due to the difference in inherent uncertainty in a typical sample of each of the different HID lamp types, DOE proposes to set the confidence intervals differently for MH versus HPS and MV lamps. Based on LSD 63–2012, MH lamps have more manufacturing variation than GSFLs, while HPS (and by association MV lamps) have less variation than GSFLs. Using these values, DOE calculated confidence intervals so that the values of the LCL divided by the sample mean for all HID lamps types are consistent with those values used in test procedures for GSFLs.[18] 74 FR 31829, 31836 (July 6, 2009) Therefore, to calculate the LCL, DOE proposes in this SNOPR to specify a confidence interval of 99 percent for MV and HPS lamps and a confidence interval of 90 percent for MH lamps.

iv. Divisor

In the December 2011 TP NOPR, DOE proposed that the LCL be divided by a divisor of 0.97, which translates to an expected variation of 3 percent. 76 FR 77914, 77921 (Dec. 15, 2011). In written comments, NEMA stated that CRI and CCT should be given tolerances of 3 and 4 percent, respectively. (NEMA, No. 6 at p. 3) NEMA also described a typical 4 percent measurement variation between testing laboratories. (NEMA, Public Meeting Transcript, No. 5 at p. 102) DOE received no other comments related to the divisor.

DOE uses various divisors for other covered light sources. General service fluorescent lamps (10 CFR 429.27) and general service incandescent lamps (10 CFR 429.27) use a divisor of 0.97. In contrast, medium base CFLs (10 CFR 429.35) and candelabra-base and intermediate-base incandescent lamps (10 CFR 429.40) use a divisor of 0.95. In the December 2011 TP NOPR, DOE proposed a divisor of 0.97 (76 FR 77914, 77921 (Dec. 15, 2011)). In this SNOPR, DOE continues to propose a divisor of 0.97 for all HID lamps.

NEMA has commented on this topic in previous rulemakings. In its comments on the September 2010 CC&E NOPR, NEMA provided a formula for calculating divisors:

$$D = 1 \pm \left(t \div \sqrt{n}\right)(\sigma \div \mu)$$

where ''t'' is a function of the specified confidence limit, ''n'' is the sample size, ''σ'' is the standard deviation, and ''μ'' is the true mean, as well as a table of divisors for different sample sizes and LCLs of 95 percent. NEMA also provided a table (Table II.8 is a reprint of the table provided by NEMA) showing different divisors for both different sample sizes and different ratios of standard of deviations to the mean. (Docket No. EERE–2010–BT–CE–0014, NEMA, No. 85 at pp. 38–39)

TABLE II.8—NEMA'S DIVISORS FOR LOWER CONFIDENCE LIMIT

σ/μ Ratio	Minimum sample size				
	4	5	6	10	21
0.01	0.99	0.99	0.99	0.99	1.00
0.02	0.98	0.98	0.98	0.99	0.99
0.03	0.96	0.97	0.98	0.98	0.99
0.04	0.95	0.96	0.97	0.98	0.98
0.05	0.94	0.95	0.96	0.97	0.98
0.10	0.88	0.90	0.92	0.94	0.96
0.15	0.82	0.86	0.88	0.91	0.94
0.20	0.76	0.81	0.84	0.88	0.92
0.25	0.71	0.76	0.79	0.86	0.91
0.30	0.68	0.71	0.75	0.83	0.89
0.35	0.59	0.67	0.71	0.80	0.87
0.40	0.53	0.62	0.67	0.77	0.85

[18] DOE calculated the t-statistics for confidence intervals from 90% to 99% in increments of 0.5% (90%, 90.5%, 91%, etc.). DOE then scaled the t-statistic based on the ratio of the long term manufacturing variability for the different light sources from LSD–63. DOE then found the confidence interval that corresponded with scaled t-statistic.

In the December 2011 TP NOPR, DOE proposed a sample size of 21 lamps and an LCL divisor of 0.97.[19] 76 FR 77914, 77921 (Dec. 15, 2011). As shown in Table II.9, this corresponds to σ/μ ratios between 0.05 and 0.10.

TABLE II.9—DIVISORS FOR VARYING LCLS WITH SAMPLE SIZE OF 21 LAMPS

σ/μ Ratio	99%	97%	95%
0.05	0.97	0.98	0.98
0.10	0.95	0.96	0.96

Finally, NEMA commented that NVLAP's ''Proficiency Testing for Energy Efficient Lighting Products'' shows lab-to-lab variations of more than 4 percent, depending on the lamp technology. (NEMA, No. 6 at p. 13) According to NEMA, the overall uncertainty for any lamp measurement will include variation of the measured characteristics. Therefore, for highly variable characteristics such as light output and color, the measurement uncertainty may be significantly greater than just the variation of the characteristic itself (which is typical for discharge lamps). (NEMA, No. 6 at p. 13) In this SNOPR, DOE proposes to retain an LCL divisor of 0.97 for all HID lamps.

v. Proposed Sampling Plan for Potential Energy Conservation Standards

DOE proposes, for each basic model of HID lamp, randomly selected samples of production lamps shall be tested and the results averaged. A minimum of 21 lamps shall be tested. Any represented value of lamp efficacy of a basic model shall be less than or equal to the lower of:

(A) The mean of the sample,

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:
$\bar{x}$ is the sample mean,
n is the number of samples, and
x_i is the ith sample;

Or,

(B) The lower confidence limit (LCL) of the true mean divided by 0.97,

$$LCL = \bar{x} - t\left(\frac{s}{\sqrt{n}}\right)$$

Where:
$\bar{x}$ is the sample mean,
s is the sample standard deviation,
n is the number of samples, and
t is the t statistic for a 90-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A) for MH lamps, or the t statistic for a 99-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A) for HPS and MV lamps.

For each basic model of HID lamp, the CCT must be measured from the same lamps selected for the lamp efficacy measurements (*i.e.,* the manufacturer must measure all lamps for lumens, input power, and CCT). The CCT must be represented as the mean of a minimum sample of 21 lamps,

Where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

$\bar{x}$ is the sample mean,
n is the number of samples, and
x_i is the ith sample.

c. Lamp Seasoning and Stabilization

In the December 2011 TP NOPR, DOE proposed that lamps be seasoned (*i.e.,* operated or aged) for at least 100 hours in the same orientation in which they will be used.[20] 76 FR 77914, 77921–22 (Dec. 15, 2011). Standard lamp orientation (burning position) would be base-up unless otherwise designated by the manufacturer.[21] *Id.* This is consistent with ANSI C78.389, section 3.7.2. NEMA supported this approach. (NEMA, No. 6 at p. 10).

DOE received additional comments on testing orientation for lamps with no specified operating position. The CA IOUs and the Joint Comment suggested that DOE examine other testing orientations, but did not disagree that the lamps should be seasoned and stabilized in the testing orientation. (CA IOUs, No. 8 at pp. 2–3; Joint Comment, No. 9 at p. 2) Therefore, DOE proposes in this SNOPR to require that HID lamps with no specified operating position (including universal position lamps) be seasoned and stabilized in the position in which they will be tested (vertical base-up position as discussed in section II.C.1.c.iv).

In the December 2011 TP NOPR, DOE also proposed a lamp stabilization method (warm-up and stabilization criteria) based on ANSI C78.389, section 3.7. 76 FR 77914, 77922 (Dec. 15, 2011). NEMA concurred with using the stabilization criteria of ANSI C78.389 for the HID lamp test procedures. (NEMA, No. 6 at p. 10) DOE received no other comments on its proposed approach. Therefore, the warm-up and stabilization criteria are unaffected by this SNOPR.

d. Lamp/Circuit Transfer

In the December 2011 TP NOPR, DOE proposed to adopt the lamp cool-down and re-stabilization methods of ANSI C78.389, section 3.7, for HID lamp test procedures. 76 FR 77914, 77922–23 (Dec. 15, 2011). HID lamps are sensitive to movement once they are warmed up and stabilized. Therefore, any significant movement or disturbance could destabilize the lamp operation, altering its output or electrical characteristics and requiring the lamp to be re-stabilized prior to testing. The re-stabilization time varies by lamp type, whether the lamp arc has been extinguished, and whether lamp orientation has changed. Lamp cool-down, in contrast, is needed only when the lamp arc is extinguished prior to relocating the lamp in the integrating sphere.

The lamp cool-down and re-stabilization requirements of ANSI C78.389, section 3.7, are shown in Table II.10. In the December 2011 TP NOPR, DOE proposed using the re-stabilization requirements in ANSI C78.389, rather than LM–51, because ANSI C78.389 provides specific guidance for re-stabilization requirements for each of the HID lamp types, whereas LM–51 provides only general guidance. 76 FR 77914, 77922 (Dec. 15, 2011). DOE received no negative comments regarding its proposed requirements as they relate to lamps that are extinguished and/or changed in orientation prior to relocation.

[19] This is the same sample size and LCL divisor used for GSFL and GSIL lamps.

