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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0960; Airspace Docket No. 13–AGL–17]

RIN 2120–AA66

Modification and Revocation of Air Traffic Service (ATS) Routes; Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies two jet routes and three VOR Federal airways and removes three jet routes in the north central United States. The FAA is taking this action due to the scheduled decommissioning of the Peck, MI, VHF Omnidirectional Range (VOR) navigation aid (NAVAID), which provides navigation guidance for portions of the affected routes. The amendments for one jet route (J–38) and one VOR Federal airway (V–337) that were addressed in the notice of proposed rulemaking (NPRM) are withdrawn from this final rule as they are being amended in a separate rulemaking action. This action promotes flight safety and the efficient management of aircraft operating within the National Airspace System (NAS).

DATES: Effective date 0901 UTC, November 13, 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.

ADDRESSES: FAA Order 7400.9X, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. The Order is also 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 *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On February 13, 2014, the FAA published in the **Federal Register** a NPRM (79 FR 8637) to amend jet routes J–16, J–38, and J–94; remove jet routes J–546, J–551, and J–553; and amend VOR Federal airways V–84, V–216, V–320, and V–337 due to the scheduled decommissioning of the Peck VOR. Subsequent to publication, the FAA proposed another rulemaking action addressing multiple Air Traffic Service routes in the North Central and Northeast United States, which included amending J–38 and V–337, in support of Canada's airspace redesign project. The FAA has determined not to proceed with the modifications proposed for J–38 and V–337 in this docket. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment from the Aircraft Owners and Pilots Association (AOPA) was received.

Discussion of Comments

In their response, AOPA addressed the statement in the NPRM that the Peck VOR is not on the list of VORs planned for retention in the VOR Minimum Operational Network (MON) and argued it was premature to utilize the VOR MON draft criteria in the FAA's decision making process. Specifically, they stated, ''the FAA is already using the [VOR MON] draft criteria to decommission or retain navigation aids (NAVAIDs).''

The determination to decommission the Peck VOR was made solely on the analysis and expectation of navigation signal degradation caused by the State of Michigan's initiative to provide renewable energy to the State with a planned construction of power transmission towers and lines within 1,400 feet of the Peck VOR. The FAA determined the integrity of the airways supported by the Peck VOR will be compromised due to modeling identifying bearing errors in excess of flight check tolerances at multiple azimuths around the NAVAID.

AOPA also commented in their response that air traffic control radar vectors should not be used to replace navigation infrastructure. They stated that the long-term use of radar vectors to mitigate the loss of navigation infrastructure is unrealistic and sets a dangerous precedent that this is an acceptable alternative to navigation infrastructure.

Effective upon the Peck VOR decommissioning, pilots that transit the area formerly serviced by the Peck VOR may either file and navigate point to point, using remaining NAVAIDs and fixes in the area, or use alternative airways if point to point navigation is not possible. Radar vectors, as addressed in the NPRM, is an additional option available to air traffic control for use as required, but is not intended or anticipated to be a routinely used method of controlling aircraft through that area. Rerouting and vectoring aircraft are safely accomplished within the NAS daily and does not set a dangerous precedent as suggested.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying jet routes J–16, and J–94, and VOR Federal airways V–84, V–216, and V–320. The FAA is also removing jet routes J–546, J–551, and J–553. The scheduled decommissioning of the Peck VOR has made this action necessary. The route changes and removals are outlined below.

J–16: J–16 extends between the Battle Ground, WA, VORTAC and the Boston, MA, VOR/DME, excluding the airspace within Canada. The route segment from the Badger, WI, VORTAC to the London, ON, Canada, VOR/DME is removed.

J–94: J–94 extends between the Oakland, CA, VORTAC and the Boston, MA, VOR/DME, excluding the airspace within Canada. The route segment from the Flint, MI, VORTAC to the London, ON, Canada, VOR/DME is removed.

J–546: J–546 is removed.

J–551: J–551 is removed.

J–553: J–553 is removed.

V–84: V–84 extends between the Northbrook, IL, VOR/DME and the Syracuse, NY, VORTAC, excluding the airspace within Canada. The route segment between the Flint, MI, VORTAC and the London, ON, Canada, VOR/DME is removed.

V–216: V–216 extends between the Lamar, CO, VOR/DME and the Toronto, ON, Canada, VOR/DME, excluding the airspace within Canada. The route segment between the Janesville, WI, VOR/DME and the Toronto, ON, Canada, VOR/DME is removed.

V–320: V–320 extends between the Pellston, MI, VORTAC and the Toronto, ON, Canada, VOR/DME. The route segment between the Saginaw, MI, VOR/DME and the Toronto, ON, Canada, VOR/DME is removed.

The navigation aid radials cited in the jet route and VOR Federal airway descriptions are unchanged and stated relative to True north.

Jet routes are published in paragraph 2004 and VOR Federal airways are published in paragraph 6010(a), respectively, 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 jet routes and VOR Federal airways listed in this document will be subsequently published in the Order.

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 Department of Transportation (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 United States Code. 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.

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 the 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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

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 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 FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013 and effective September 15, 2013, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–16 [Amended]

From Battle Ground, WA; Pendleton, OR; Whitehall, MT; Billings, MT; Dupree, SD; Sioux Falls, SD; Mason City, IA; to Badger, WI. From London, ON, Canada; Buffalo, NY; Albany, NY; to Boston, MA; excluding the airspace within Canada.

* * * * *

J–94 [Amended]

From Oakland, CA; Manteca, CA; INT Manteca 047° and Mustang, NV, 208° radials; Mustang; Lovelock, NV; Battle Mountain, NV; Lucin, UT; Rock Springs, WY; Scottsbluff, NE; O'Neill, NE; Fort Dodge, IA; Dubuque, IA; Northbrook, IL; Pullman, MI; to Flint, MI. From London, ON, Canada; Buffalo, NY; Albany, NY; to Boston, MA; excluding the airspace within Canada.

* * * * *

J–546 [Removed]

* * * * *

J–551 [Removed]

* * * * *

J–553 [Removed]

* * * * *

Paragraph 6010 Domestic VOR Federal Airways

* * * * *

V–84 [Amended]

From Northbrook, IL; Pullman, MI; Lansing, MI; to Flint, MI. From London, ON, Canada; Buffalo, NY; Geneseo, NY; INT Geneseo 091° and Syracuse, NY, 240° radials; to Syracuse; excluding the airspace within Canada.

* * * * *

V–216 [Amended]

From Lamar, CO; Hill City, KS; Mankato, KS; Pawnee City, NE; Lamoni, IA; Ottumwa, IA; Iowa City, IA; INT Iowa City 062° and Janesville, WI, 240° radials; to Janesville.

* * * * *

V–320 [Amended]

From Pellston, MI; Traverse City, MI; Mount Pleasant, MI; to Saginaw, MI.

* * * * *

Issued in Washington, DC, on September 4, 2014.

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–21577 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 943, and 982

[Docket No. FR–5778–C–02]

HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition, and Utility Allowances; Technical Correction

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

ACTION: Notice of statutory changes; correction.

SUMMARY: On June, 25, 2014, HUD published a document implementing statutory changes made by the Department of Housing and Urban Development Appropriations Act, 2014 to certain programs administered by HUD's Office of Housing and HUD's Office of Public and Indian Housing. In the discussion of implementation of the new definition of ''extremely low-income'' applicable to multifamily projects administered by HUD's Office of Housing, the document referred to ''contract administrators'' and it should have referenced ''owners.'' This document makes that correction.

DATES: *Effective Date:* September 11, 2014.

FOR FURTHER INFORMATION CONTACT: Claire Brolin, Office of Multifamily Housing Programs, Office of Housing, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 6106, Washington, DC 20410 at 202–402–6634 (this is not a toll-free number). Persons with hearing or speech impairments may access either of these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 2014, in FR Doc. 2014–14915, beginning on page 39540, the following corrections are made:

1. On page 35942, in the first column, correct the second paragraph under section ''C. Extremely Low-Income'' to read:

Beginning with the effective date of this notice, a PHA or owner shall meet its targeting requirements through a combination of ELI admissions prior to the effective date (using the prior definition) and ELI admissions after the effective date (using the new statutory definition). Neither a PHA nor an owner may skip over a family on the waiting list if that family meets the new definition of ELI as enacted by this section.

2. On page 35942, in the first column, correct the fifth paragraph under section ''C. Extremely Low-Income'' to read:

For the multifamily project-based section 8 programs, the owner must make available for occupancy by ELI families not less than 40 percent of the section 8-assisted dwelling units that become available for occupancy in any fiscal year.

1. On page 35942, in the second column, correct the seventh paragraph under section ''C. Extremely Low-Income'' to read:

In some communities, the extremely low-income and very low-income levels will be identical for some or all household sizes, in which case PHAs or owners meet their ELI targeting requirements by serving VLI households, since those families meet the new definition of ELI. To reduce the work a PHA or owner must do to determine which standard it should be using, HUD's Office of Policy Development and Research has calculated the new income limits for extremely low-income families, taking the previous sentence into account, and has made the new area income limits available online at *http://www.huduser.org/portal/datasets/il/il14/index.html.*

Dated: September 4, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–21637 Filed 9–10–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[OAG Docket No. 143; AG Order No. 3464–2014]

Office of the Pardon Attorney

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule revises certain regulations of the Department of Justice (the ''Department'') that govern the Pardon Attorney. The rule conforms the regulations to current practice, under which the Pardon Attorney is subject to the direction of, and submits recommendations in clemency cases through, the Deputy Attorney General.

DATES: The rule is effective on September 11, 2014.

FOR FURTHER INFORMATION CONTACT: Deborah Leff, United States Department of Justice, Suite 11000, 1425 New York Avenue NW., Washington, DC 20530, or by telephone at (202) 616–6070.

SUPPLEMENTARY INFORMATION: Present regulations of the Department of Justice provide that the Pardon Attorney is subject to the direction of the Associate Attorney General, and that the Pardon Attorney shall submit all recommendations in clemency cases through the Associate Attorney General, who in turn shall exercise such discretion and authority as is appropriate and necessary for the handling and transmittal of such recommendations to the President. *See* 28 CFR 0.35–0.36.

However, it has long been the internal practice of the Department for the Pardon Attorney to be subject to the direction of the Deputy Attorney General, and to submit clemency recommendations through the Deputy Attorney General for handling and transmittal, rather than through the Associate Attorney General.

This rule conforms Department regulations to current practice.

Administrative Procedure Act

This rule is a rule of agency organization, procedure, and practice and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(b). This rule is effective upon publication.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to agency organization, procedure, and practice. Further, a Regulatory Flexibility Analysis was not required to be prepared for this rule because the Department was not required to publish a general notice of proposed rulemaking.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation.

The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This rule does not have federalism implications warranting the preparation of a Federalism Assessment under section 6 of Executive Order 13132 because it is a rule of agency organization, procedure, and practice.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and

3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act). Therefore, the reports to Congress and the General Accounting Office specified by 5 U.S.C. 801 are not required.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure, Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, Chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Subpart G—Office of the Pardon Attorney

§ 0.35 [Amended]

■ 2. In § 0.35, remove the words ''Associate Attorney General'' each place they appear and add in their place the words ''Deputy Attorney General''.

§ 0.36 [Amended]

■ 3. In § 0.36, remove the words ''Associate Attorney General'' each place they appear and add in their place the words ''Deputy Attorney General''.

Dated: September 5, 2014.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2014–21678 Filed 9–10–14; 8:45 am]

BILLING CODE 4410–29–P

POSTAL SERVICE

39 CFR Part 111

Simplifying Threshold Volume Requirements for USPS Return Services

AGENCY: Postal Service™.

ACTION: Interim rule with request for comments.

SUMMARY: To minimize customer confusion and ensure consistent administration, the Postal Service proposes to change the total annual volume thresholds required for USPS Return Services products to qualify for Commercial Plus® pricing. A minimum volume of 50,000 will be established for these products across the board to simplify the product and make it easier for customers to do business with the Postal Service.

DATES: *Effective date:* The interim rule is effective September 15, 2014.

Comment date: Comments are due on or before November 10, 2014.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at the USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday, by calling 202–268–2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: *ProductClassification@usps.gov,* with a subject line of ''Threshold Volume for USPS Return Services''. Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Karen F. Key at 202–268–7492 (*karen.f.key@usps.gov*); John F. Rosato at 202–268–8597 (*john.f.rosato@usps.gov*); or Suzanne Newman at 202–695–0550 (*suzanne.j.newman@usps.gov*).