[20] For example, if the lamp is to be operated in the base-down position, the lamp must be operated (''burned in'' or ''aged'') in that base-down position.

[21] Lamp position is designated in the lamp designation (catalog code) and included in manufacturer catalogs, specification sheets, and the packaging.

TABLE II.10—ANSI C78.389 HID LAMP COOL-DOWN AND RE-STABILIZATION REQUIREMENTS

Lamp type	Cooling requirement	Re-Stabilization time
MV	None	Not in standard. Reconfirm stabilized operations upon transfer/restrike.
HPS	Allow to cool for 1 hour minimum before relocating	Not in standard. Reconfirm stabilized operations upon transfer/restrike.
MH	Cool to below 60 °C if relocating	No relocation no reorientation—30 minutes. Relocation with no reorientation—30 minutes. Reorientation—6 hours.

During the January 2012 TP public meeting, OSRAM SYLVANIA explained an industry practice where HID lamps are energized, stabilized, and moved into the integrating sphere. There is no cool-down or re-stabilization because the lamps are not extinguished. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at pp. 85–86) NEMA provided further details on how the lamps are moved into the integrating sphere while operating, and how stabilization is reconfirmed inside the sphere. (NEMA, No. 6 at p. 11) NEMA stated that this methodology is more efficient than extinguishing, cooling, and re-stabilizing the lamp. (NEMA, No. 6 at p. 11) NEMA also stated that this method generally requires a maximum stabilization time of only 15 minutes. NEMA was concerned that DOE's proposed cool-down and re-stabilization requirements would apply unnecessarily to lamps that remain operating with no change in orientation. (NEMA, No. 6 at p. 11) According to NEMA, ''The table [Table II.10], as written seems to apply to lamps that are turned off before locating them in the sphere. This should not apply to the lamps that remain lighted with no change in orientation.'' (NEMA, No. 6 at p.11) DOE understands that this methodology is an industry practice but is not documented in any industry standards.

DOE agrees with NEMA's distinction, and proposes that lamps that remain energized with no change in orientation when moved should be operated for the minimum time needed to verify lamp stabilization prior to measurements. If the lamps are changed in orientation and/or extinguished and then moved, DOE proposes to apply the cool-down and re-stabilization requirements from the NOPR (shown in Table II.10).

e. Lamp Orientation

In the December 2011 TP NOPR, DOE proposed to adopt the lamp orientation requirements of ANSI C78.389, section 3.6, for HID lamp testing. 76 FR 77914, 77923 (Dec. 15, 2011). As discussed herein, industry procedures have been developed to ensure that the correct orientation is maintained for consistent electrical and photometric measurements.

ANSI C78.389, section 3.6, requires that a lamp marked or designated on the lamp's data sheet for use in a specific operating position be tested in that position. If no operating position is specified or the lamp is marked ''universal,'' this industry standard directs that the lamp is to be operated in the vertical base-up position.

In contrast, LM–51 does not contain lamp orientation requirements for testing, except to note that lamp orientation during warm-up must be the same as that during photometry. LM–51 also states that the manufacturer's specifications should be consulted for any restrictions on lamp orientation.

During the January 2012 TP public meeting, the CA IOUs asked whether HID lamps performed best in a vertical operating position. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 89–90) OSRAM SYLVANIA stated that it measures lumen output for universal position lamps in horizontal and vertical orientations. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at pp. 90–91) Manufacturers further elaborated that universal position lamps are often used in floodlights where the aiming angle is unknown, and it would be burdensome to test them in additional orientations. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at pp. 91–93; GE, Public Meeting Transcript, No. 5 at pp. 92–93)

In their comments, the CA IOUs expressed concern that universal position lamps were less efficacious and, because they are less expensive than position-dedicated lamps, they might be substituted in position-dedicated applications. (CA IOUs, No. 8 at pp. 2–3) The CA IOUs urged DOE to require testing universal position lamps at multiple orientations, suggesting that two or three additional orientations would not add significant testing burden. (CA IOUs, No. 8 at pp. 2–3) The Joint Comment agreed, encouraging DOE to examine the range of efficacy levels of universal position lamps when operated in a horizontal position. (Joint Comment, No. 9 at p. 2) NEMA stated that it agreed with ANSI C78.389, which limits testing to a lamp's specified orientation or a vertical base-up orientation if not specified (including universal position lamps). (NEMA, No. 6 at p. 11)

DOE reviewed manufacturer performance data for horizontal position only lamps, vertical base-up position only lamps, and universal position lamps (tested in a vertical, base-up position). In its review, DOE found the data reported in catalogs did not provide conclusive evidence of differences in efficacy between these lamp types. DOE also reviewed published data, such as manufacturer catalogs, for universal orientation lamps when operated in vertical base-up and horizontal orientations. This data suggests that universal position lamps are generally less efficacious when operated in a horizontal orientation.

DOE acknowledges that manufacturers cannot know the orientation in which universal lamps will be operated, and agrees that testing at multiple orientations would impose an undue burden. At the January 2012 TP public meeting, OSRAM SYLVANIA and GE stated that universal orientation lamps are most commonly used in a vertical position. (OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at p. 91; GE, Public Meeting Transcript, No. 5 at p. 92)

Vertical position specifies the orientation of the lamp, but does not denote whether the base is up or down in the orientation. Of the HID lamps, only MH lamps are affected by operating position. Vertical burning MH lamps are available in base-up, base-down, and base-up/base-down designations.

Universal lamps are specified for projects for two major reasons: (1) The fixture can be aimed (*e.g.,* a floodlight) and is going to be aimed at angle that is not entirely vertical or horizontal; and (2) there are multiple types of fixtures at the site (*e.g.,* a bollard with a base-down socket, an area lighting fixture with a base-up socket, or a downlight fixture with a base-up socket) that use

the same type of lamp. By specifying the universal lamp, the one lamp type can be stocked for each type of fixture, simplifying maintenance at the site. Vertical base up is the most common orientation of MH lamps because more fixtures (*e.g.,* high-bay; low-bay; downlights; parking structure fixtures; most pole-mounted area ''shoeboxes'' fixtures) need this orientation for optical reasons to distribute the light.[22]

In this SNOPR, DOE retains its original proposal that HID lamps with a manufacturer-specified operating position be tested in the position specified, and that HID lamps with no specified operating position (including universal orientation lamps) be tested in the vertical base-up orientation.

3. Special Considerations for Directional Lamps

Directional lamps, which are typically reflector lamps with a discernible beam pattern, have different setup and measurement requirements than omni-directional lamps. In the December 2011 TP NOPR, DOE proposed set-up and measurement requirements of directional lamps in accordance with ANSI C78.379, which provides classification of beam patterns and specification of directional lamp measurement and evaluation. 76 FR 77914, 77923 (Dec. 15, 2011).

The CA IOUs and the Joint Comment supported DOE's proposal to develop a new metric and test procedures for directional HID lamps. (CA IOUs, No. 8 at p. 4; Joint Comment, No. 9 at p. 1) NEMA agreed with using ANSI C78.379, but noted that industry standards and technical guidance are being developed for directional lamps, and recommended that DOE not include directional lamps in its rulemakings until the new industry references are available. (NEMA, No. 6 at p. 11)

In the February 2013 HID lamps ECS Interim Analysis document, DOE stated that it was considering excluding directional HID lamps from standards coverage, citing their small market share and the fact that this application is replacing less-efficient halogen lamps. (Docket No. EERE–2010–BT–STD–0043) As a result, DOE is not including directional lamp testing in this SNOPR.

D. Test Measurements and Calculations

1. Measurement and Calculation of Efficacy

In the December 2011 TP NOPR, DOE proposed that HID lamp efficacy be calculated as the initial lumen output divided by the measured input lamp wattage, with the resulting quotient rounded off to the nearest tenth of a lumen per watt. 76 FR 77914, 77923 (Dec. 15, 2011). This requirement is consistent with the 2009 GSFL/GSIL/IRL test procedures final rule, in which DOE required testing to a tenth of a lumen per watt. 74 FR 31829, 31836 (July 6, 2009).

In this SNOPR, DOE proposes specific provisions for initial lumen output and lamp input power measurements for clarity. DOE proposes that the initial lumen output be measured in accordance with section II.C.1.d, in which DOE maintained its proposal from the NOPR that photometric testing be conducted per IES LM–51–2013. For lamp input power, DOE proposes measurements be conducted in accordance with section 3.5, 3.9, and 3.10 of ANSI C78.389. Section 3.5 details the circuit types that can be used for the connecting the required measurement instrumentation, including the reference ballast, voltmeter, wattmeter, and/or ammeter to the HID lamp. Section 3.9 describes the methods necessary to compensate for the presence of instruments in the lamp circuit when taking the measurements. Lastly, section 3.10 (which applies exclusively to HPS lamps) gives instructions for the measurement of lamp amperes and volts at nominal lamp wattage. To measure the wattage of an HID lamp, if a voltmeter and ammeter are used then the product of the measured voltage and the current is the lamp wattage (input electrical power) of the HID lamp. If a wattmeter is used, then the measured value in watts is the lamp wattage of the HID lamp. DOE did not receive any comments following the December 2011 TP NOPR regarding input power measurements for HID lamps. In this SNOPR, DOE proposes to calculate HID lamp efficacy as the measured initial lumen output divided by the measured input power in watts, with the resulting quotient rounded off to the nearest tenth of a lumen per watt. DOE requests comment on the input power and lumen output measurements necessary to calculate lamp efficacy.

2. Measurement and Calculation of Center Beam Intensity and Beam Angle

In the December 2011 TP NOPR, DOE proposed measuring center beam intensity and calculating the beam angle for directional lamps using the procedures described in ANSI C78.379. 76 FR 77914, 77923 (Dec. 15, 2011). During the January 2012 TP public meeting, NEMA expressed general concern about DOE's directional HID lamp requirements. (NEMA, Public Meeting Transcript, No. 5 at pp. 88–89) GE clarified that NEMA agreed with using ANSI C78.379, but that its concern was related to the specific metrics and related tolerances once the measurements were completed. (GE, Public Meeting Transcript, No. 5 at p. 89) NEMA elaborated that measuring the beam performance of directional lamps increases the measurement variation if zonal lumens are used to set efficiency limits. (NEMA, No. 6 at p. 11)

As discussed in section II.C.3, DOE is considering excluding directional lamps from its HID lamps ECS rulemaking. For this reason, DOE is not including center beam intensity or beam angle calculation provisions in this SNOPR.

3. Measurement and Calculation of Correlated Color Temperature and Color Rendering Index

In the December 2011 TP NOPR, DOE proposed to adopt CCT and CRI measurement methods based on CIE 15 and CIE 13.3. 76 FR 77914, 77924 (Dec. 15, 2011). DOE previously incorporated these standards in the GSFL/GSIL/IRL test procedures final rule. 74 FR 31829, 31834 (July 6, 2009).

During the January 2012 TP public meeting, the CA IOUs asked NEMA to distinguish its position on the proposed methodology for color quality measurements from its disagreement of using color quality to establish equipment classes in the HID lamps ECS. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 106–107) NEMA responded that it had no issue with the proposed methods for measuring color quality of HID lamps. (NEMA, Public Meeting Transcript, No. 5 at p. 107)

NEMA commented that test standards are appropriate for CCT and CRI for lamps at 100 hours. NEMA further elaborated that the industry does not endorse the concept of CRI or CCT maintenance. (NEMA, No. 6 at p. 3) DOE acknowledges that after HID lamps have been seasoned (operated for 100 hours), the color characteristics can be measured. Although DOE is considering using initial CCT and CRI to determine scope and equipment classes in the HID lamps ECS rulemaking, DOE is not considering CCT or CRI maintenance requirements. (Docket No. EERE–2010–BT–STD–0043)

DOE acknowledges that the color shift of HID lamps occurs over time and is not possible to predict. Therefore, DOE proposes that after the initial seasoning period (100 hours of operation), manufacturers would measure CCT values for 21 HID lamps (see section II.C.2.b.i for a discussion of proposed sample size requirements). The sample

[22] Base down requires the socket to be at the ''bottom'' of the fixture and the socket occludes light, causing a dark spot directly below the fixture.

mean CCT values would be the representative values for the basic model. CRI values would be tested in the same manner. DOE proposes test procedures for CRI only because CRI is being considered in the standards rulemaking to define the CRI above which standards will not be considered for lamps. DOE and manufacturers would use the proposed CRI test method to determine whether lamps are subject to the potential standards.

i. Correlated Color Temperature

In the past, DOE has used CCT to define and categorize certain kinds of lamps (*e.g.,* modified-spectrum fluorescent and incandescent lamps, and general service fluorescent lamps). DOE is considering CCT as a means to define equipment classes for HID lamps. For HID lamp testing, in the December 2011 TP NOPR, DOE proposed to adopt the procedures and methods in CIE 15 to determine HID lamp CCT. 76 FR 77914, 77924 (Dec. 15, 2011).

Ushio commented that DOE should establish CCT requirements for MH lamps used in general lighting applications, but not for MH lamps used for special applications such as disinfection, curing, and aquariums. (Ushio, No. 7 at p. 1) In the concurrent HID lamps ECS rulemaking, DOE is considering excluding certain HID lamps in a given CCT range from coverage because they are used only for specialty applications. DOE will address comments related to CCT requirements as part of the standards rulemaking.

NEMA stated that if CCT requirements are established, CCT should have a tolerance of 4 percent. (NEMA, No. 6 at p. 3) DOE researched CCT and considered three options related to tolerances for CCT values for HID lamps:

1. Set a fixed tolerance of at least 4 percent for the CCT value as proposed by NEMA in written comments. For other covered products (*i.e.,* general service fluorescent lamps), however, DOE does not apply a percent tolerance to CCT values. Therefore, DOE found that this percentage-based tolerance would be inconsistent with other lighting products and does not propose to use this tolerance method.

2. Define the x,y coordinates for the different nominal CCTs, and then apply a seven-step MacAdam ellipse to the center of the x,y value. If the measured x,y values corresponding to a lamp's CCT were within that ellipse, the lamp would be characterized by that nominal CCT. This is the standard protocol for lighting industry chromaticity standards.

No industry chromaticity standards are currently defined for HID lamps. DOE researched available chromaticity standards for fluorescent lamps (ANSI C78.376–2001) and solid-state lighting (SSL) (ANSI C78.377–2011). DOE notes that in the ENERGY STAR November 30, 2012 letter, EPA stated that there is no industry standard to reference.[23]

DOE researched publicly available chromaticity data for HID lamps found in manufacturer catalogs, and found that the graphed x,y coordinates for many HID lamps would not fall within the seven-step MacAdam ellipses for nominal fluorescent lamp CCT values in ANSI C78.376–2001. Because of the lack of industry chromaticity standards for HID lamps, and DOE's findings that HID lamps often do not fall within the seven-step MacAdam ellipses for fluorescent lamps, DOE rejects this method of testing CCT values in HID lamps.

3. Round the mean of the sample of lamps' CCT values to the nearest 10 kelvin, as is prescribed in test procedures for general service fluorescent lamps in 10 CFR part 430, subpart B, appendix R. In the 2012 GSFL/GSIL/IRL test procedures final rule, DOE discussed originally requiring rounding to the nearest single kelvin, but increased it to the nearest 10 kelvin per a recommendation from NEMA and in consultation with NIST. 77 FR 4203, 4207 (Jan. 27, 2012).

Therefore, DOE proposes that the HID lamps be measured for CCT and, like the rounding approach used in the GSFL/GSIL/IRL test procedures, that CCT values be rounded to the nearest 10 kelvin.

ii. Color Rendering Index

In the December 2011 TP NOPR, DOE proposed a test method to measure CRI because DOE was considering CRI as a means to define the scope of coverage for HID lamps for potential energy conservation standards. DOE proposed to adopt the methods and procedures set forth in CIE 13.3 to determine lamp CRI. 76 FR 77914, 77924 (Dec. 15, 2011).

The CA IOUs supported the proposed color quality measurements. (CA IOUs, No. 8 at p. 2) NEMA commented that CCT and CRI have little relevance to the energy efficiency of HID lamps. (NEMA, No. 6 at p. 3) However, in commenting on the February 2012 HID lamps ECS Framework document, NEMA supported using CRI as a metric for possible exclusion of certain lamps (*e.g.,* high CRI, low CCT lamps), also noting that CRI could affect an equation-based efficacy standard. (Docket No. EERE–2010–BT–STD–0043, NEMA, No. 7 at pp. 5, 21)

In the HID lamps ECS rulemaking, DOE is considering a CRI above which lamps would not be considered for standards. (Docket No. EERE–2010–BT–STD–0043) DOE and manufacturers would use the proposed CRI test method to determine whether a lamp is subject to standards based on CRI applied to a basic model of lamp. In this SNOPR, DOE proposes that the CRI of HID lamps be rounded to the nearest whole number, as is consistent with rounding for other lighting technologies.

NEMA stated that if CRI requirements are established, CRI measurements should be given a tolerance of at least 3 percent. (NEMA, No. 6 at p. 3) In the HID lamps ECS rulemaking, DOE is only considering using CRI to determine whether a particular lamp model is considered for standards. The CRI itself is not under consideration for being regulated or reported. (Docket No. EERE–2010–BT–STD–0043) Because of this, DOE did not give further consideration to the tolerance of at least 3 percent requested by NEMA.

4. Test Method for Measuring Lumen Maintenance

In the December 2011 TP NOPR, DOE proposed measuring lumen maintenance for HID lamps at 40 percent and 70 percent of rated lamp life, as described in LM–47. 76 FR 77914, 77923–24, 77934 (Dec. 15, 2011).