SUPPLEMENTARY INFORMATION: The Postal Service has determined that it is immediately necessary to simplify its returns shipping options. Currently, there are different annual volume threshold requirements to qualify for Commercial Plus® pricing for products under the USPS Return Services umbrella. These products are Priority Mail® Return Service, First-Class™ Package Return® Service, and Ground Return Service.

As the requirements now exist, Commercial Plus pricing is available for cumulative Priority Mail Return Service and First-Class Package Return Service volume exceeding a combined total of 25,000 return pieces in the previous calendar year. Additionally, Commercial Plus cubic volume must exceed a combined total of 85,000 pieces returned in approved packaging in the previous calendar year, or cumulative returns and outbound volume must exceed a combined total of 90,000 pieces in the previous calendar year to qualify. Commercial Plus pricing customer commitments may differ depending on the individual signed agreements with USPS. The Postal Service has discovered that these varied and overlapping criteria are confusing to customers, and increasingly difficult to administer. Additionally, this change better aligns with recently adopted changes to the Priority Mail cubic threshold, and to the outbound Priority Mail CPP threshold, of 50,000 pieces.

To provide consistency for customers without signed agreements, the Postal Service proposes to establish a minimum total annual threshold volume requirement of 50,000 for all USPS Return Services products in order to qualify for Commercial Plus pricing. This simplified approach will not affect customers with the 25,000 piece threshold until their agreements expire. At that time, the 50,000 piece threshold will apply unless an extension is requested and approved by the Vice President, Sales.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following interim changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR part 111.1. Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail Letters, Cards, Flats, and Parcels

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220 Commercial Mail Priority Mail

* * * * *

223 Prices and Eligibility

* * * * *

1.2 Commercial Base Prices

For prices, see Notice 123—*Price List.* The Commercial Base prices are available for:

[Revise the text of 1.2e to read as follows:]

e. Permit holders using Merchandise Return Service, including Priority Mail Return Service, for mailpieces returned at Priority Mail prices when all requirements are met (505.0).

* * * * *

1.3 Commercial Plus Prices

1.3.1 Basic Eligibility

[Revise the entire text of 1.3.1 to read as follows:]

For prices, see Notice 123—*Price List.* Commercial Plus prices are available to Priority Mail (including Critical Mail) customers who qualify for Commercial Base prices and whose cumulative account volume exceeds a combined total of 5,000 letter-size and flat-size pieces (including Flat Rate Envelopes, but not the Padded Flat Rate Envelope) or 50,000 total pieces in the previous calendar year (except Priority Mail Open and Distribute) and who have a customer commitment agreement with USPS (New Priority Mail customers see 1.3.2), and are:

a. Registered end-users of USPS-approved PC Postage products.

b. Permit imprint customers.

c. Priority Mail Open and Distribute (PMOD) customers whose account volume exceeds 600 PMOD containers (see 705.18.5.1).

d. Permit holders using Merchandise Return Service, including USPS Returns, for mailpieces returned at Priority Mail prices, when all requirements are met (505.0).

e. Customers using USPS-approved IBI postage meters that print the IBI with the appropriate price marking for commercial price items (202.3.3) and electronically transmit transactional data daily to USPS for all mailpieces and mail categories.

* * * * *

1.5 Commercial Plus Cubic

1.5.1 Commercial Plus Cubic Eligibility

[Revise the entire text of 1.5.1 to read as follows:]

Commercial Plus cubic prices are available to Priority Mail customers whose account volumes exceeded 50,000 pieces in the previous calendar year and have a customer commitment agreement with the USPS. New Priority Mail customers see 1.5.5. Each mailpiece must measure .50 cubic foot or less, weigh 20 pounds or less, and the longest dimension may not exceed 18 inches. Cubic-priced mailpieces may not be rolls or tubes. The Commercial Plus cubic prices are available for:

a. Registered end-users of USPS-approved PC Postage products.

b. Permit imprint customers. Customers are required to use the Electronic Verification System (eVS) program or submit an electronic postage statement with a computerized manifest under 705.2.0. Mailings must contain at least 200 pieces or 50 pounds of mail. Mailpieces are not required to be identical in weight.

c. Permit holders using Merchandise Return Service, including USPS Returns, for parcels returned at Priority Mail prices when all requirements are met (505.0).

* * * * *

280 Commercial Mail First-Class Package Service

* * * * *

283 Prices and Eligibility

1.0 Prices and Fees for First-Class Package Service

* * * * *

[Revise the entire text of 1.3 to read as follows:]

1.3 Commercial Base Prices

Commercial Base prices are available for presorted mailings or the residual portion of a presorted mailing, prepared under 285.4.0, or single-piece mailings, paid by one of the following methods:

a. Registered end-users of USPS-approved PC Postage products when using a qualifying shipping label, managed by the PC Postage system.

b. USPS-approved IBI postage meters that electronically transmit transactional data to USPS.

c. Permit imprint.

d. Permit holders using Merchandise Return Service, including First-Class Package Return Service, for First-Class Package Service mailpieces being returned, when all applicable requirements are met (505.0).

1.4 Commercial Plus Prices

[Revise the entire text of 1.4 to read as follows:]

First-Class Package Service prices are available for presorted or single-piece mailings, and when customers:

a. Establish a customer commitment agreement with the Postal Service to mail, or receive, more than 5,000 First-Class Package Service machinable parcels at Commercial Plus prices in a calendar year.

b. Pay for postage by one of the following methods:

1. Permit imprint using the Electronic Verification System (eVS) or submit an electronic postage statement with a computerized manifest.

2. Are registered end-users of USPS-approved PC Postage products when using a qualifying shipping label, managed by the PC Postage system.

3. Permit holders using Merchandise Return Service, including USPS Returns, for First-Class Package Service mailpieces, when all applicable requirements are met (505.0).

* * * * *

500 Additional Mailing Services

* * * * *

505 Return Services

* * * * *

3.0 Merchandise Return Service

3.1 Prices and Fees

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[Revise the entire text of 3.1.5 to read as follows:]

3.1.5 Priority Mail Commercial Base and Commercial Plus Prices

See Notice 123—*Price List* for applicable prices. Priority Mail Commercial Base and Commercial Plus prices are available to MRS permit holders when the following criteria are met:

a. Commercial Base prices are available for permit holders using MRS for Priority Mail items (223.1.2) when all MRS requirements for Priority Mail are met.

b. Commercial Plus prices are available for permit holders using MRS for Priority Mail items who qualify for Commercial Base prices (223.1.2) and whose account volume exceed 50,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS (223.1.3.2).

* * * * *

4.0 USPS Return Services

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4.4 Pricing

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[Revise the entire text of 4.4.2 to read as follows:]

4.4.2 Commercial Plus Prices

Eligibility for Commercial Plus prices are available to permit holders who

qualify for Commercial Base prices, and at least one of the following:

a. Have cumulative volumes of Priority Mail Return Service, First-Class Package Return Service, or Ground Return Service exceeding a combined total of 50,000 return pieces in the previous calendar year.

b. Have cumulative returns and outbound Commercial Plus cubic volume exceeding a combined total of 50,000 pieces returned in approved packaging in the previous calendar year.

c. Have cumulative returns and outbound volume exceeding a combined total of 50,000 pieces in the previous calendar year.

d. Have a signed Commercial Plus returns customer commitment agreement with USPS.

e. Have a signed Commercial Plus Critical Mail commitment agreement with USPS.

* * * * *

Following the expiration of the comment period, the Postal Service will publish its responses to any adverse comments in a subsequent **Federal Register** notice, together with its determination whether to confirm the interim rule as published, or modify the rule in response to the comments received.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–21510 Filed 9–10–14; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 14–92; MD Docket No. 13–140; MD Docket No. 12–201; FCC 14–129]

Assessment and Collection of Regulatory Fees for Fiscal Year 2014

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission revises its Schedule of Regulatory Fees to recover an amount of $339,844,000 that Congress has required the Commission to collect for fiscal year 2014. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Effective September 11, 2014. To avoid penalties and interest, regulatory fees should be paid by the due date of September 23, 2014.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), FCC 14–129, MD Docket No. 14–92; MD Docket No. 13–140; MD Docket No. 12–201, adopted on August 29, 2014 and released on August 29, 2014.

I. Procedural Matters

A. Final Paperwork Reduction Act of 1995 Analysis

1. This *Report and Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c) (4).

B. Congressional Review Act Analysis

2. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C 801(a)(1)(A).[1]

C. Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act of 1980 (''RFA''),[2] the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this *Report and Order.* The FRFA is set forth in the section entitled Final Regulatory Flexibility Analysis.

II. Introduction and Executive Summary

4. This Report and Order concludes the rulemaking proceeding initiated to collect $339,844,000 in regulatory fees for Fiscal Year (FY) 2014, pursuant to Section 9 of the Communications Act of 1934, as amended (the Act or Communications Act).[3] These regulatory fees are due in September 2014. This Report and Order also adopts several proposals from our June 13, 2014 Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking (*FY 2014 NPRM*).[4] Specifically the proposals adopted are: (1) Ending the exemption of AM expanded band licenses from regulatory fees; (2) revising the apportionment between International Bureau licensees to reduce the proportion paid by the submarine cable/terrestrial and satellite bearer circuits by approximately five percent; (3) increasing the regulatory fees paid by earth station licensees by approximately 7.5 percent to more accurately reflect the regulation and oversight of this industry; (4) increasing our annual de minimis threshold from under $10 to $500; (5) eliminating several regulatory fee categories (218–219 MHz, broadcast auxiliaries, and satellite television construction permits) from regulatory fee requirements; and adopting a regulatory fee for each toll free number managed by a Responsible Organization. The increase in the annual de minimis threshold, the elimination of three regulatory fee categories, and the new toll free category will be effective in FY 2015, following the required notification of Congress. The other provisions adopted in this Report and Order will be in effect for FY 2014 upon publication of a summary of this Report and Order in the **Federal Register** and are reflected in the fee schedule attached as Appendix C.

III. Background

5. The Commission is required by Congress to assess regulatory fees each year in an amount that can reasonably be expected to equal the amount of its appropriation.[5] The Commission calculates the fees by first determining the full-time equivalent (FTE)[6] number of employees performing the regulatory activities specified in section 9(a), ''adjusted to take into account factors

[1] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[3] Section 9 regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities. 47 U.S.C. 159(a). In FY 2013, the Commission was also required to collect $339,844,000 in regulatory fees. The final collection amount was $10.9 million over this total, which the Commission deposited in the U.S. Treasury. The year-to-date accumulated total is $81.9 million.

[4] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014,* Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, MD Docket Nos. 14–92, 13–140, and 12–201, 79 FR 37982 (July 3, 2014) (2014) (*FY 2014 NPRM*).

[5] 47 U.S.C. 159(b)(1)(B).

[6] One FTE, a ''Full Time Equivalent'' or ''Full Time Employee,'' is a unit of measure equal to the work performed annually by a full time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget.

that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities. . . .'' [7] Regulatory fees must also cover the costs the Commission incurs in regulating entities that are statutorily exempt from paying regulatory fees,[8] entities whose regulatory fees are waived,[9] and entities that provide nonregulated services.[10] To calculate regulatory fees, the Commission allocates the total amount to be collected among the various regulatory fee categories. This allocation is based on the number of FTEs assigned to work in each regulatory fee category. FTEs are categorized as ''direct'' if they are performing regulatory activities in one of the ''core'' bureaus, *i.e.,* the Wireless Telecommunications Bureau, Media Bureau, Wireline Competition Bureau, and part of the International Bureau. All other FTEs are considered ''indirect.'' [11] The total FTEs for each fee category is calculated by counting the number of direct FTEs in the core bureau that regulates that category, plus a proportional allocation of indirect FTEs. Each regulatee within a fee category pays its proportionate share based on an objective measure, *e.g.,* revenues, or number of subscribers or licenses.[12]

6. Section 9 of the Act requires the Commission to make certain changes to the regulatory fee schedule ''if the Commission determines that the schedule requires amendment to comply with the requirements'' of section 9(b)(1)(A).[13] The Commission is required, by rule, to revise regulatory fees by proportionate increases or decreases to reflect changes in the amount appropriated for the performance of its regulatory activities.[14] The Commission must add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services ''as a consequence of Commission rulemaking proceedings or changes in law.'' These ''permitted amendments'' require Congressional notification[15] before they may take effect and any resulting changes in fees are not subject to judicial review.[16]