The Joint Comment supported measuring lumen maintenance, which is used in lighting design calculations to estimate future light output and energy use in lighting systems more accurately. The Joint Comment stated that improved lumen maintenance results in energy savings in the field and encouraged DOE to include lumen maintenance in the test procedures. (Joint Comment, No. 9 at p. 1) The CA IOUs also supported DOE's proposal to measure lumen maintenance for HID lamps. (CA IOUs, No. 8 at p. 1)

NEMA raised a number of logistical issues related to the proposal and was generally not supportive of lumen maintenance testing. NEMA cited particular concerns about lumen maintenance testing for HID lamps, including: (1) The significant capital investment and operating expenses for long-term testing of 21 or more samples for tens or hundreds of basic models, ranging in wattage from 50 to 1,000 watts; (2) the difficulty of obtaining NVLAP accreditation for manufacturer testing facilities for lumen maintenance; and (3) the potential delays in new product introduction while long-term lumen maintenance data is gathered. (NEMA, No. 6 at pp. 2, 3, 12, 13) NEMA stated that new product introduction to the market could be delayed if testing at 40 percent of rated life is required before a lamp can be introduced. (NEMA, No. 6 at p. 3)

At this time, DOE does not plan to include lumen maintenance requirements in potential energy conservation standards for HID lamps,

[23] ENERGY STAR Lighting Stakeholder—*www.energystar.gov/products/specs/sites/products/files/ES_Luminiares_1%202_Letter_FINAL.pdf*—last accessed October 26, 2013

and therefore does not propose to require lumen maintenance measurement to demonstrate compliance with any final standards. In this SNOPR, DOE addresses comments on lumen maintenance testing regarding updated industry test standards, measured points in rated life, and test burden.

In the December 2011 TP NOPR, DOE referenced LM–47–01. 76 FR 77914, 77916–17, 77923–24 (Dec. 15, 2011). Intertek commented on the use of older versions of IES standards (*i.e.,* LM–47), stating they may have been recently revised or be under revision. (Intertek, Public Meeting Transcript, No. 5 at p. 121) DOE is no longer proposing to incorporate LM–47 because DOE no longer proposes in this SNOPR to measure the lumen maintenance of HID lamps.

NEMA commented that the 2012 version of the IES Design Guide 10 (DG–10–12) states ''mean lumens are defined as the lumens emitted at 40 percent (fluorescent and HID) or 50 percent (other sources) of rated lamp life.'' (NEMA, No. 6 at p. 3) NEMA stated that this definition is incorrect, and should specify 40 percent for MH/MH lamps and 50 percent for HPS lamps. (NEMA, No. 6 at pp. 2–3) NEMA stated that it has alerted IES to the error. NEMA stated that the accepted industry practice is to measure lumen maintenance at 40 percent of rated life for MH lamps. (NEMA, No. 6 at pp. 2–3) For HPS and MV lamps, NEMA stated that the accepted industry practice is to measure lumen maintenance at 50 percent of rated life. (NEMA, No. 6 at pp. 2–3)

The CA IOUs were supportive of measuring lumen output at one defined point in the rated lamp life for all HID lamp types. The CA IOUs further encouraged lumen maintenance testing even if the proposed 40 percent and 70 percent measurement points had to be modified to accommodate industry concerns. (CA IOUs, No. 8 at pp. 1–2) NEMA commented that HID lamps can have very long operating lifetimes (*e.g.,* greater than 40,000 hours), and that measuring at 70 percent of life could require multiple years of lamp operation. (NEMA, No. 6 at p. 2) NEMA speculated that the proposed measurement at 70 percent of life was derived from the ''L_{70}'' value for SSL products, which designates the operating hours at which an SSL product still maintains 70 percent of initial light output. (NEMA, No. 6 at pp. 2–3) The CA IOUs supported a second lumen maintenance test at 70 percent of rated lamp life, stating that lumen maintenance is a significant factor in the specification of HID lamp and ballast systems. (CA IOUs, No. 8 at pp. 1–2) The Joint Comment stated that most lighting systems are designed based on the mean light output of the lamps. (Joint Comment, No. 9 at p. 1) DOE understands the 40 and 50 percent of rated lamp lifetimes are the traditional points in time when lumen maintenance is measured. DOE notes that LM–47 contains the 70 percent of rated lamp lifetime and DOE was not conflating it with L_{70} value for SSL. DOE no longer proposes to measure lumen maintenance as part of this SNOPR.

NEMA also stated that if 40 percent of life lumen maintenance is required, for newly introduced products DOE should allow projection of lumen maintenance values using manufacturer-accepted practices. (NEMA, No. 6 at p. 3) NEMA stressed that existing data should be used, where possible, to reduce potential delays to market. (NEMA, No. 6 at pp. 2, 13; NEMA, Public Meeting Transcript, No. 5 at pp. 35–36, 39–42) The CA IOUs also supported lumen maintenance testing and suggested that standardizing on a measurement point of 40 percent of rated lamp life for all HID lamps would not be overly burdensome to manufacturers, and would facilitate comparison of lamps. (CA IOUs, No. 8 at pp. 1–2) DOE reviewed technical reports, industry test procedures, and other literature and could not find a lumen maintenance extrapolation methodology for HID lamps.[24] DOE understands both the potential burden and advantage of standardizing on a point in lamp life to reduce the burden to manufacturers. However, lumen maintenance is not under consideration for use in the HID lamps ECS rulemaking. (Docket No. EERE–2010–BT–STD–0043) Because of this, DOE no longer proposes testing lumen maintenance in this SNOPR.

E. Active Modes—Less Than Full Output (Dimming)

1. Measurement of Dimming Performance for Potential Energy Conservation Standards

In the December 2011 TP NOPR, DOE proposed a requirement that the HID lamp be energized before efficiency testing was conducted. 76 FR 77914, 77921 (Dec. 15, 2011). DOE did not propose testing at reduced light output. At the January 2012 TP public meeting, the CA IOUs asked about HID lamps designed to operate on dimming systems, to which OSRAM SYLVANIA responded that HID lamps are typically not designed for dimming, but can be dimmed in compatible lamp and ballast systems. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 113–114; OSRAM SYLVANIA, Public Meeting Transcript, No. 5 at p. 114) In written comments, the CA IOUs noted that dimming performance can vary significantly among HID lamp technologies, and encouraged DOE to develop a procedure to test and measure the performance of HID lamps in a dimmed state. (CA IOUs, No. 8 at p. 4) The Joint Comment agreed. (Joint Comment, No. 9 at p. 2)

In the April 2010 HID lamps notice of proposed determination, DOE stated that dimming (operating the lamps at less than full power) HID lamps is uncommon. 76 FR 22031, 22034 (April 27, 2010). NEMA responded that there were currently no industry standards for dimming HID lamp and ballast systems, although an industry task force had been organized to address the issue. (Docket No. EE–DET–03–001, NEMA, No. 2 at p. 2) NEMA also directed DOE to NEMA LSD 14–2010, ''Guidelines on the Application of Dimming High-Intensity Discharge Lamps.'' (Docket No. EE–DET–03–001, NEMA, No. 2 at p. 2) DOE has since reviewed LSD 14–2010 and identified three major issues related to dimming HID lamps:

1. HID lamps should not be dimmed below 50 percent of rated lamp wattage.
2. Color, lamp life, lumen depreciation, and efficacy can be affected by dimming.
3. Lamps, ballasts, and control systems could have compatibility issues because each component of the HID system would be required to be designed for use with dimming (*i.e.,* a dimmable HID lamp could not be placed on any existing ballast and be dimmed, it would have to be placed specifically on a dimmable ballast in order for the lamp to be dimmed).

In the February 2013 HID lamps ECS Interim Analysis document, DOE stated that it plans to assess HID lamp performance at full light output only. (Docket No. EERE–2010–BT–STD–0043, DOE, Framework Document, No. 2 at pp. 15) Therefore, in this SNOPR, DOE is not proposing to require testing of HID lamps in the dimmed state for potential energy conservation standards.

F. Standby Mode and Off Mode Energy Usage

In the December 2011 TP NOPR, DOE stated that HID lamps do not operate in standby or off mode and, thus, energy use in those states would not be

[24] DOE researched the use of lumen maintenance extrapolation in industry standards and test procedures from ANSI, CIE, IESNA, and NEMA and did not find any details on lumen maintenance extrapolation. DOE also did a general search of publicly available peer-reviewed lighting literature, technical reports, manufacturer data sheets, and did not find test procedures to extrapolate the lumen maintenance of HID lamps.

measured. 76 FR 77914, 77924 (Dec. 15, 2011). DOE received no comments on its proposed approach. This proposal is unaffected by this SNOPR.

G. Laboratory Accreditation Program

In the December 2011 TP NOPR, DOE proposed that testing be conducted by test laboratories accredited by NVLAP or an accrediting organization recognized by NVLAP. 76 FR 77914, 77923 (Dec. 15, 2011). NVLAP establishes standards for the accreditation of laboratories that test for compliance with relevant industry standards pursuant to 15 CFR 285.3. *Id.* A manufacturer's or importer's own laboratory, if accredited, may be used to conduct the applicable testing. 15 CFR 285.3.