7. The Commission will continue our efforts to examine areas where it can improve the regulatory fee process to better reflect changes in the industry and at the Commission, and this *Report and Order* is another step in this process. The Commission began this regulatory fee reform analysis in the *FY 2008 Further Notice.*[17] Regulatory fees cannot be precisely calibrated to the actual costs of the regulatory activities; however, there may be areas in which the regulatory fee process can be improved and revised.[18] In that proceeding, the Commission sought comment on several issues, *e.g.,* updating FTE allocations; [19] ITTA's proposal to add wireless providers to the Interstate Telecommunications Service Providers (ITSP) category, which includes interexchange carriers (IXCs), incumbent local exchange carriers (LECs), toll resellers, and other IXC service providers regulated by the Wireline Competition Bureau; [20] adding a category for Internet Protocol TV (IPTV); [21] and adopting a per-subscriber fee for direct broadcast satellite (DBS).[22] In its 2012 report on the Commission's regulatory fee program the Government Accountability Office (GAO) encouraged the Commission to update the FTE allocations to better align regulatory fees with regulatory costs.[23] In the *FY 2012 NPRM* [24] and the *FY 2013 NPRM* [25] the Commission also sought comment on revising the FTE allocations; and in the *FY 2013 Report and Order* the Commission adopted an updated FTE allocations that more accurately reflects the number of FTEs working on regulation and oversight of the regulatees in the various fee categories; [26] the Commission also combined the UHF and VHF television stations into one regulatory fee category,[27] and created a fee category to include IPTV.[28]

8. In our *FY 2014 NPRM,* the Commission sought comment on proposed regulatory fees and on whether AM expanded band radio stations should remain exempt from regulatory fees. In addition, the Commission also sought comment on additional reform measures including: (1) Reallocating some of the FTEs from the Enforcement Bureau, the Consumer & Governmental Affairs Bureau, and the Office of Engineering and Technology, as direct FTEs for regulatory fee purposes; (2) reapportioning the fee allocations between groups of International Bureau regulatees; (3) periodically updating FTE allocations; (4) applying a cap on any regulatory fee increases for FY 2014; (5) improving access to information through our Web site; (6) establishing a higher de minimis threshold; (7) eliminating certain regulatory fee categories; (8) combining ITSP and wireless voice services into one fee category; (9) adding DBS operators to the cable television and IPTV category; (10) creating a new regulatory fee category for non-U.S. licensed space stations, or, alternatively, reallocating some FTEs assigned to work on non-U.S. licensed space station issues as indirect for regulatory fee purposes; and (11) adding a new regulatory fee category for toll free numbers. Some of these issues had been raised in earlier regulatory fee

[7] 47 U.S.C. 159(b)(1)(A). When section 9 was adopted, the total FTEs were to be calculated based on the number of FTEs in the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau. (The names of these bureaus were subsequently changed.) Satellites and submarine cable were regulated through the Common Carrier Bureau before the International Bureau was created.

[8] *Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* Report and Order, 69 FR 41030, para 11 (July 7, 2004) (2004) (*FY 2004 Report and Order*). For example, governmental and nonprofit entities are exempt from regulatory fees under section 9(h) of the Act. 47 U.S.C. 159(h); 47 CFR 1.1162.

[9] 47 CFR 1.1166.

[10] *E.g.,* broadband services, non-U.S.-licensed space stations.

[11] The indirect FTEs are the employees from the International Bureau (in part), Enforcement Bureau, Consumer & Governmental Affairs Bureau, Public Safety & Homeland Security Bureau, Chairman and Commissioners' offices, Office of the Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Strategic Planning and Policy Analysis, Office of Workplace Diversity, Office of Media Relations, and Office of Administrative Law Judges, totaling 1,044 FTEs.

[12] For a fuller description of this process, *see Assessment and Collection of Regulatory Fees for Fiscal Year 2012,* Notice of Proposed Rulemaking, 77 FR 29275 (May 7, 2012) (2012) (*FY 2012 NPRM*).

[13] 47 U.S.C. 159(b)(1)(A).

[14] 47 U.S.C. 159(b)(2) (Mandatory Amendments).

[15] 47 U.S.C. 159(b)(4)(B).

[16] 47 U.S.C. 159(b)(3).

[17] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* MD Docket No. 08–65, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50285 (August 26, 2008) (2008) (*FY 2008 Further Notice*).

[18] *FY 2008 Further Notice,* 73 FR 50285 at 50287, para. 5–6.

[19] *Id.,* 73 FR 50285 at 50288–50289, para. 10, 18, 19.

[20] *Id.,* 73 FR 50285 at 50289, para. 19

[21] *Id.,* 73 FR 50285 at 50288–50289, para. 24.

[22] *Id.,* 73 FR 50285 at 50290, para. 26. Although these proposals were not adopted at that time; we later adopted a new methodology for assessing regulatory fees for the submarine cable industry. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 74 FR 22104 (May 12, 2009) (2009) (*Submarine Cable Order*).

[23] *See* GAO, Federal Communications Commission, ''Regulatory Fee Process Needs to be Updated,'' Aug. 2012, GAO–12–686 (GAO Report).

[24] *FY 2012 NPRM,* 77 FR 29275.

[25] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013,* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, MD Docket Nos. 13–140, 12–201, and 08–65, 78 FR 34612 (June 10, 2013) (2013) (*FY 2013 NPRM).*

[26] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013,* MD Docket No. 08–65, Report and Order, 78 FR 52433 (August 23, 2013) (2013) (*FY 2013 Report and Order*).

[27] *FY 2013 Report and Order,* 78 FR 52433 at 52443 paras. 32–34.

[28] *Id.,* 78 FR 52433 at 52443–52444 paras. 35–36.

proceedings and other issues were discussed for the first time as part of our reform process. The Commission received 19 comments (some of which are joint comments) and six reply comments. Appendix A is a list of the commenters in this proceeding.

IV. Discussion

A. AM Expanded Band Radio Stations

9. Licensees operating a standard band AM station (540–1600 kHz) linked to an AM expanded band station (1605–1705 kHz) are subject to regulatory fees for the standard band station only.[29] The Commission decided not to require section 9 regulatory fee payments for AM expanded band stations to encourage the movement to the expanded band and reduce interference in the standard band.[30] In doing so, the Commission determined that at some future point it might impose section 9 regulatory fee requirements for AM expanded band stations.[31] In the *FY 2008 FNPRM,* the Commission stated that ''[t]here is no compelling reason to permanently exempt AM expanded band licensees from paying regulatory fees. As a general matter, it would be appropriate to treat the AM expanded band and the AM standard band similarly for regulatory fee purposes.'' [32] In the *FY 2014 NPRM,* the Commission proposed adopting a section 9 regulatory fee obligation for all AM expanded band radio stations.[33]

10. A number of AM expanded band broadcasters have chosen to operate exclusively in the expanded band; at least two opted to retain their standard band licenses. As a result, the Commission finds that there is no longer a reason to provide this regulatory fee exemption to AM broadcasters.[34] Broadcasters who have retained both their standard and expanded band licenses should not continue to be exempt from paying regulatory fees because the exemption's original purpose of encouraging AM broadcasters to move to the expanded band and reduce interference in the standard band has been achieved. Therefore, the Commission adopts the proposal in the *FY 2014 NPRM* by discontinuing the exemption. Broadcasters who are operating in the AM expanded band will pay regulatory fees on the same basis as AM standard band licensees beginning in FY 2014.

B. Reallocations Within Fee Categories

1. Submarine Cable

11. Submarine cable systems [35] transport data, as well as voice services, for international carriers, Internet providers, wholesale operators, corporate customers, and governments. The submarine cable industry is subject to minimal regulation and oversight from the Commission after the initial licensing process.[36] After a submarine cable system is licensed, the regulatory activity is primarily limited to preparing Circuit Status Reports [37] and filing of quarterly reports by licensees affiliated with a carrier with market power in destination market of the submarine cable.[38]

12. Previously, commenters proposed that the regulatory fees among International Bureau licensees should be adjusted to reflect this minimal oversight [39] and the Commission sought comment on this issue in the *FY 2014 NPRM.*[40] The Commission tentatively concluded in the *FY 2014 NPRM* that it should revise the apportionment between satellite services (space station and earth station regulatory fee categories) and the submarine cable operators/terrestrial and satellite circuits (submarine cable/bearer circuits) to more accurately reflect the amount of oversight and regulation for these industries.[41] The satellite services pay 59 percent of the total regulatory fees allocated to International Bureau licensees and submarine cable pays 41 percent of this total. Submarine cable is subject to minimal regulation and oversight after being licensed, and therefore, the current allocation of 41 percent of regulatory fees is excessive for this industry.

13. For instance, in response to the *FY 2014 NPRM,* NASCA, representing several submarine cable operators (with 29 of the 41 active systems landing in the United States) emphasized that the Commission engages in limited enforcement activity, policy and rulemaking actions, user information services, and international activities regarding submarine cable operators.[42] NASCA also observes that most of the Commission's work related to submarine cable is limited to licensing, processing applications, and reviewing proposed transactions.[43]

14. We agree that the combined revenue requirement for submarine cable is currently too high compared to the revenue requirement for the satellite and earth station operators.[44] Specifically, the current regulatory fee assessment for the submarine cable category does not fairly take into account the Commission's minimal oversight and regulation of the industry, as demonstrated by NASCA. We therefore reduce the regulatory fee apportionment for submarine cable to more accurately reflect the amount of regulation and oversight for this industry. In doing so, we find a five percent decrease in regulatory fee obligations is appropriate at this time. This decrease reflects that although only two FTEs in the International Bureau work on submarine cable issues, a total of 47.5 indirect FTEs devote time to both submarine cable and other regulatees of the International Bureau.[45] A five percent decrease, is therefore appropriate because it reflects both the direct work on submarine cable issues and the indirect FTEs that devote their time to International Bureau regulatees as a whole. As discussed below, this approximately five percent decrease in regulatory fees for submarine cable results in a change in the allocation percentage between Submarine Cable and Bearer Circuit issues (41 percent of International regulatory fees), and Satellite and Earth Station issues (59 percent of International regulatory fees)

[29] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005* and *Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 70 FR 41967 at 41971, para. 24 (2005) (*FY 2005 Report and Order*).

[30] *FY 2005 Report and Order,* 70 FR 41967 at 41971, para. 25.

[31] *Id.*

[32] *See FY 2008 FNPRM,* 73 FR 50201 at 50203, paras. 11–13.

[33] *FY 2014 NPRM,* 79 FR 37982 at 37986 at para. 25.

[34] Commenters addressing this issue support assessing regulatory fees on the AM expanded band licensees. *See* T. Cowan Comments at 1. We did not receive any comments objecting to discontinuation of the exemption.

[35] Submarine cable systems are undersea cables between land-based stations carrying data and voice services.

[36] *FY 2014 NPRM,* 79 FR 37982 at 37988 at para. 34.

[37] *See Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules,* IB Docket No. 04–112, Second Report and Order, 28 FCC Rcd 575, 601–08, paras. 89–108 (2013), *recon. pending.*

[38] *See* 47 CFR 1.767(l).

[39] *See, e.g.,* NASCA Comments at 8–9 (filed June 19, 2013); Telstra Comments at 2 (filed June 19, 2013); ICC Reply Comments at 2 (filed June 19, 2013).

[40] *FY 2014 NPRM,* 79 FR 37982 at 37988 at para. 34.

[41] The revenue allocation between submarine cable operators and common carrier terrestrial and satellite circuits is 87.6 percent/12.4 percent and was adopted in the *Submarine Cable Order. See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 74 FR 22104 (2009) (*Submarine Cable Order*). The Commission did not propose any change to this allocation in the *FY 2014 NPRM.*

[42] NASCA Comments at 5–7.

[43] NASCA Comments at 7.

[44] NASCA Comments at 10–12.

[45] *FY 2013 Report and Order,* 78 FR 52433.

to 35.72 percent and 64.28 percent, respectively. We will revisit the issue of submarine cable systems in future regulatory fee proceedings to determine if additional adjustment is warranted.