DOE received comments on the following related topics: (1) Additional accrediting organizations; (2) color measurements; (3) lab-to-lab measurement variations; and (4) lumen maintenance testing and NVLAP.

NEMA generally supported DOE's proposed laboratory accreditation requirements but stated that NVLAP does not recognize other accrediting organizations. NEMA cautioned DOE against involving other accrediting organizations, citing additional administrative and cost burdens, and recommended that DOE limit its laboratory accreditation requirements to NVLAP-accredited laboratories only. (NEMA, No. 6 at p. 12) NEMA also stated that any CCT or CRI measurements should be performed by an NVLAP-accredited facility. (NEMA, No. 6 at p. 3)

NEMA stated that almost all HID lamp lumen maintenance testing occurs at lamp manufacturing facilities, which are typically not NVLAP-accredited. (NEMA, No. 6 at p. 13) During the March 2012 ECS public meeting, Venture elaborated by stating that manufacturers support using NVLAP-accredited laboratories for testing color and efficacy, but that lumen maintenance testing could overload these external laboratories. Venture stated that this was a similar problem with GSIL life testing. (Docket No. EERE–2010–BT–STD–0043, Venture, No. 7 at pp. 166–167) DOE recognizes these comments related to lumen maintenance but no longer proposes lumen maintenance as part of this SNOPR.

DOE finds that the benefits from testing in NVLAP-accredited laboratories only do not outweigh the costs, both in terms of financial costs and additional time before new lamp models are approved for commercial sale. Because of this, DOE does not propose that testing related to efficacy and color measurements be performed in NVLAP-accredited laboratories only. DOE requests comment on the proposal to not require testing to be performed in NVLAP-accredited laboratories only.

NEMA directed DOE to NVLAP's ''Proficiency Testing for Energy Efficient Lighting Products,'' which shows lab-to-lab measurement variations of more than 4 percent, depending on the lamp technology. (NEMA, No. 6 at p. 13) DOE researched this document and determined that the ''Proficiency Testing for Energy Efficient Lighting Products'' document is still being developed and not available.

H. Effective Date and Compliance Date for the Test Procedures and Compliance Date for Submitting High-Intensity Discharge Lamp Certification Reports

1. Effective Date for the Test Procedures

The test procedures will be effective 30 days after publication of any final rule in the **Federal Register**.

2. Compliance Date for the Test Procedures

The compliance date for making any representations of the energy efficiency of covered HID lamps is 180 days from the date of the publication of any final rule in the **Federal Register**. On or after that date, any such representations, including those made on marketing materials and product labels, would be required to be based on results generated under the final test procedures and the applicable sampling plans.

3. Compliance Date for Submitting High-Intensity Discharge Lamp Certification Reports

Until DOE establishes energy conservation standards for HID lamps, manufacturers, including importers, are not required to submit compliance statements or certification reports for HID lamps. DOE will address these requirements should DOE establish energy conservation standards for HID lamps.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedures rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (Feb. 19, 2003). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed the test procedures considered in today's SNOPR under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003. As discussed in more detail below, DOE found that because the proposed test procedures have not previously been required of manufacturers, all manufacturers, including small manufacturers, may potentially experience a financial burden associated with new testing requirements. While examining this issue, DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. Therefore, DOE has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this rulemaking. The IRFA describes the potential impacts on small businesses associated with HID lamp testing and labeling requirements. DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review.

1. Estimated Small Business Burden

SBA has set a size threshold for electric lamp manufacturers to describe those entities that are classified as ''small businesses'' for the purposes of the IRFA. DOE used the SBA's small business size standards to determine whether any small manufacturers of HID lamps would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size

standards are listed by North American Industry Classification System (NAICS) code and industry descriptions are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

In the December 2011 TP NOPR, DOE stated that none of the HID lamp manufacturers surveyed would be considered a small business under SBA size standards—NAICS code 335110 and under 1,000 employees. 76 FR 77914, 77925 (Dec. 15, 2011). In making this determination, DOE developed a list of potential manufacturers by referring to the energy conservation standards (Docket EERE–2010–BT–STD–0043), reviewing NEMA membership, and surveying the lighting industry. After developing the list of potential manufacturers, DOE researched each manufacturer to determine if the manufacturer was domestic and how many employees the manufacturer employed. DOE received no comments on its statement on small businesses following the December 2011 TP NOPR. However, DOE's additional review identified two small manufacturers that potentially qualify for a small business under NAICS 335110 because these companies had fewer than 1,000 employees, were domestic, and not owned by a subsidy or owned by a larger company.

DOE also acknowledges Philips and NEMA's comments that DOE underestimated testing expenses in the December 2011 TP NOPR. Philips stated in the HID TP public meeting that annual electricity cost alone for lumen maintenance testing would exceed $200 per individual lamp, extrapolating to $4,200 for a sample size of 21 lamps. Philips estimated their catalog represents 200 basic models and thus the total cost of electricity could be over $2.3 million (accounting for the fact that lumen maintenance testing could require two to three years to complete). (Public Meeting Transcript, No. 5 at pp. 110–111) NEMA reiterated that electricity costs for lumen maintenance testing were $200 per lamp (or more than $4,200 for 21 lamps of a basic model per year). (NEMA, No. 6 at p. 13) DOE determined that GE, Philips, and OSRAM SYLVANIA (none of which qualify as small HID lamp manufacturers) each possibly have more than 200 basic models of HID lamps, and used an estimated number of basic models from these manufacturers' catalogs to estimate the potential annual electricity costs per manufacturer for lumen maintenance testing. As stated previously, DOE no longer proposes lumen maintenance testing for use with the possible energy conservation standard.

Labor and operating costs associated with conducting the input power, lumen output, CCT and CRI testing contribute to overall burden. However, DOE believes that calculating the efficacy of an HID lamp does not result in any incremental testing burden beyond the cost of carrying out lumen output and input power testing. DOE expects that the majority of manufacturers are already testing for lumen output, input power, CCT and CRI, as these metrics are well-established and most manufacturers report the values in their catalogs. However, DOE's sample size and other requirements may differ from those selected for a manufacturer's existing data. Therefore, DOE included the cost of carrying out these tests in its assessment of testing burden.

Table III.1 lists representative rated lamp wattages and the ballast input power required to operate the corresponding lamps. DOE calculated the annual costs of operating the lamps for representative ballast input power values. Table III.1 facilitates comparison of representative lamp wattages.

TABLE III.1—RATED LAMP POWER AND ASSOCIATED BALLAST INPUT POWER

HPS		MV		Quartz Probe (MH)		Quartz Pulse (MH)		Ceramic Pulse (MH)	
Rated lamp wattage	Input power *W*	Rated lamp wattage	Input power *W*	Rated lamp wattage	Input power *W*	Rated lamp wattage	Input power *W*	Rated lamp wattage	Input power *W*
35	44								
50	60	50	68			50	70	50	70
70	94					70	98	70	98
		75	93						
100	122	100	125			100	125	100	125
150	185					150	185	150	185
		175	202	175	208	175	209		
200	230								
250	295	250	283	250	291	250	285	250	285
						320	367	320	367
				360	400	350	400	350	400
400	465	400	454	400	456	400	458	400	458
1000	1100	1000	1080	1000	1080	1000	1060		
				1500	1610				

The potential total number of lamps tested is a function of the number of basic models and the required sample size. In the December 2011 TP NOPR, DOE proposed a sample size of 21 for lamp efficacy, CCT, and lumen maintenance. As previously stated in this SNOPR, DOE only plans to test lamp efficacy and CCT in setting potential HID lamps energy conservation standards (and CRI for excluding certain types of lamps from standards coverage). In addition, DOE continues to propose in this SNOPR to use a sample size for lamp efficacy and CCT of 21 lamps per basic model.

For stabilization and related testing, DOE assumed 7 hours of operation for the MH lamps and 3 hours for HPS and MV lamps. That ballast input power required to operate the lamps (shown in Table III.1) was multiplied by the respective hours and an electricity rate of $0.1052 per kilowatt-hour (kWh).[25]

The costs in the table were calculated as follows:

[25] The electricity rate of $0.1052 per kWh is the average commercial rate year from January through February 2014 from the U.S. Energy Information Administration's (EIA's) *Electric Power Monthly, October 2013,* Table 5.3, available at: *www.eia.gov/electricity/monthly/* (last accessed April 4, 2014).

NEMA's written comments reference an electricity cost of $0.10 per kWh. These rates should be considered the same for most purposes.