2. Earth Stations

15. An earth station transmits or receives messages from a satellite. In the *FY 2014 NPRM,* the Commission recognized that oversight and regulation of the satellite industry by International Bureau FTEs involves legal, technical, and policy issues pertaining to both space station and earth station operations and is therefore interdependent to some degree.[46] We also recognized in the *FY 2014 NPRM,* that our activities concerning the satellite industry also involve issues related to non-U.S. licensed space stations that access the U.S. market but do not pay regulatory fees.[47] In light of this, we sought comment on whether we should increase the earth station regulatory fee allocation in order to reflect more appropriately the number of FTEs devoted to the regulation and oversight of the earth station portion of the satellite industry.[48] Commenters suggest that if the Commission needs a specific mechanism to account for International Bureau FTEs working on market access requests from non-U.S.-licensed satellites, the Commission should do so by increasing the earth station regulatory fee.[49] EchoStar and DISH observe that earth station licensees' regulatory fees may not reflect the regulatory cost associated with these systems for regulatory fee purposes. These commenters also note that space stations pay an unreasonably high portion of the regulatory fees for this allocation.[50] Commenters also suggest the current allocation between space and earth station operators does not reflect the significant streamlining of space station regulation that has occurred.[51] We agree with commenters and adjust the regulatory fees for earth stations to reflect the relative oversight and regulation of space stations and earth stations. Accordingly, as discussed above, we revise the allocation of the submarine cable/bearer circuit fee categories from 41 percent of all international regulatory fees to approximately 36 percent of all international regulatory fees. This reduction in the allocation of submarine cable/bearer circuit fee categories results in an increase in the satellite/earth station allocation percentage from 59 percent to approximately 64 percent. This five percent change in allocation results in a larger projected revenue collection for satellite and earth stations. To collect this additional revenue for FY 2014 we will increase earth stations regulatory fees by 7.5 percent from their FY 2013 rates and we will collect the remaining revenue from the satellite fee categories.

C. Improving the Regulatory Fee Process

16. As noted earlier, this Report and Order is our latest step in reforming our regulatory fee process. In the *FY 2013 Report and Order,* the Commission committed to additional regulatory fee reform, stating:

> Various other issues relevant to revising our regulatory fee program were also raised in either the *FY 2013 NPRM* or in comments submitted in response to it. Because we require further information to best determine what action to take on these complex issues, we will consolidate them for consideration in a *Second Further Notice of Proposed Rulemaking* that we will issue shortly. We recognize that these are complex issues and that resolving them will be difficult. Nevertheless, we intend to conclusively readjust regulatory fees within three years.[52]

17. We adopted significant reforms in the *FY 2013 Report and Order* and we continued to seek comment on additional reforms in the *FY 2014 NPRM* and in the *Further Notice* included in this order. In the *FY 2014 NPRM* we sought comment on how often we should engage in an in-depth review of our regulatory fee methodology in a way that balances the need for stability to enable regulatees in various industry sectors to budget for regulatory fees against the need to reflect the changing work of the Commission FTEs.[53] Commenters agree that we should update our FTE allocations at regular intervals, such as annually, to avoid assessing regulatory fees based on outdated information.[54]

18. We conclude that it is appropriate to update the FTE count annually. We agree with commenters and the GAO that regular updates are appropriate in order to calculate regulatory fees more accurately. We also find it appropriate to perform these updates annually because doing so will ensure use of the most current FTE counts in regulatory fee calculations, while imposing little administrative burden on the Commission. We will begin this process beginning in FY 2015.

19. Commenters also suggest that we conclude our regulatory fee proceedings earlier in the year;[55] however, it is not feasible to do so because our fee calculations (unit estimates) are generally updated based on industry submissions with filing deadlines between April and June, and this data is crucial in determining an accurate fee rate prior to release of the regulatory fee notice of proposed rulemaking.[56] Given these deadlines, which are set for additional purposes beyond regulatory fees and the time needed to comply with rulemaking requirements, it is not currently feasible to conduct and conclude the regulatory fee process earlier in the year.

20. Concerning revising allocations, the Commission believes it would be appropriate to seek comment on any such revisions every two years, or as needed. Whereas updating the FTEs can be accomplished at minimal cost to the Commission, revising the allocations is a more complex process requiring in-depth analysis and public comment. Moreover, revising the allocations annually could create regulatory uncertainty based on changes stemming from small variations in annual workload rather than a longer lasting change. Therefore, given the need for regulatory certainty and the time needed for the Commission to conduct the appropriate rulemaking proceedings, the Commission concludes that a biennial process for revising allocations is preferable to an annual one.

D. Revising the De Minimis Threshold

21. Currently, a regulatee is exempt from paying regulatory fees if the sum total of all of its liabilities for all categories of regulatory fees for the fiscal year is less than $10.[57] Because

[46] *FY 2014 NPRM,* 79 FR 37982 at 37988 at para. 35. Some of these FTEs work on earth station issues that pertain to non-U.S.-licensed space stations.

[47] *Id.,* 79 FR 37982 at 37988 at para. 35.

[48] *Id.,* 79 FR 37982 at 37988 at para. 35.

[49] Satellite Parties Comments at 8–10 (''assessing these costs as part of earth station regulatory fees may be a better (albeit imperfect) method of capturing these costs'').

[50] *See, e.g.,* Echostar and DISH Comments at 5.

[51] *See, e.g.,* SIA Comments at 5. *See also Comprehensive Review of Licensing and Operating Rules for Satellite Services,* Report and Order, 28 FCC Rcd 12403 at 1205, n.2 (2013) (providing an exhaustive list of streamlined actions with respect to satellite services).

[52] *FY 2013 Report and Order,* 78 FR 52433.

[53] *FY 2014 NPRM,* 79 FR 37982.

[54] CTIA Comments at 2; ITTA Comments at 12–13; USTelecom Reply Comments at 2–4 (arguing that we should update the FTE count annually).

[55] ITTA Comments at 14; USTelecom Reply Comments at 2–3.

[56] *E.g.,* revenue information is provided in the FCC Form 499–A, due April 1 each year, and Media Bureau licensees file data in June and July. In addition, the Circuit Status Report, which contains bearer circuit and submarine cable information, is filed with the International Bureau by March 31 each year. After the International Bureau staff analyzes this information and requests supporting data, the final data is usually provided to the Managing Director in June.

[57] The Commission's *Process Reform Report,* 29 FCC Rcd 1338 (2014), also seeks comment on this issue.

this $10 annual threshold is too low to benefit most small entities, in the *FY 2014 NPRM* the Commission proposed to increase the de minimis threshold to $100, $500, or $1,000 to provide more relief to smaller entities and improve the cost effectiveness of the Commission's collection of regulatory fees.[58]

22. ACA contends, and the Commission agrees, that our previous de minimis threshold of $10 was too low to benefit the smaller licensees and provide cost effectiveness to our fee collection process.[59] ACA asserts that extending relief from regulatory fees to very small operators would have a de minimis impact on our regulatory fee collections [60] but may contribute to the difference between staying in business or shuttering the system for the operators and small and rural communities they serve.[61] NAB also asserts that a higher de minimis threshold would permit stations in small markets to devote more resources towards improved programming and signal quality.[62]

23. AT&T suggests that in setting the de minimis threshold the Commission select a ''fee amount just north of the point at which it costs the Commission more to assess and recover the fee than the fee actually brings in.'' [63] This suggestion is reasonable and, as discussed below, the Commission adopts this suggestion today. In addition, the Commission also takes into account the significant non-financial benefits that justify an increased threshold. Smaller entities are at greater risk of missing regulatory fee deadlines because of their limited budgets and resources. Nonpayment for these small entities then often results in the escalation of administrative and financial burdens, as these small entities must devote more resources to navigate through the late payment recovery process. In addition, many of these entities are subject to little Commission oversight and regulation which serves to further exacerbate this inequity. Therefore, the Commission finds the current $10 threshold unnecessarily burdens small entities, and raising it to $500 will provide financial relief to these entities, in addition to reducing the administrative burden on the Commission. This higher threshold reflects the estimated costs of collecting an unpaid, minimal regulatory fee, at least $350 in direct costs,[64] and the benefits to these entities of a higher de minimis threshold. In addition, setting the threshold at $500 is unlikely to reduce fee collections to an amount below the full amount of the Commission's annual appropriation. Contrary to the assertion of ACA, which argues the de minimis threshold should be cable operators serving 1000 or fewer subscribers, or NAB, which argues for a $750 or $1,000 de minimis threshold, the Commission believes setting the de minimis threshold at $500 is the proper balance to ensure relief for smaller entities against the need for sufficient collection of regulatory fees consistent with the Commission's responsibilities. In particular, the Commission finds a de minimis threshold higher than $500 may result in insufficient fees collected for the fiscal year. The Commission will continue to monitor the de minimis issue and, in the future, will consider whether to further increase the threshold, adopt a threshold based on the number of cable and IPTV subscribers as suggested by ACA, or revise the threshold on some other basis.

24. The de minimis threshold the Commission adopts today applies only to filers of annual regulatory fees (not multi-year filings). This de minimis exemption from the payment of regulatory fees applies to the sum of all annual regulatory fee obligations that a regulatee has for all applicable fee categories; not to individual payments for each category separately. So that all licensees have the same opportunity to include all of their licenses towards the $500 de minimis exemption, the Commission will raise the de minimis threshold to $500 beginning October 1, 2014, the first day of fiscal year 2015. For example, in FY 2015, a regulatee will be exempt from paying regulatory fees if the sum total of all annual regulatory fee obligations between October 1, 2014 and September 30, 2015 is $500 or less. This includes the sum total of all annual regulatory fees (but not multi-year wireless fees). The de minimis status is not a permanent exemption from regulatory fees. Rather, each regulatee will need to reevaluate annually to determine whether its total liability for annual regulatory fees falls at or below the threshold given any changes that the Commission may make in its regulatory fees from year to year.

E. Eliminating Certain Regulatory Fee Categories

25. In the *FY 2014 NPRM,* the Commission sought comment on whether to exclude certain categories, such as amateur radio vanity call signs [65] ($21.60 for a 10-year license) and general mobile radio service (GMRS) [66] ($25 for a five-year license), from regulatory fees.[67] The Commission also sought comment on eliminating other regulatory fee categories, such as Satellite TV, Satellite TV Construction Permits, Broadcast Auxiliaries,[68] LPTV/Class A Television and FM Translators/Boosters, and CMRS Messaging (Paging) from regulatory fees. The Commission sought comment on the benefits of discontinuing such collections because these fee categories account for a relatively small portion of annual regulatory fees. The fees for single licenses in many of these regulatory fee categories are below the de minimis threshold adopted above. However, the de minimis threshold is an annual threshold and licensees that pay regulatory fees on multiple licenses during the fiscal year may exceed this de minimis threshold by the end of the fiscal year.

[58] *FY 2014 NPRM,* 79 FR 37982.

[59] ACA Comments at 9–13.

[60] For example, figures from our FY 2013 regulatory fee collections show that increasing the de minimis threshold to $500 would have decreased the amount collected from cable licensees by only .125% and making the same change for ITSPs would have decreased collections for that fee category by only .04%.

[61] ACA Comments at 12.

[62] NAB Comments at 2.

[63] AT&T Comments at 3. *See also* CTIA Comments at 12.

[64] The Commission estimates that the cost of researching, creating, and sending a bill to a non-payer bill, and completing all follow-up discussion and correspondence, totals more than $350. This sum does not include overhead or the more difficult to quantify administrative costs of administering the regulatory fee program generally.

[65] Amateur stations are normally assigned the next available call sign, based on the licensee's geographic region and license status, i.e., a sequential call sign. 47 CFR 97.17(d). The licensee can request a specific unassigned but assignable call sign, known as a vanity call sign. 47 CFR 97.19.

[66] GMRS is a land-mobile radio service available for short-distance two-way communications to facilitate the activities of a licensee and his or her immediate family members. *See* 47 CFR 95.1. The Commission initially proposed eliminating regulatory fees for GMRS in the *FY 2008 Further Notice. See FY 2008 Further Notice,* 73 FR 50285 at 50290–50291 at para. 337.

[67] CTIA opposes this proposal because the exclusion of some categories would shift the burden to other categories. *See* CTIA Comments at 12–13. These fee categories, however, account for a very small portion of annual regulatory fees. R. Knowles suggests that we eliminate the application fee instead of the regulatory fee. R. Knowles Comments at 4–7. In Reply Comments, however, Mr. Knowles recommends that the Commission eliminate the GMRS regulatory fee. *See* R. Knowles Reply Comments at 1–5. As noted below, the Commission will not eliminate the GMRS regulatory fee because the Commission does not yet have an adequate record to support it.

[68] Broadcast Auxiliary stations are used for relaying broadcast aural and television signals. They can be used to relay signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The Broadcast Auxiliary services also include mobile TV pickups and remote pickup stations which relay signals from a remote location, back to the studio.

26. Most commenters addressing this issue agree with our proposal.[69] Commenters contend that the Commission should eliminate CMRS Messaging,[70] aviation ground licensees,[71] and certain broadcast categories,[72] because there is not intensive Commission oversight or regulation of these industry sectors. At this time, the Commission is not eliminating these categories or GMRS, Satellite TV, LPTV/Class A Television and FM Translators/Boosters, and amateur radio Vanity Call Signs because, based on examination, there is not enough support to determine whether the cost of recovery and burden on small entities outweighs the collected revenue; or whether eliminating the fee would adversely affect the licensing process. The Commission will reevaluate this issue in the future to determine if other fee categories should be eliminated.

27. The Commission therefore concludes that 218–219 MHz licenses,[73] broadcast auxiliaries, and satellite television construction permits be eliminated from the regulatory fee schedule, beginning in FY 2015. Entities holding 218–219 MHz licenses pay an annual fee consisting of a regulatory fee and an annual license renewal fee. The Commission will eliminate the regulatory fee component of this three multi-year wireless fee category beginning in FY 2015. Parties that already have such licenses, however, must continue to pay the annual renewal fee and will not be eligible for a refund of any previously paid licensing fees. In the past several years, the Commission has received very few applications, if any, for 218–219 MHz licenses, which has prompted us to eliminate this fee category. The Commission will eliminate annual regulatory fees for satellite television construction permits, beginning in FY 2015 because the Commission has not received any new applications or payments of regulatory fees for this fee category in many years. The Commission has also decided to eliminate the broadcast auxiliary fee category beginning in FY 2015 because the Commission spends more resources in monitoring and collecting these very small fees ($10 in FY 2013) than it collects. After these fees are eliminated, licensees will no longer be burdened administratively and financially to identify each of their call signs and to submit payment. Finally, eliminating this fee category benefits the Commission because it will no longer have to devote resources to associate each of the 27,000 call signs with the primary station of ownership.

F. New Regulatory Fee Categories—Toll Free Numbers

28. Toll free numbers allow callers to reach the called party without being charged for the call; instead the charge for the call is paid by the called party (the toll free subscriber).[74] Toll free numbers, as defined in section 52.101(f) of our rules,[75] are not currently subject to regulatory fees. Historically, the Commission has not assessed regulatory fees on toll free numbers under the rationale that the entities controlling the numbers, wireline and wireless carriers, were paying regulatory fees based on either revenues or subscribers.[76] In the *FY 2014 NPRM,*[77] the Commission recognized this may no longer be a realistic assumption as there appear to be many toll free numbers controlled or managed by entities, Responsible Organizations or RespOrgs,[78] that in some cases are not carriers. In the *FY 2014 NPRM* the Commission sought comment on whether it should assess regulatory fees on RespOrgs, for each toll free number managed by a RespOrg.[79]

29. The Commission finds that it has the legal authority and responsibility to assess regulatory fees on toll free numbers[80] and therefore adopt a new fee category for toll free numbers in this proceeding.[81] The Commission has exclusive jurisdiction over ''those portions of the North American Numbering Plan that pertain to the United States.''[82] Commission FTEs, primarily in the Wireline Competition Bureau and the Enforcement Bureau, devote work to toll free numbering issues and activities including enforcement activities,[83] rulemakings, and other policy making proceedings.[84] Because the Commission is required to devote its FTEs to toll number regulation, it is appropriate under section 9 of the Act to recover the associated costs.[85] Exercising our authority under section 9 to assess regulatory fees on toll free numbers also advances a fundamental purpose of section 251(e)(1) of the Act, to ensure the efficient, fair, and orderly allocation of toll free numbers.[86] The Commission is empowered to ensure that toll free numbers, a valuable national public resource, are allocated in an equitable and orderly manner that serves the public interest.[87]

30. Based on our evaluation, the FTEs involved in toll free issues are primarily from the Wireline Competition

[69] *See, e.g.,* K. Harrison Comments at 2; NAB Comments at 2; R. Knowles Reply Comments at 1–5.

[70] CMA Comments at 3–5.

[71] ASRI Comments at 6.

[72] T. Cowan Comments at 1 (suggesting that the Commission also eliminate regulatory fees for Broadcast Auxiliaries and Translators); NAB Comments at 2 (suggesting the Commission eliminate regulatory fees for Broadcast Auxiliaries, Low Power TV/Class A Television, and TV/FM Translators and Boosters. The Commission is eliminating the broadcast auxiliaries fee category, but not translators and boosters or low power TV/Class A television, at this time because translators and boosters are still an integral part of radio and television operations, whereas broadcast auxiliaries only carry the signal forward. As a result, compared to broadcast auxiliaries, the fee revenue derived from translators and boosters is approximately six times greater ($1.57 million versus .26 million), which the Commission would still need to recoup. However, in instances in which a regulatee has one translator/booster license, it would be exempt from regulatory fees because it would meet the de minimis threshold.

[73] The 218–219 MHz Service (formerly known as the Interactive Video and Data Service (or IVDS)) is in the 218–219 MHz spectrum range. The 218–219 MHz Service spectrum is suitable for providing fixed or mobile services.

[74] 47 U.S.C. 52.101(e), (f).

[75] Toll free numbers are telephone numbers for which the toll charges for completed calls are paid by the toll free subscriber. *See* 47 CFR 52.101(f). These are 800, 888, 877, 866, 855, or 844 numbers. SMS/800 (or the 800 Service Management System) is a centralized system that performs toll free number management. For a list of RespOrgs on the SMS/800 Web site, *see http://www.sms800.com/Controls/NAC/Serviceprovider.aspx.*

[76] *See generally, Universal Service Contribution Methodology,* Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5463–64, para. 306 (2012).

[77] *FY 2014 NPRM,* 79 FR 37982 at 37992, para. 57.

[78] A RespOrg is a company that manages toll free telephone numbers for subscribers. They use the SMS/800 data base to verify the availability of specific numbers and to reserve the numbers for subscribers. *See* 47 CFR 52.101(b).

[79] In the *FY 2014 Further Notice* we asked commenters whether we should assess regulatory fees on working, assigned, and reserved toll free numbers if we should assess regulatory fees for toll free numbers that are in the ''transit'' status, or any other status as defined in section 52.103 of the Commission's rules. *FY 2014 NPRM,* 79 FR 37982 at 37992, para. 57.

[80] *Toll Free Access Codes,* Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11178–79, para. 22 (1997) (*Toll Free Second Report and Order*) (Sections 201(b) and 251(e) of the Act ''empower the Commission to ensure that toll free numbers * * * are allocated in an equitable and orderly manner that serves the public interest.'')

[81] We will seek comment on the fee rate in our annual regulatory fee notice of proposed rulemaking next year.

[82] 47 U.S.C. 251(e)(1).

[83] *See, e.g., Richard Jackowitz, IT Connect, Inc.,* Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 3318 (2014); *Richard Jackowitz, IT Connect, Inc.,* Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6692 (2013); *Telseven, LLC, et al.,* Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558 (2013).

[84] *See, e.g., Toll Free Second Report and Order,* 12 FCC Rcd 11162 (1997).

[85] 47 U.S.C. 159(a)(1).

[86] *See Toll Free Second Report and Order,* 12 FCC Rcd at 11176, para. 18.

[87] *Id.,* 12 FCC Rcd at 11178–79, para. 22.

Bureau.[88] Accordingly, a regulatory fee assessed on toll free numbers reduces the ITSP regulatory fee total; for example, if the total revenue requirement for toll free numbers had been four million dollars this year,[89] expected ITSP revenues would need only be $127,369,000 instead of $131,369,000 and the ITSP rate would need only be 0.00333 instead of 0.00343. The Commission, therefore, will assess regulatory fees on RespOrgs, for each toll free number managed by a RespOrg.[90] However, the Commission wishes to clarify that the regulatory fee, assessed on RespOrgs, for toll free numbers is limited to toll free numbers that are accessible within the United States.[91]

31. Parties requested greater clarity and outreach to promote awareness of why this new fee category may be needed, especially for RespOrgs that the commenters allege are not generally accustomed to being regulated or paying regulatory fees.[92] Consistent with past efforts by Commission staff to seek and obtain greater input concerning regulatory fee reform, the Commission will engage and conduct outreach to promote awareness of this new category and to promote discussion with interested parties.[93] There will be sufficient time for such activities because this change will not take effect until FY 2015. It is a ''permitted amendment'' as defined in section 9(b)(3) of the Act, which, pursuant to section 9(b)(4)(B), must be submitted to Congress at least 90 days before it becomes effective.[94] Therefore, because the Commission will not have sufficient time to provide 90 days' notice before September 30, 2014, this change will not be implemented until FY 2015.

G. Additional Regulatory Fee Reform

32. In the *FY 2014 NPRM* the Commission sought comment on ways to further improve our regulatory fee process to make it less burdensome for all entities, specifically smaller entities.[95] The Commission notes that it is currently seeking comment on Commission-wide ''Process Reform,'' [96] and it plans to adopt reforms to the regulatory fee process in conjunction with the Process Reform initiative. In particular, the Managing Director has placed regulatory fee waiver decisions on the Commission's Web site so that they are accessible to the public.[97] Although the decisions are specifically applicable only to the parties involved, these letters can be helpful in providing guidance to all waiver applicants regarding the requirements of our rules. The Managing Director has also initiated a complete review of the Commission's regulatory fee Web page with the objective of improving access to other regulatory fee payment information. The Managing Director is directed to provide details on other improvements in a subsequent public notice.

H. Other Issues

33. One of the significant measures adopted in the FY 2013 regulatory fee reform process was updating the FTE allocations and allocating a portion of the International Bureau FTEs as indirect FTEs.[98] The Commission reallocated some FTEs from the International Bureau as indirect FTEs because the work those FTEs perform is for the Commission as a whole, rather than for a particular group of regulatees.[99] In the *FY 2014 NPRM,* the Commission sought comment on additional FTE reallocations. The Commission recognizes that reallocating FTEs from a core bureau as indirect, or from a non-core bureau as direct, could better align regulatory fees with the costs of regulation. In this Report and Order the Commission does not adopt further FTE reallocations. Rather, as discussed below, additional information and examination is needed to better understand, at a more granular level, the number of FTEs performing work related to the various types of regulatees throughout the communications industry. In particular, the work of the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Media Bureau has, in many cases, converged over time and their regulation of various types of regulatees involves similar issues and generates common Commission costs.[100] In addition, the Commission has seen an increase in the number of wireless subscribers and a decrease in wireline (switched access lines and interconnected Voice over Internet Protocol (VoIP), together) subscribers.[101] From June 2011 to June 2014 wireless subscribers have increased from 298 million to 335 million, while the total wireline access lines (switched access lines and VoIP subscriptions, together) have decreased from 146 million to 135 million.[102] Fewer wireline customers over time may result in disproportionately higher regulatory fees for the ITSP industry. Also, a growth in segments of the industry that do not pay regulatory fees can also increase the regulatory fee burden on the remaining industries. For these reasons, Commission staff will continue their analysis of these issues and will seek further comment on reallocation proposals in future regulatory proceedings.

34. In the *FY 2014 NPRM,* the Commission specifically sought comment on a proposal from SIA to reallocate FTEs from the Enforcement Bureau and the Consumer & Governmental Affairs Bureau to other bureaus.[103] SIA contends that the FTEs in these two non-core bureaus are focused on certain regulatees or licensees and therefore should not be allocated proportionally to all the core bureaus as indirect FTEs but should be allocated directly to the Wireline, Media, and Wireless bureaus.[104] For

[88] *See, e.g., Toll Free Service Access Codes, Petition to Change the Composition of SMS/800, Inc.,* CC Docket No. 95–155, WC Docket No. 12–260, Order, 28 FCC Rcd 15328 (2013); Enforcement Bureau staff also work on toll free issues.

[89] *See FY 2014 NPRM,* 79 FR 37982 at 37992 at para. 57 (estimating based on assessment of one cent per month per managed toll free number by a RespOrg).

[90] In the *FY 2014 NPRM* the Commission asked commenters whether it should assess regulatory fees on working, assigned, and reserved toll free numbers and whether it should assess regulatory fees for toll free numbers that are in the ''transit'' status, or any other status as defined in section 52.103 of the Commission's rules. *FY 2014 NPRM,* 79 FR 37982 at 37992 at para. 57. Toll free numbers in any such status are included in this category.

[91] *See, e.g.,* Bell Canada Comments at 2. Other commenters support this new category. *See, e.g.,* ITTA Comments at 13. One commenter, however, contends that it would be confusing to impose regulatory fees on a RespOrg that is not a carrier. *See* Bandwidth.com Reply Comments at 2. USTelecom argues that the Commission needs to clarify our proposal to impose regulatory fees on toll free numbers. USTelecom Reply Comments at 5.

[92] *See* Bandwidth Reply Comments at 2.

[93] *See FY 2014 NPRM,* 79 FR 37982 at 37992 at para. 57.

[94] 47 U.S.C. 159(b)(3).

[95] *FY 2014 NPRM,* 79 FR 37982 at 37989 at para. 41.