Number of basic models (per lamp type) × sample size × input power × operating hours × $0.1052/kWh

Table III.2 shows the operating costs for MV lamps for a possible manufacturer. The number of basic models is multiplied by the sample size by the input power (see Table III.1) by the operating hours (seasoning plus testing operation) and finally multiplied by the electricity cost per kilowatt-hour. The total cost for electricity for testing this family of lamps can be determined by summing the total electricity costs for the lamps—$1,218.52. The cost per basic model for electricity can be determined by dividing the total electricity costs ($1,218.52) by the total number of basic models (16), which is a cost per basic model of $76.16.

TABLE III.2—EXAMPLE OPERATING ELECTRICITY COSTS FOR MV LAMPS

Rated lamp power	# Basic models	Samples	Input power	Operating hours	Electricity rate	Total electricity cost
50	1	21	68	103	$0.1052	$15.47
75	1	21	93	103	0.1052	21.16
100	4	21	125	103	0.1052	113.77
175	3	21	202	103	0.1052	137.89
250	2	21	283	103	0.1052	128.79
400	3	21	454	103	0.1052	309.92
1000	2	21	1080	103	0.1052	491.50
Total cost for electricity for testing this family of lamps						1,218.52

NEMA requested in its review of estimated testing costs that labor-year costs be added into the analysis. (NEMA, No. 6 at p. 13) DOE reviewed the 2012 median pay for electrical and electronic engineering technicians ($57,850), electrical and electronics engineers ($89,630) and electro-mechanical technicians ($51,820), and calculated an average annual salary of $66,433 from the U.S. Department of Labor Bureau of Labor Statistics.[26] This average was divided by 1,920 hours per year (40 hours per week for 48 weeks per year) to develop an hourly rate of $34.06. The hourly rate was multiplied by 31 percent[27] to account for benefits[28] to calculate an estimated total cost per hour of $45.32.

DOE assumed that the testing technician would not be needed for the entire time because the technician can perform other tasks not related to testing the lamp while the lamp is being stabilized. Therefore, DOE multiplied the full labor rate by 50 percent of the expected total operation time of the lamp.

Table III.3 shows the labor costs for MV lamps for a possible manufacturer. The number of basic models is multiplied by the sample size by the hourly labor rate by the testing time by the time utilization of the technician (50 percent of the technician's time during testing) to determine the total labor costs. The total example labor costs can be determined by summing all of the values in the total labor costs column to equal $22,841.28. The total example labor cost per basic model can be determined by dividing the total labor costs ($22,481.28) by the total quantity of basic models (16) to equal about $1,427.58.

TABLE III.3—EXAMPLE LABOR COSTS FOR TESTING MV LAMPS

# Basic models	Samples	Lamp power	Hourly labor rate	Hours	Time utilization (percent)	Total labor costs
1	21	50	$45.32	3	50	$1,427.58
1	21	75	45.32	3	50	1,427.58
4	21	100	45.32	3	50	5,710.32
3	21	175	45.32	3	50	4,282.74
2	21	250	45.32	3	50	2,855.16
3	21	400	45.32	3	50	4,282.74
2	21	1000	45.32	3	50	2,855.16

The process of determining the electricity costs (depicted in Table III.2) and determining the labor costs (depicted in Table III.3) was repeated for MH and HPS lamps. In summary, the cost for electricity per HPS basic model was $55.88 and per MH basic model was $59.81. The labor costs per HPS basic model was $1,427.58 and the labor costs per MH basic model was $3,331.02.

In the August 30, 2013, memorandum documenting ex parte communication, NEMA indicated further reservations concerning future interpretation of the proposed definition of ''basic model,'' stating that because HID lamps are not classified into families, every HID lamp could potentially be identified as a separate basic model requiring testing and significantly increasing costs. (Docket EERE–2010–BT–STD–0043, NEMA No. 29 at p. 2) In response to NEMA's comment about the lack of families for HID lamps, DOE analyzed a large number of potential basic models for each type of HID lamp.

DOE was able to collect annual revenue estimates for the two small

[26] United States Department of Labor. *Bureau of Labor Statistics Occupational Outlook Handbook.* Washington, DC. (Last accessed April 7, 2014.) *www.bls.gov/ooh/Architecture-and-Engineering/home.htm.*

[27] Obtained from the Bureau of Labor Statistics (News Release: Employer Cost For Employee Compensation—December 2012, U.S. Department of Labor (December 2012), *www.bls.gov/news.release/ecec.nr0.htm.*

[28] Additional benefits include: Paid leave, supplemental pay, insurance, retirement and savings, Social Security, Medicare, unemployment insurance and workers compensation.

business HID lamp manufacturers using Hoovers.com company profile database. DOE determined that the mean revenue of the identified small business manufacturers is $10,300,000.[29] DOE then analyzed the potential burden on one of the two small manufacturers as a proxy for all the small manufacturers. For this manufacturer, DOE identified 36 different wattage MH lamps, 13 different wattage HPS lamps, and 5 different wattage MV lamps offered by the manufacturer. For each wattage and type of lamp, the manufacturer could possibly have between one and five different basic models. DOE estimated the total cost to test 21 samples, assuming that each lamp type/wattage combination was a basic model, to be $145,613.16. DOE estimated that a maximum total cost to test 21 samples, assuming that each lamp offered was treated as a different basic model, would be $321,681.36. According to DOE's calculations, the proposed testing cost represents between 1.39 percent and 3.06 percent of the mean revenues of the two small business manufacturers. DOE requests comment on the estimated number of small businesses that would be affected by the proposed rulemaking.

The final cost per manufacturer primarily depends on the number of basic models of that lamp type that a manufacturer sells. Some lamp types have more basic models than others. These are not annual costs because DOE does not require manufacturers to retest a basic model annually. The initial test results used to generate a certified rating for a basic model remain valid as long as the basic model has not been modified from the tested design in a way that makes it less efficient or more consumptive, which would require a change to the certified rating. If a manufacturer has modified a basic model in a way that makes it more efficient or less consumptive, new testing is required only if the manufacturer wishes to make representations of the new, more efficient rating.

DOE seeks comments on its determination that it could not certify that the proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. DOE also seeks comment on the methodologies and data used to reach this determination, including data on the average number of years a basic model remains unchanged (and therefore does not require annual retesting).

[29] According to Hoovers.com, the smallest of the two small business HID lamp manufacturers had revenues of $6.1 million per year.

C. Review Under the Paperwork Reduction Act of 1995

There is currently no information collection requirement related to the test procedures for HID lamps. In the event that DOE proposes an energy conservation standard with which manufacturers must demonstrate compliance, or otherwise proposes to require the collection of information derived from the testing of HID lamps according to these test procedures, DOE will seek OMB approval of such information collection requirement.

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standard developed by DOE. In certifying compliance, manufacturers must test their products according to the applicable DOE test procedure, including any amendments adopted for that test procedure.

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping was subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification was estimated to average 20 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 of information.

As stated above, if DOE proposes an energy conservation standard for HID lamps with which manufacturers must demonstrate compliance, DOE will seek OMB approval of the associated information collection requirement. DOE will seek approval either through a proposed amendment to the information collection requirement approved under OMB Control Number 1910–1400 or as a separate proposed information collection requirement.

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

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedures that it expects will be used to develop and implement future energy conservation standards for HID lamps. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would establish test procedures without affecting the amount, quality, or distribution of energy usage, and therefore would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that these requirements do not apply because the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to create the test procedures for measuring the energy efficiency of HID lamps is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed test procedures incorporate testing methods contained in the following commercial standards:

1. ANSI C78.389–R2009, ''American National Standard for Electric Lamps—High Intensity Discharge—Methods of Measuring Characteristics'' (sections 1.0, 2.0, 3.0, and Figure 1);
2. CIE 13.3–1995, ''Technical Report: Method of Measuring and Specifying Colour Rendering Properties of Light Sources'';
3. CIE 15:2004, ''Technical Report: Colorimetry'';
4. IES LM–51–13, ''Approved Method for the Electrical and Photometric Measurements of High Intensity Discharge Lamps'' (sections 1.0, 5.2, 7.0, and 8.0); and
5. IES LM–78–07, ''IESNA Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer'' (sections 3.1 and 6.3).

DOE evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). Before prescribing a final rule, DOE will consult with the Attorney General and the Chairman of the FTC about the effect of these test procedures on competition.