[96] *Process Reform Report,* 29 FCC Rcd 1338 (2014).

[97] These are in our electronic comment filing system (ECFS), under proceeding ''86–285.''

[98] *FY 2013 Report and Order,* 78 FR 52433 at 52437 at para. 15–17.

[99] The Commission notes that even with that FTE reallocation, a significant number of International Bureau FTEs work on matters involving non-U.S.-licensed space stations serving the United States. The Commission is also considering reallocating those FTEs as indirect but does not adopt such a rule here because it needs to develop the record further before making a decision.

[100] *FY 2013 NPRM,* 78 FR 34612 at 34616–34617 at para. 24.

[101] *See* ''Local Telephone Competition: Status as of June 30, 2013,'' Industry Analysis and Technology Division, Wireline Competition Bureau, June 2014 (Local Telephone Competition Report) at 2, Figure 1.

[102] Local Telephone Competition Report at 2, Figure 1. A decrease in total wireline access lines could eventually result in a higher rate for the ITSP category if the same number of FTEs are assigned to this category.

[103] *FY 2014 NPRM,* 79 FR 37982 at 37987 at para. 28–30.

[104] This proposal is supported by several commenters. *See, e.g.,* Echostar and DISH

example, the FTEs in the regional and field offices of the Enforcement Bureau primarily investigate issues involving wireless and broadcast licensees; however, this division has one FTE responsible for satellite interference issues, and may also be involved in wireline issues in the course of disaster relief efforts. As a whole, the Enforcement Bureau [105] and the Consumer & Governmental Affairs Bureau FTEs devote a small portion of their time to international bureau licensee issues. For that reason, the Commission finds that the record does not support reallocating these indirect Enforcement Bureau and Consumer & Governmental Affairs Bureau FTEs to the Wireline, Enforcement, and Wireless Bureaus at this time.[106]

35. The Commission also sought comment on reallocating the FTEs from the Commission's Office of Engineering and Technology.[107] This office is primarily involved in work related to spectrum issues. For example, the office advises the Commission on technical and engineering matters, develops and administers Commission decisions regarding spectrum allocations, develops technical rules for the operation of unlicensed radio devices, authorizes the marketing of radio frequency devices as compliant with Commission technical rules, grants experimental radio licenses, and is the agency's liaison to the National Telecommunications and Information Administration. After reviewing the record, the Commission is not persuaded that reallocation of these indirect FTEs as direct FTEs to certain bureaus is appropriate at this time; however, the Commission will continue to develop the record for possible implementation in the future.[108]

36. As a result, the various reallocation proposals discussed in the *FY 2014 NPRM* regarding the Enforcement Bureau, the Consumer & Governmental Affairs Bureau, and the Office of Engineering and Technology require further review. The Commission intends to conduct a more in-depth, fact-based examination of the work of the FTEs in these bureaus and offices and the regulatees benefited by their work. Such analysis will be incorporated into any future notice of proposed rulemaking concerning regulatory fee allocations in order to determine whether reallocation is appropriate.

37. The Commission also notes that other proposals discussed in the *FY 2014 NPRM, e.g.,* a per subscriber charge for DBS,[109] adding a fee category for non-U.S.-licensed space stations,[110] and combining the ITSP category with wireless,[111] are not adopted in this report and order. The Commission declines to adopt these proposals at this time due to the complexities of these proposals raised by commenters in the record. For example, ITTA's proposal to combine wireless and wireline voice services would require a methodology to synthesize two different regulatory fee structures for two different industries. Adopting a fee category for non-U.S.-licensed space stations raises significant issues regarding our authority to assess such a fee as well as the policy implications if other countries decided to follow our example.[112] The Commission recognizes that there may be merit to more fundamental reform in the regulatory fee process as outlined in these proposals. Additional time, however, is needed to provide an opportunity to more closely examine and consider these proposals and the record in future fiscal year regulatory fee proceedings.[113]

38. As a final matter, in the *FY 2014 NPRM,* the Commission sought comment on capping increases at 7.5 percent, or a higher cap, ''for any category resulting solely from the reallocations of FTEs or our reform measures;'' however, the Commission did not adopted any such measures that would result in an increase of over 7.5 percent. The Commission recognizes that the fees in some categories may increase for FY 2014 due to a decrease in the number of units in that particular category. These changes in the number of units in each category can occur each year without any Commission action. As compared with FY 2013, very few fee categories will experience large fee rate increases in FY 2014, and these increases do not result from the reform measures that the Commission has adopted here. Therefore, a formal cap is not adopted in this proceeding. The Commission notes that commenters did not support this proposal, as set forth in the *FY 2014 NPRM.* For example, AT&T opposes adopting a cap for FY 2014 unless the Commission can show that an uncapped increase in regulatory fees would have a severe impact on the economic wellbeing of licensees and that the increase was not due to the Commission's efforts to address a long-standing imbalance.[114]

V. Procedural Matters

A. New for Fiscal Year 2014

1. Payments by Check Will No Longer Be Accepted for Payment of Annual Regulatory Fees

39. Pursuant to an Office of Management and Budget (OMB) directive,[115] the Commission is moving towards a paperless environment, extending to disbursement and collection of select federal government payments and receipts.[116] The initiative to reduce paper and curtail check payments for regulatory fees is expected to produce cost savings, reduce errors, and improve efficiencies across government. Accordingly, the Commission will no longer accept checks (including cashier's checks and money orders) and the accompanying hardcopy forms (e.g., Forms 159, 159–B, 159–E, 159–W) for the payment of regulatory fees. This new paperless procedure will require that all payments be made by online ACH payment, online credit card, or wire transfer. Any other form of payment (*e.g.,* checks, cashier's checks, or money orders) will be rejected. For payments by wire, a Form 159–E should still be transmitted via fax so that the Commission can

Comments at 3–4; NASCA Comments at 12–13; SIA Comments at 2–4.

[105] *See, e.g., Intelsat License, LLC,* Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17183 (2013).

[106] Several commenters argue that the Commission should not take this action at this time. *See, e.g.,* AT&T Comments at 1–2; CTIA Comments at 10–12; NAB Comments at 3; USTelecom Reply Comments at 5.

[107] *FY 2014 NPRM,* 79 FR 37982 at 37987–37988 at para. 32. This proposal is supported by several commenters. *See, e.g.* Echostar and DISH Comments at 4.

[108] NAB agrees that the Commission should adopt a comprehensive holistic method for reallocation. NAB Comments at 3–5.

[109] This issue is supported by some commenters, (*see, e.g.,* ACA Comments at 3–9; ITTA Comments at 11–12; NCTA Comments at 3–6; NCTA & ACA Reply Comments at 3–11), and is opposed by the DBS and satellite industry, (*see, e.g.,* DIRECTV and DISH Comments at 1–18; SIA Comments at 6–8).

[110] This issue, proposed by Intelsat, (*see* Intelsat Comments at 3–8 and Intelsat Reply Comments at 1–8) is opposed by the rest of the satellite industry. *See, e.g.,* EchoStar and DISH Comments at 6–9; Satellite Parties Comments at 3–8; Satellite Parties Reply Comments at 1–7.

[111] The ITTA proposal, discussed in ITTA Comments at 5–11, is generally opposed by commenters, *see, e.g.,* AT&T Comments at 4–5 (observing that ''although both wireline and wireless services involve voice telecommunications services, they remain strikingly different services.''); CTIA Comments at 3–9.

[112] These issues are discussed in greater detail in the *FY 2013 NPRM,* 78 FR 34612.

[113] In the attached Further Notice of Proposed Rulemaking the Commission seeks comment on the issue of a per subscriber regulatory fee for DBS.

[114] AT&T Comments at 3–4. EchoStar and DISH suggested using the rate of inflation instead of 7.5 percent. EchoStar and DISH Comments at 6.

[115] Office of Management and Budget (OMB) Memorandum M–10–06, Open Government Directive, Dec. 8, 2009; *see also http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov.*

[116] *See* U.S. Department of the Treasury, Open Government Plan 2.1, Sept. 2012.

associate the wire payment with the correct regulatory fee information. This change will affect all payments of regulatory fees.[117]

B. Assessment Notifications

1. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services Assessments

40. For regulatory fee collection in FY 2014, the Commission will continue to follow our current procedures for conveying CMRS subscriber counts to providers, except that in FY 2014 and thereafter, the Commission will no longer mail out the initial CMRS assessment letters to providers. The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on ''assigned'' telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[118] This information of telephone numbers (subscriber count) will be posted on the Commission's electronic filing and payment system (Fee Filer) along with the carrier's Operating Company Numbers (OCNs).

41. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing Fee Filer and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation.[119] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If a response is not received from the provider, or the Commission does not reverse its initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in Fee Filer. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

42. Because some carriers do not file the NRUF report, they may not see their telephone number counts in Fee Filer. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (i.e., compute their telephone number counts as of December 31, 2013), and submit their fee payment accordingly. Whether a carrier reviews their telephone number counts in Fee Filer or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

C. Payment of Regulatory Fees

1. Lock Box Bank

43. All lock box payments to the Commission for FY 2014 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the fee season for collecting FY 2014 regulatory fees, regulatees can pay their fees by credit card through Pay.gov,[120] ACH, debit card,[121] or by wire transfer. Additional payment instructions are posted at *http://transition.fcc.gov/fees/regfees.html.*

2. Receiving Bank for Wire Payments

44. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://transition.fcc.gov/fees/wiretran.html.*

3. De Minimis Regulatory Fees

45. Regulatees whose total FY 2014 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2014 regulatory fees. The new $500 de minimis threshold that is adopted here will be effective for payment of FY 2015 regulatory fees.

4. Standard Fee Calculations and Payment Dates

46. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2013 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2013. In instances where a permit or license is transferred or assigned after October 1, 2013, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2013. In instances where a permit or license is transferred or assigned after October 1, 2013, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category.[122]
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2013. The number of subscribers, units, or telephone numbers on December 31,

[117] Payors should note that this change will mean that to the extent certain entities have to date paid both regulatory fees and application fees at the same time via paper check, they will no longer be able to do so as the regulatory fees payment via paper check will no longer be accepted.

[118] *See FY 2005 Report and Order,* 70 FR 41967.

[119] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

[120] In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the U.S. Treasury will reject credit card transactions greater than $49,999.99 from a single credit card in a single day. This includes online transactions conducted via Pay.gov, transactions conducted via other channels, and direct-over-the counter transactions made at a U.S. Government facility. Individual credit card transactions larger than the $49,999.99 limit may not be split into multiple transactions using the same credit card, whether or not the split transactions are assigned to multiple days. Splitting a transaction violates card network and Financial Management Service (FMS) rules. However, credit card transactions exceeding the daily limit may be split between two or more *different* credit cards. Other alternatives for transactions exceeding the $49,999.99 credit card limit include payment by electronic debit from your bank account, and wire transfer.

[121] In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the maximum dollar-value limit for debit card transactions will be eliminated. It should also be noted that only Visa and MasterCard branded debit cards are accepted by Pay.gov.

[122] Audio bridging services are toll teleconferencing services.

2013 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2013, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Appendix C) pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed or a new license is obtained. These fee categories are included in our rulemaking (*see* Appendix B) to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2014.

• *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2013.[123] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2013. In instances where a permit or license is transferred or assigned after October 1, 2013, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for (1) earth stations and (2) geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2013. In instances where a permit or license is transferred or assigned after October 1, 2013, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2013. In instances where a license is transferred or assigned after October 1, 2013, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2014 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

• *International Services: Terrestrial and Satellite Services:* Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2013 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, the facilities-based common carriers must include circuits held by themselves or their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit they and their affiliates hold and each circuit sold or leased to any customer, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits as of December 31, 2013. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2013, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2014 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

D. Enforcement

47. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the payment due date for regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline for filing these fees.[124] Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules,[125] which generally requires the Commission to withhold action on ''applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission'' and in the Debt Collection Improvement Act of 1996 (DCIA).[126] The Commission also assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[127] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In the case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

48. Pursuant to the ''red light rule,'' we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[128] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).[129]

E. Effective Date

49. Providing a 30-day period after **Federal Register** publication before this *Report and Order* becomes effective as required by 5 U.S.C. 553(d) will not allow sufficient time for the Commission to collect the FY 2014 fees before FY 2014 ends on September 30, 2014. For this reason, pursuant to 5 U.S.C. 553(d)(3), the Commission finds there is good cause to waive the requirements of section 553(d), and this *Report and Order* will become effective upon publication in the **Federal Register**. Because payments of the regulatory fees will not actually be due until the middle of September, persons

[123] Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2013, rather than on a count as of December 31, 2013.