IV. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through *www.regulations.gov* will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked ''confidential,'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential,'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

DOE requests comments and data on the HID lamp test procedures proposed in this SNOPR. Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in comments on the following:

1. Definitions

DOE seeks comments on all of the proposed definitions in this SNOPR.

a. Beam Angle

DOE requests comments on its proposal to withdraw the December

2011 TP NOPR proposed definition of ''beam angle.''

b. Color Rendering Index

DOE requests comments on its proposal to retain the December 2011 TP NOPR proposed definition of ''color rendering index.''

c. Correlated Color Temperature

DOE requests comments on its proposal to retain the December 2011 TP NOPR proposed definition of ''correlated color temperature.''

d. Directional Lamp

DOE requests comments on its proposal to revise the December 2011 TP NOPR proposed definition of ''directional lamp.''

e. High-Pressure Sodium Lamp

DOE requests comments on its proposal to retain the December 2011 TP NOPR proposed definition of ''high-pressure sodium lamp.''

f. Initial lumen output

DOE requests comments on its proposal to add a definition for ''initial lumen output.''

g. Lamp Efficacy

DOE requests comments on its proposal to revise the December 2011 TP NOPR proposed definition for ''lamp efficacy.''

h. Lamp Electrical Power Input

DOE requests comments on its proposal to withdraw the December 2011 TP NOPR proposed definition of ''lamp electrical power input.''

i. Lamp Wattage

DOE requests comments on its proposal to revise the December 2011 TP NOPR proposed definition of ''lamp wattage.''

j. Lumen Maintenance

DOE requests comments on its proposal to withdraw the December 2011 TP NOPR proposed definition of ''lumen maintenance.''

k. Mercury Vapor Lamp

DOE requests comments on its proposal to retain the December 2011 TP NOPR definition of ''mercury vapor lamp.''

l. Metal Halide Lamp

DOE requests comments on its proposal to retain the December 2011 TP NOPR definition of ''metal halide lamp.''

m. Rated Luminous Flux or Lumen Output

DOE requests comments on its proposal to withdraw December 2011 TP NOPR definition for ''rated luminous flux or lumen output.''

n. Self-Ballasted Lamp

DOE requests comments on its proposal to retain the December 2011 TP NOPR definition for ''self-ballasted lamp.''

o. Ballast Efficiency

DOE requests comments on its proposal to retain the definition of ''ballast efficiency'' for high-intensity discharge fixtures, currently set forth at 10 CFR 431.322.

p. Basic Model

DOE requests comments on its proposal to revise the December 2011 TP NOPR definition of ''basic model.''

2. Ambient Test Temperature

DOE requests comments on retaining the December 2011 TP NOPR proposed ambient test temperature requirements (25 °C ±5 °C) based on IES LM–51–13.

3. Air Speed

DOE requests comments on its proposal to eliminate the December 2011 TP NOPR proposed specific air speed requirements.

4. Reference Ballasts

DOE requests comments on its proposed approach for testing HID lamps for which there are no ANSI reference ballasts.

5. Instrumentation for Photometric Measurement

DOE requests comments on its proposal to incorporate by reference sections 3.1 and 6.3 of LM–78–07, and add related text that references LM–78–07 guidance on integrating sphere measurement errors and corrections.

6. Sampling Plan

DOE requests comments on its proposed sampling plan as summarized and discussed in section II.C.1.c, especially regarding sample size (21 units for lamp efficacy and correlated color temperature), statistical representation (confidence intervals of 90 percent for MH lamps, and 99 percent for HPS and MV lamps), and divisor (0.97).

7. Lamp Seasoning and Stabilization

DOE requests comments on its proposed requirement that HID lamps with no specified operating position (including universal position lamps) be operated in the vertical base-up orientation for seasoning and stabilization purposes.

8. Cool-Down and Re-Stabilization

DOE requests comments on its proposed cool-down and re-stabilization requirements.

9. Lamp Orientation

DOE requests comments on its proposed requirement that HID lamps with no specified operating position (including universal position lamps) be tested in the vertical base up position.

10. Special Consideration for Directional Lamps

DOE requests comments on its proposal to exclude directional lamp testing in this SNOPR.

11. Efficacy

DOE requests comments on its proposed method of calculating HID lamp efficacy and reporting efficacy to the nearest tenth of a lumen per watt.

12. Measurement and Calculation of Correlated Color Temperature and Color Rendering Index

DOE requests comments on its proposed measurement methods for color characteristics (CCT and CRI).

13. Dimming

DOE requests comments on its proposal that eliminates testing HID lamps in a dimmed state.

14. Small Business Burden

DOE requests comment on its determination that it could not certify that the proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. DOE also seeks comment on the methodologies and data used to reach this determination.

15. Basic Model Introduction and Modification

DOE requests comment on the expected frequency of introductions of new basic models and the average number of years a basic model remains unmodified to potentially better determine the potential effects of this rule on small businesses.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Buildings and facilities,

Business and industry, Energy conservation, Grants programs—energy, Housing, Reporting and recordkeeping requirements, Technical assistance.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements, Small business.

Issued in Washington, DC, on May 5, 2014.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 431 of chapter II of title 10, Code of Federal Regulations as set forth below.

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.11 is revised to read as follows:

§ 429.11 General sampling requirements for selecting units to be tested.

(a) When testing of covered products or covered equipment is required to comply with section 323(c) of the Act, or to comply with rules prescribed under sections 324, 325, or 342, 344, 345, or 346 of the Act, a sample composed of production units (or units representative of production units) of the basic model being tested must be selected at random and tested, and must meet the criteria found in §§ 429.14 through 429.55 of this subpart. Components of similar design may be substituted without additional testing if the substitution does not affect energy or water consumption. Any represented values of energy efficiency, water efficiency, energy consumption, or water consumption for all individual models represented by a given basic model must be the same.

(b) Unless otherwise specified, the minimum number of units tested must be no less than two (except where a different minimum limit is specified in §§ 429.14 through 429.55 of this subpart).

■ 3. Section 429.55 is added to read as follows:

§ 429.55 High-intensity discharge (HID) lamps.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to high-intensity discharge (HID) lamps. HID lamps include high-pressure sodium (HPS), mercury vapor (MV), and metal halide (MH) lamps.

(2)(i) For each basic model of HID lamp, a sample of sufficient size, but not less than 21 units, shall be randomly selected and tested to ensure that—any represented value of lamp efficacy of a basic model shall be less than or equal to the lower of:

(A) The mean of the sample,

Where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

$\bar{x}$ is the sample mean,
n is the number of samples, and
x_i is the ith sample;

Or,

(B) The lower confidence limit (LCL) of the true mean divided by 0.97,

Where:

$$LCL = \bar{x} - t\left(\frac{s}{\sqrt{n}}\right)$$

$\bar{x}$ is the sample mean,
s is the sample standard deviation,
n is the number of samples, and
t is the t statistic for a 90-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A) for MH lamps, and the t statistic for a 99-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A) for HPS and MV lamps.

(ii) For each basic model of HID lamp, the correlated color temperature (CCT) must be measured from the same lamps selected for the lamp efficacy measurements in paragraph (a)(2)(i) of this section (*i.e.,* the manufacturer must measure all lamps for lumens, input power, and CCT). The CCT must be represented as the mean of a minimum sample of 21 lamps,

Where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

$\bar{x}$ is the sample mean,
n is the number of samples, and
x_i is the ith sample.

(b) *Certification reports.* [Reserved]

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Subpart 431.2 is amended by adding in alphabetical order, definitions for ''ballast'', ''high-intensity discharge lamp'', ''high-pressure sodium (HPS) lamp'', ''mercury vapor lamp'', and ''metal halide lamp'' to read as follows:

§ 431.2 Definitions.

* * * * *

Ballast means a device used with an electric discharge lamp to obtain necessary circuit conditions (voltage, current, and waveform) for starting and operating.

* * * * *

High-intensity discharge lamp means an electric-discharge lamp in which—

(1) The light-producing arc is stabilized by the arc tube wall temperature; and

(2) The arc tube wall loading is in excess of 3 watts/cm^2, including such lamps that are high-pressure sodium, mercury vapor, and metal halide lamps.

High-pressure sodium (HPS) lamp means a high-intensity discharge lamp in which the major portion of the light is produced by radiation from sodium vapor operating at a partial pressure of about 6,670 pascals (approximately 0.066 atmospheres or 50 Torr) or greater.

* * * * *

Mercury vapor lamp means a high-intensity discharge lamp, including clear, phosphor-coated, and self-ballasted screw base lamps, in which the major portion of the light is produced by radiation from mercury typically operating at a partial vapor pressure in excess of 100,000 Pa (approximately 1 atm).

Metal halide lamp means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

* * * * *

§ 431.282 [Amended]

■ 3. Section 431.282 is amended by removing the definitions of ''ballast'', ''high intensity discharge lamp'', and ''mercury vapor lamp''.

§ 431.322 [Amended]

■ 4. Section 431.322 is amended by removing the definitions of ''ballast'' and ''metal halide lamp.''

■ 5. Subpart Y is added to read as follows:

Subpart Y—High-Intensity Discharge Lamps

Sec.
431.451 Purpose and scope.
431.452 Definitions concerning high-intensity discharge lamps.
431.453 Materials incorporated by reference.
431.454 Uniform test method for calculation of lamp efficacy and color characteristics.
431.455 [Reserved].

§ 431.451 Purpose and scope.

This subpart sets forth energy conservation requirements for high-intensity discharge lamps, pursuant to Parts A and A–1 of Title III of the Energy Policy and Conservation Act, as amended, and 42 U.S.C. 6291, et al.

§ 431.452 Definitions concerning high-intensity discharge lamps.