[124] 47 U.S.C. 159(c).

[125] *See* 47 CFR 1.1910.

[126] Delinquent debt owed to the Commission triggers the ''red light rule,'' which places a hold on the processing of pending applications, fee offsets, and pending disbursement payments. 47 CFR 1.1910, 1.1911, 1.1912. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR part 1, Subpart O, Collection of Claims Owed the United States.

[127] 47 CFR 1.1940(d).

[128] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[129] 47 U.S.C. 159.

affected by this Report and Order will still have a reasonable period in which to make their payments and thereby comply with the rules established herein.

VI. Additional Tables

TABLE A

Commenter	Abbreviation
List of Commenters—Initial Comments	
American Cable Association	ACA.
AT&T Services, Inc	AT&T.
Aviation Spectrum Resources, Inc	ASRI.
Bell Canada	Bell Canada.
Terry Cowan	T. Cowan.
Critical Messaging Association	CMA.
DirecTV, LLC	DirecTV.
CTIA—The Wireless Association®	CTIA.
DirecTV, LLC and DISH Network L.L.C	DirecTV and DISH.
EchoStar Satellite Operating Company and Hughes Network Systems, LLC and DISH Network L.L.C	EchoStar and DISH.
G. Kris Harrison	K. Harrison.
Intelsat License LLC	Intelsat.
ITTA—the Voice of Midsize Communications Companies, the Eastern Rural Telecom Association, and Windstream Corporation.	ITTA.
P. Randall Knowles	R. Knowles.
National Association of Broadcasters	NAB.
National Cable & Telecommunications Association	NCTA.
North American Submarine Cable Association	NASCA.
Satellite Industry Association	SIA.
SES Americom, Inc., Inmarsat, Inc., and Telesat Canada	Satellite Parties.
List of Commenters—Reply Comments	
Bandwidth.com, Inc	Bandwidth.com.
Intelsat License LLC	Intelsat.
P. Randall Knowles	R. Knowles.
National Cable & Telecommunications Association and American Cable Association	NCTA and ACA.
SES Americom, Inc., Inmarsat, Inc., and Telesat Canada	Satellite Parties.
United States Telecom Association	USTelecom.

TABLE B—CALCULATION OF FY 2014 REVENUE REQUIREMENTS AND PRO-RATA FEES

[The first ten regulatory fee categories listed below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2014 payment units	Years	FY 2013 revenue estimate	Pro-rated FY 2014 revenue requirement	Computed uncapped FY 2014 regulatory fee	Rounded FY 2014 regulatory fee	Expected FY 2014 revenue
PLMRS (Exclusive Use)	1,700	10	560,000	595,000	35	35	595,000
PLMRS (Shared use)	30,000	10	2,250,000	3,000,000	10	10	3,000,000
Microwave	17,000	10	2,640,000	2,550,000	15	15	2,550,000
218–219 MHz (Formerly IVDS)	5	10	3,750	4,000	82	80	4,000
Marine (Ship)	5,200	10	655,000	780,000	17	15	780,000
GMRS	8,900	5	197,500	222,500	7	5	222,500
Aviation (Aircraft)	4,200	10	290,000	420,000	10	10	420,000
Marine (Coast)	300	10	156,750	165,000	55	55	165,000
Aviation (Ground)	510	10	135,000	153,000	30	30	153,000
Amateur Vanity Call Signs	11,500	10	230,230	246,100	2.14	2.14	246,100
AM Class A [4a]	67	1	286,000	274,700	4,105	4,100	274,700
AM Class B [4b]	1,481	1	3,435,250	3,410,900	2,308	2,300	3,410,900
AM Class C [4c]	832	1	1,201,500	1,212,750	1,385	1,375	1,212,750
AM Class D [4d]	1,522	1	3,862,500	4,033,300	2,661	2,650	4,033,300
FM Classes A, B1 & C3 [4e]	3,107	1	8,379,375	8,466,575	2,731	2,725	8,466,575
FM Classes B, C, C0, C1 & C2 [4f]	3,139	1	10,597,500	10,437,175	3,316	3,325	10,437,175
AM Construction Permits	30	1	30,090	17,700	590	590	17,700
FM Construction Permits [1]	185	1	142,500	138,750	750	750	138,750
Satellite TV	127	1	190,625	196,850	1,545	1,550	196,850
Satellite TV Construction Permit	3	1	2,880	3,900	1,308	1,025	3,900
Digital TV Markets 1–10	138	1	6,235,725	6,161,700	44,661	44,650	6,161,700
Digital TV Markets 11–25	138	1	5,636,875	5,809,800	42,102	42,100	5,809,800
Digital TV Markets 26–50	182	1	4,965,225	4,909,450	26,964	26,975	4,909,450

TABLE B—CALCULATION OF FY 2014 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[The first ten regulatory fee categories listed below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2014 payment units	Years	FY 2013 revenue estimate	Pro-rated FY 2014 revenue requirement	Computed uncapped FY 2014 regulatory fee	Rounded FY 2014 regulatory fee	Expected FY 2014 revenue
Digital TV Markets 51–100	290	1	4,645,275	4,524,000	15,604	15,600	4,524,000
Digital TV Remaining Markets	380	1	1,769,975	1,805,000	4,751	4,750	1,805,000
Digital TV Construction Permits [1]	5	1	20,950	23,750	4,750	4,750	23,750
Broadcast Auxiliaries	25,800	1	254,000	258,000	12	10	258,000
LPTV/Translators/Boosters/ Class A TV	3,830	1	1,527,250	1,570,300	410	410	1,570,300
CARS Stations	325	1	165,750	196,625	604	605	196,625
Cable TV Systems, including IPTV	65,400,000	1	61,200,000	64,746,000	.993	.99	64,746,000
Interstate Telecommunication Service Providers	$38,300,000,000	1	135,330,000	131,369,000	0.003425	0.00343	131,369,000
CMRS Mobile Services (Cellular/Public Mobile)	335,000,000	1	58,680,000	60,300,000	0.179	0.18	60,300,000
CMRS Messag. Services	2,900,000	1	240,000	232,000	0.0800	0.080	232,000
BRS [2]	900	1	469,200	643,500	715	715	643,500
LMDS	190	1	86,700	135,850	715	715	135,850
Per 64 kbps Int'l Bearer Circuits [6a] Terrestrial (Common) & Satellite (Common & Non-Common)	4,484,000	1	1,032,277	932,351	.2079	.21	941,640
Submarine Cable Providers (see chart in Appendix C) [3,6b]	40.19	1	8,530,139	6,586,607	163,897	163,900	6,586,731
Earth Stations [6c]	3,400	1	935,000	1,003,000	303	295	1,003,000
Space Stations (Geostationary)	94	1	12,101,700	11,505,600	122,402	122,400	11,505,600
Space Stations (Non-Geostationary)	6	1	899,250	797,100	132,850	132,850	797,100
****** Total Estimated Revenue to be Collected			339,965,741	339,837,833			339,847,246
****** Total Revenue Requirement			339,844,000	339,844,000			339,844,000
Difference			121,741	(6,167)			3,246

Notes on Appendix B

[1] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the AM and FM Construction Permit revenues are offset by increases in the revenue totals for AM and FM radio stations, respectively. Similarly, reductions in the Digital (VHF/UHF) Construction Permit revenues are offset by increases in the revenue totals for various Digital television stations by market size, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Appendix C lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *FY 2008 Further Notice,* 24 FCC Rcd 6388 and the *Submarine Cable Order,* 24 FCC Rcd 4208.

[4] The fee amounts listed in the column entitled "Rounded New FY 2014 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2014 regulatory fees for AM/FM radio station are listed on a grid located at the end of Appendix C.

[5] As a continuation of our regulatory fee reform for the submarine cable and bearer circuit fee categories, the allocation percentage for these two categories, in relation to the satellite (GSO and NGSO) and earth station fee categories, was reduced by approximately 5 per cent. This allocation reduction of 5 per cent resulted in an increase in the allocation for the satellite and earth station fee categories. However, only the earth station fee rate increased from its FY 2013 fee amount.

TABLE C—FY 2014 SCHEDULE OF REGULATORY FEES

[The first eleven regulatory fee categories listed below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	15
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	80
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	55
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10

TABLE C—FY 2014 SCHEDULE OF REGULATORY FEES—Continued

[The first eleven regulatory fee categories listed below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	30
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.14
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	715
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	715
AM Radio Construction Permits	590
FM Radio Construction Permits	750
Digital TV (47 CFR part 73) VHF and UHF Commercial:	
Markets 1–10	44,650
Markets 11–25	42,100
Markets 26–50	26,975
Markets 51–100	15,600
Remaining Markets	4,750
Construction Permits	4,750
Satellite Television Stations (All Markets)	1,550
Construction Permits—Satellite Television Stations	1,300
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	410
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	605
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	.99
Interstate Telecommunication Service Providers (per revenue dollar)	.00343
Earth Stations (47 CFR part 25)	295
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	122,400
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	132,850
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.21
International Bearer Circuits—Submarine Cable	See Table Below

TABLE C (CONTINUED)—FY 2014 SCHEDULE OF REGULATORY FEES: MAINTAIN ALLOCATION

FY 2014 Radio station regulatory fees						
Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	$775	$645	$590	$670	$750	$925
25,001–75,000	1,550	1,300	900	1,000	1,500	1,625
75,001–150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001–500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001–1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001–3,000,00	7,750	6,500	4,500	5,400	8,250	9,250
>3,000,000	9,300	7,800	5,700	6,750	10,500	12,025

FY 2014 SCHEDULE OF REGULATORY FEES—INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE

Submarine cable systems (capacity as of December 31, 2013)	Fee amount	Address
<2.5 Gbps	$10,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	20,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	40,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps.	81,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	163,900	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Table D

Sources of Payment Unit Estimates for FY 2014

In order to calculate individual service fees for FY 2014, we adjusted FY 2013 payment units for each service to more accurately reflect expected FY 2014 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database

System (CDBS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases; we compared FY 2014 estimates with actual FY 2013 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2014 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2014 payment units are based on FY 2013 actual payment units, it does not necessarily mean that our FY 2014 projection is exactly the same number as in FY 2013. We have either rounded the FY 2014 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (''WTB'') projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 13 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 13 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2013 payment units.
Digital TV Stations (Combined VHF/UHF units).	Based on CDBS data, adjusted for exemptions, and actual FY 2013 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2013 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2013 payment units.
Broadcast Auxiliaries	Based on actual FY 2013 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2013 payment units.
LMDS	Based on WTB reports and actual FY 2013 payment units.
Cable Television Relay Service (''CARS'') Stations.	Based on data from Media Bureau's COALS database and actual FY 2013 payment units.
Cable Television System Subscribers, Including IPTV Subscribers.	Based on publicly available data sources for estimated subscriber counts and actual FY 2013 payment units.
Interstate Telecommunication Service Providers.	Based on FCC Form 499–Q data for the four quarters of calendar year 2013, the Wireline Competition Bureau projected the amount of calendar year 2013 revenue that will be reported on 2014 FCC Form 499–A worksheets in April, 2014.
Earth Stations	Based on International Bureau (''IB'') licensing data and actual FY 2013 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2013 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees, adjusted as necessary.
Submarine Cable Licenses	Based on IB license information.

Table E

Factors, Measurements, and Calculations That Determines Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population

for the predicted principal community coverage area.