Basic model means all units of a given type of covered equipment (or class thereof) manufactured by one manufacturer, that have the same primary energy source, and that have essentially identical electrical, physical, and functional characteristics that affect energy consumption or efficacy.

Color rendering index or CRI means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

Correlated color temperature means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

Directional lamp means a lamp with an integral reflector, emitting at least 80 percent of its light output within a solid angle of π steradians (corresponding to a cone with an angle of 120 degrees).

Initial lumen output means the measured lumen output after the lamp is seasoned, then initially energized and stabilized, using the lamp seasoning and stabilization procedures in 10 CFR 431.454(b)(1).

Lamp efficacy means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

Lamp wattage means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in section 6.2.1 of IES LM–51–13.

Self-ballasted lamp means a lamp unit that incorporates all elements that are necessary for the starting and stable operation of the lamp in a permanent enclosure and that does not include any replaceable or interchangeable parts.

§ 431.453 Materials incorporated by reference.

(a) *General.* DOE incorporates by reference the following standards into subpart Y of part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, 202–586–2945. Standards can be obtained from the sources listed as follows.

(b) *ANSI.* American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or go to *www.ansi.org.*

(1) ANSI C78.389–2004 (R2009) (''ANSI C78.389''), American National Standard for Electric Lamps—High Intensity Discharge—Methods of Measuring Characteristics, approved August 9, 2009, IBR approved for § 431.454.

(b) [Reserved].

(c) *CIE.* International Commission on Illumination (Commission Internationale de l'Eclairage) Central Bureau, Kegelgasse 27, A–1030, Vienna, Austria, 011+43 1 714 31 87 0, or go to *www.cie.co.at.*

(1) CIE 13.3–1995 (''CIE 13.3–1995''), Technical Report: Method of Measuring and Specifying Colour Rendering Properties of Light Sources, 1995. IBR approved for § 431.454.

(2) CIE 15:2004 (''CIE 15–2004''), Technical Report: Colorimetry, 2004. IBR approved for § 431.454.

(d) *IES.* Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001, 212–248–5000, or go to *www.iesna.org.*

(1) IES LM–51–13 (''LM–51–13''), Approved Method for the Electrical and Photometric Measurements of High Intensity Discharge Lamps, 2013. IBR approved for § 431.454.

(2) IES LM–78–07 (''LM–78–07''), IESNA Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer, 2007. IBR approved for § 431.454.

§ 431.454 Uniform test method for calculation of lamp efficacy and color characteristics.

Note: After [DATE 180 DAYS AFTER PUBLICATION OF TEST PROCEDURE FINAL RULE IN THE **Federal Register**], any representations made with respect to the efficacy, CCT, or CRI of HID lamps must be made in accordance with the results of testing pursuant to this test procedure.

(a) *Test setup and conditions.* (1) *Ambient conditions.* The ambient conditions must be established in accordance with the specifications in section 4.0 of IES LM–51 (incorporated by reference; see § 431.453).

(2) *Power supply characteristics.* The power supply characteristics must be established in accordance with section 3.2 of ANSI C78.389 (incorporated by reference; see § 431.453).

(3) *Reference ballasts.* For HID lamp testing, the reference ballast used must meet the requirements of ANSI C78.389. For HID lamp measurements (electrical and photometric), the tested lamps must be operated with a reference ballast with the matching ANSI rating or a reference ballast with variable impedance that can be set to match each lamp type to be tested. The reference ballast must have the impedance and the electrical characteristics required by ANSI for the lamp being tested. If electrical readings are to be taken on a lamp for which no ANSI standard exists, that lamp must be tested on a reference ballast with specifications that match the manufacturer specifications for the lamp such as those provided in a catalog or for marketing purposes online but not those provided for specific or limited uses, such as specifically for testing. If electrical readings are to be taken on a multi-start metal halide lamp, the lamp must be tested on a reference ballast with the characteristics defined in the equivalent probe-start ANSI lamp designation as listed in the lamp catalog or manufacturer data sheets with the lowest ANSI lamp designation. If no probe-start ANSI lamp designation is listed by the manufacturer, then the lamp must be tested on a reference ballast with the characteristics defined in the lowest ANSI lamp designation listed.

(4) *Electrical instrumentation.* Instrumentation for electrical measurements must meet the requirements of section 3.8 of ANSI

C78.389 (incorporated by reference, see § 431.453).

(5) *Photometric instrumentation.* Instrumentation for photometric measurements must meet the requirements of section 7.0 of IES LM–51, and sections 3.0 and 6.3 of IES LM–78 (incorporated by reference, see § 431.453).

(b) *Lamp preparation.* (1) *Lamp seasoning and stabilization.* The HID lamp must be seasoned for 100 hours per section 6.2.1 of IES LM–51 (incorporated by reference, see § 431.453). During the seasoning period, the lamp must be operated in the same orientation in which it will be tested for lamp efficacy. HID lamps with no specified operating position (including universal lamps) must be operated in the vertical base-up orientation for seasoning and stabilization. After this one-time seasoning process, a lamp being tested must achieve stable operation, prior to any measurements, using the lamp stabilization method specified in section 3.7 of ANSI C78.389 (incorporated by reference, see § 431.453). As detailed in ANSI C78.389, HID lamp stabilization requirements vary with lamp technology. Table I lists the lamp warm-up, stabilization, and re-stabilization requirements for MV, HPS, and MH lamps.

TABLE I—HID LAMP WARM-UP AND STABILIZATION CRITERIA

Lamp type	Lamp warm-up time	Stabilization criteria
MV	15–20 minutes	3 successive measurements (voltage and current). 5-minute measurement intervals. Change in value <1.0%.*
HPS	1 hour	3 successive measurements (voltage and current). 10- to 15-minute measurement intervals. Change in value <1.0%.*
MH	6 hours Operated within ±10% rated wattage	3 successive measurements (voltage and current). 10- to 15-minute measurement intervals. Change in value <3.0%.**

* This is determined by $\text{measurement}_{(n+1)}/\text{measurement}_{n}$, where the resultant value needs to be less than 101% and greater than 99% for the lamp to be considered stabilized.

** This is determined by $\text{measurement}_{(n+1)}/\text{measurement}_{n}$, where the resultant value needs to be less than 103% and greater than 97% for the lamp to be considered stabilized.

(2) *Lamp/circuit transfer.* Lamp transfer and re-stabilization must be conducted according to section 3.7 of ANSI C78.389 (incorporated by reference, see § 431.453). Lamps may either be operated continuously and moved into the integrating sphere or extinguished and relocated. If the lamp is not-extinguished prior to transfer, the lamp must be stabilized prior to measurement. If the lamp is extinguished and transferred, the lamp cool-down and transfer must adhere to the requirements shown in Table II. The requirements vary with HID lamp type, as well as with the specifics of the lamp movement.

TABLE II—LAMP COOL-DOWN AND RE-STABILIZATION REQUIREMENTS

Lamp type	Cooling requirement	Re-stabilization time
MV	None	Reconfirm stabilized operations upon transfer/restrike.
HPS	If extinguished, allow to cool for 1 hour minimum before relocating.	Reconfirm stabilized operations upon transfer/restrike.
MH	If extinguished, cool to below 60 °C if relocating	No relocation and no reorientation—30 minutes. Relocation with no reorientation—30 minutes. Reorientation—6 hours.

(3) *Lamp orientation.* Lamp orientation requirements are those specified in section 3.6 of ANSI C78.389 (incorporated by reference, see § 431.453). A lamp marked or otherwise designated for use in a specific operating position must be tested in that position. If no operating position is specified or the lamp is marked ''universal,'' the lamp must be operated in the vertical base-up position.

(c) *Test measurements and calculations.* Test measurements and calculations must be carried out in accordance with the test conditions, setup, and lamp preparation requirements of § 431.454(a)–(b).

(1) *Measurement and calculation of lamp efficacy.* (i) Measure the initial lumen output as specified in section 7.0 of IES LM–51 (incorporated by reference, see § 431.453).

(ii) Measure the input power in watts as specified in sections 3.5, 3.9, and 3.10 of ANSI C78.389 (incorporated by reference, see § 431.453). If a voltmeter and ammeter are used for measurements, multiply the measured voltage and current values.

(iii) HID lamp efficacy must be calculated as the value from (c)(1)(i) divided by the value from (c)(1)(ii) of this section, with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(2) *Measurement and calculation of correlated color temperature and color rendering index.* (i) Determine HID lamp CCT using the methods for measurement and characterizing color set forth in CIE 15 (incorporated by reference, see § 431.453). The CCT value must be rounded to the nearest 10 kelvins.

(ii) Determine HID lamp CRI using the methods for measurement and characterizing color set forth in CIE 15 and CIE 13.3 (incorporated by reference, see § 431.453). Measure HID lamp CRI if necessary to determine whether a lamp is subject to standards based on its CRI as specified in § 431.455. The CRI must be rounded to the nearest whole number.

§ 431.455 [Reserved].

[FR Doc. 2014–10683 Filed 5–21–14; 8:45 a.m.]

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