TABLE F—REVISED FTE (AS OF 9/30/12) ALLOCATIONS FY 2013 SCHEDULE OF REGULATORY FEES (FEE RATES CAPPED AT 7.5%)

[The first eleven regulatory fee categories listed below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	75
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	55
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.61
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	510
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	510
AM Radio Construction Permits	590
FM Radio Construction Permits	750
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	86,075
Markets 11–25	78,975
Markets 26–50	42,775
Markets 51–100	22,475
Remaining Markets	6,250
Construction Permits	6,250
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	38,000
Markets 11–25	35,050
Markets 26–50	23,550
Markets 51–100	13,700
Remaining Markets	3,675
Construction Permits	3,675
Satellite Television Stations (All Markets)	1,525
Construction Permits—Satellite Television Stations	960
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	410
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	510
Cable Television Systems (per subscriber) (47 CFR part 76)	1.02
Interstate Telecommunication Service Providers (per revenue dollar)	.00347
Earth Stations (47 CFR part 25)	275
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station)	139,100
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	149,875
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.27
International Bearer Circuits—Submarine Cable	See Table Below

TABLE F (CONTINUED)—FY 2013 SCHEDULE OF REGULATORY FEES

FY 2013 radio station regulatory fees						
Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	$775	$645	$590	$670	$750	$925
25,001–75,000	1,550	1,300	900	1,000	1,500	1,625
75,001–150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001–500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001–1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001–3,000,00	7,750	6,500	4,500	5,400	8,250	9,250
>3,000,000	9,300	7,800	5,700	6,750	10,500	12,025

FY 2013 SCHEDULE OF REGULATORY FEES: FEE RATE INCREASES CAPPED AT 7.5%—INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE

Submarine cable systems (capacity as of December 31, 2012)	Fee amount	Address
<2.5 Gbps	$13,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	27,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	54,425	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps.	108,850	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	217,675	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

VII. Regulatory Flexibility Analysis

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[130] an Initial Regulatory Flexibility Analysis (IRFA) was included in the *FY 2014 NPRM.* The Commission sought written public comment on the proposals in the *FY 2014 NPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.[131]

A. Need for, and Objectives of, the Report and Order

2. In this Report and Order, we conclude the Assessment and Collection of Regulatory Fees for Fiscal Year (FY) 2014 proceeding to collect $339,844,000 in regulatory fees for FY 2014, pursuant to Section 9 of the Communications Act.[132] These regulatory fees will be due in September 2014. Under section 9 of the Communications Act, regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities in an amount that can reasonably be expected to equal the amount of the Commission's annual appropriation.[133]

3. In our *FY 2014 NPRM,* we sought comment on proposed regulatory fees and on whether AM expanded band radio stations should remain exempt from regulatory fees. In addition, we sought comment on additional reform measures including: (1) Reallocating some of the FTEs from the Enforcement Bureau, the Consumer & Governmental Affairs Bureau, and the Office of Engineering and Technology, as direct FTEs for regulatory fee purposes; (2) reapportioning the fee allocations between groups of International Bureau regulatees; (3) periodically updating FTE allocations; (4) applying a cap on any regulatory fee increases for FY 2014; (5) improving access to information through our Web site; (6) establishing a higher de minimis amount; (7) eliminating certain regulatory fee categories; (8) combining ITSP and wireless voice services into one fee category; (9) adding DBS operators to the cable television and IPTV category; (10) creating a new regulatory fee category for non-U.S. licensed space stations, or, alternatively, reallocating some FTEs assigned to work on non-U.S. licensed space station issues as indirect for regulatory fee purposes; and (11) adding a new regulatory fee category for toll free numbers. Some of these issues had been raised in earlier regulatory fee proceedings and other issues were discussed for the first time as part of our reform process.

4. The Report and Order adopts some of the proposals from the *FY 2014 NPRM.* Specifically, in addition to adopting the proposed new regulatory fee rates, the Commission (1) removes the exemption on regulatory fees from AM expanded band licenses; (2) revises the apportionment between the submarine cable/terrestrial and satellite bearer circuits and the satellite/earth stations by approximately five percent to reduce the proportion paid by the submarine cable/terrestrial and satellite bearer circuits; (3) increases the allocation paid by earth stations and satellites by approximately 7.5 percent to more accurately reflect the regulation and oversight of this industry; (4) increases the de minimis threshold from $10 to $500 (to go into effect for FY 2015); (5) eliminates several regulatory fee categories (218–219 MHz, broadcast auxiliaries, and satellite television construction permits) from regulatory fee requirements (to go into effect for FY 2015); and (6) adopts a new toll free number regulatory fee category (to go into effect for FY 2015).

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

5. None.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[134] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[135] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[136] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[137] Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[138]

8. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178

[130] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[131] 5 U.S.C. 604.

[132] 47 U.S.C. 159(a).

[133] 47 U.S.C. 159(a).

[134] 5 U.S.C. 603(b)(3).

[135] 5 U.S.C. 601(6).

[136] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[137] 15 U.S.C. 632.

[138] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.*

operated with fewer than 100 employees.[139] Thus, under this size standard, the majority of firms can be considered small.

9. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[140] According to Commission data, census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.[141] The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies adopted.

10. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[142] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[143] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[144] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted.

11. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[145] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[146] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[147] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[148] In addition, 72 carriers have reported that they are Other Local Service Providers.[149] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[150] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted.

12. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically applicable to interexchange services. The applicable size standard under SBA rules is for the Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[151] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[152] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[153] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

13. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[154] Census data for 2007 show that 1,716 establishments provided resale services during that year. Of that number, 1,674 operated with fewer than 99 employees and 42 operated with more than 100 employees.[155] Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[156] Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[157] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted.

14. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[158] Census data for 2007 show that 1,716 establishments provided resale services during that year. Of that number, 1,674 operated with fewer than 99 employees and 42 operated with more than 100 employees.[159] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[160] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[161] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted.

15. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[162] Census data for 2007 show that 1,716 establishments provided resale services during that year. Of that number, 1,674 operated with fewer than 99 employees and 42

[139] *See id.*

[140] 13 CFR 121.201, NAICS code 517110.

[141] *See id.*

[142] 13 CFR 121.201, NAICS code 517110.

[143] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[144] *Id.*

[145] 13 CFR 121.201, NAICS code 517110.

[146] *See Trends in Telephone Service,* at Table 5.3.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

[151] 13 CFR 121.201, NAICS code 517110.

[152] *See Trends in Telephone Service,* at Table 5.3.

[153] *Id.*

[154] 13 CFR 121.201, NAICS code 517911.

[155] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.*

[156] *See Trends in Telephone Service,* at Table 5.3.

[157] *Id.*

[158] 13 CFR 121.201, NAICS code 517911.

[159] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.*

[160] *See Trends in Telephone Service,* at tbl. 5.3.

[161] *Id.*

[162] 13 CFR 121.201, NAICS code 517911.

operated with more than 100 employees.[163] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[164] Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[165] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules adopted herein.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[166] Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.[167] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[168] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[169] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted.

17. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.[170] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.[171] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[172] For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.[173] Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.[174] Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our action.

18. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[175] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[176] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

19. *Cable Television and other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.''[177] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[178] Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 had more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted.

20. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[179] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[180] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[181] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[182] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted.

21. *All Other Telecommunications.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.

[163] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.*

[164] *Trends in Telephone Service,* at Table 5.3.

[165] *Id.*

[166] 13 CFR 121.201, NAICS code 517110.

[167] *Id.*

[168] *Trends in Telephone Service,* at Table 5.3.

[169] *Id.*

[170] 13 CFR 121.201, NAICS code 517210.

[171] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging,'' available at *http://www.census.gov/cgibin/sssd/naics/naicsrch?code=517211&search=2002%20NAICS%20Search;* U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications,'' available at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517212&search=2002%20NAICS%20Search.*

[172] 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[173] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[174] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[175] *Trends in Telephone Service,* at Table 5.3.

[176] *Id.*

[177] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition), available at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007%20NAICS%20Search.*

[178] 13 CFR 121.201, NAICS code 517110.

[179] *See* 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation,* MM Docket Nos. 92–266, 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

[180] These data are derived from R.R. Bowker, Broadcasting & Cable Yearbook 2006, ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, Television & Cable Factbook 2006, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[181] *See* 47 CFR 76.901(c).

[182] Warren Communications News, Television & Cable Factbook 2006, ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' [183] The SBA has developed a small business size standard for this category; that size standard is $30.0 million or less in average annual receipts.[184] According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year.[185] Of these, 2478 establishments had annual receipts of under $10 million and 145 establishments had annual receipts of $10 million or more.[186] Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, some small businesses whose primary line of business does not involve provision of communications services hold FCC licenses or other authorizations for purposes incidental to their primary business. We do not have a reliable estimate of how many of these entities are small businesses.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

22. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[187]

24. This *Report and Order* does not adopt any new reporting requirements. Therefore no adverse economic impact on small entities will be sustained based on reporting requirements. There may be a regulatory fee increase on small entities, in some cases and in some industries, but if so it would be specifically in furtherance of the reform measures. We are mitigating fee increases to small entities, and other entities, by, for example, raising the de minimis threshold from $10 to $500 and eliminating several regulatory fee categories (218–219 MHz, broadcast auxiliaries, and satellite television construction permits) from regulatory fee requirements. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. In addition, the Commission's rules provide a process by which regulatory fee payors may seek waivers or other relief on the basis of financial hardship. 47 CFR 1.1166.

F. Federal Rules That May Duplicate, Overlap, or Conflict

26. None.

VIII. Ordering Clauses

50. Accordingly, *it is ordered* that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *Report and Order* and *Further Notice of Proposed Rulemaking is hereby adopted.*

51. *It is further ordered* that, as provided in paragraph 54, this *Report and Order shall be effective* September 11, 2014.

52. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis in Appendix F, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309, and 310. Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

■ 2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS)		
(47 CFR part 90):		
(a) New, Renew/Mod (FCC 601 & 159).	$35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) ..	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159).	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

[183] U.S. Census Bureau, ''2007 NAICS Definitions: 517919 All Other Telecommunications,'' available at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search.*

[184] 13 CFR 121.201, NAICS code 517919.

[185] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, ''Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 517919'' (issued Nov. 2010).

[186] *Id.*

[187] 5 U.S.C. 603(c)(1)–(c)(4).

Exclusive use services (per license)	Fee amount [1]	Address
220 MHz Nationwide		
a) New, Renew/Mod (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159).	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
2. Microwave (47 CFR Pt. 101) (Private)		
(a) New, Renew/Mod (FCC 601 & 159) ...	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
3. 218–219 MHz Service		
(a) New, Renew/Mod (FCC 601 & 159) ...	80.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	80.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	80.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159).	80.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
4. Shared Use Services		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz):		
(a) New, Renew/Mod (FCC 601 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) ..	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159).	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159).	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159) ..	5.00	FCC, P.O. Box 979097. St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159).	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Coast:		
(a) New Renewal/Mod (FCC 601 & 159).	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) ..	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159).	55.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Ground:		
(a) New, Renewal/Mod (FCC 601 & 159).	30.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	30.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159) ..	30.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Only) (FCC 601 & 159).	30.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Ship:		
(a) New, Renewal/Mod (FCC 605 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

Exclusive use services (per license)	Fee amount [1]	Address
(c) Renewal Only (FCC 605 & 159) ..	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Aircraft:		
(a) New, Renew/Mod (FCC 605 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159) ..	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (FCC 605 & 159)	2.14	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159).	2.14	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
6. CMRS Cellular/Mobile Services (per unit) (FCC 159)	[2] .18	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
7. CMRS Messaging Services (per unit) (FCC 159).	[3] .08	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
8. Broadband Radio Service (formerly MMDS and MDS).	715	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
9. Local Multipoint Distribution Service	715	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.

[1] Note that ''small fees'' are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. Also, application fees may apply as detailed in § 1.1102 of this chapter.
[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.
[3] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

■ 3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR part 73)	Fee amount	Address
1. *AM Class A:*		
<=25,000 population	$775	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,550	
75,001–150,000 population	2,325	
150,001–500,000 population	3,475	
500,001–1,200,000 population	5,025	
1,200,001–3,000,000 population	7,750	
>3,000,000 population	9,300	
2. *AM Class B:*		
<=25,000 population	645	FCC, Radio, P.O. Box 979084, St. Louis, MO, 63197–9000.
25,001–75,000 population	1,300	
75,001–150,000 population	1,625	
150,001–500,000 population	2,750	
500,001–1,200,000 population	4,225	
1,200,001–3,000,000 population	6,500	
>3,000,000 population	7,800	
3. *AM Class C:*		
<=25,000 population	590	FCC, Radio, P.O. Box 979084, St. Louis, MO, 63197–9000.
25,001–75,000 population	900	
75,001–150,000 population	1,200	
150,001–500,000 population	1,800	
500,001–1,200,000 population	3,000	
1,200,001–3,000,000 population	4,500	
>3,000,000 population	5,700	
4. *AM Class D:*		
<=25,000 population	670	FCC, Radio, P.O. Box 979084, St. Louis, MO, 63197–9000.
25,001–75,000 population	1,000	
75,001–150,000 population	1,675	
150,001–500,000 population	2,025	
500,001–1,200,000 population	3,375	
1,200,001–3,000,000 population	5,400	
>3,000,000 population	6,750	
5. AM Construction Permit	590	FCC, Radio, P.O. Box 979084, St. Louis, MO, 63197–9000.
6. *FM Classes A, B1 and C3:*		
<=25,000 population	750	FCC, Radio, P.O. Box 979084, St. Louis, MO, 63197–9000.
25,001–75,000 population	1,500	
75,001–150,000 population	2,050	
150,001–500,000 population	3,175	
500,001–1,200,000 population	5,050	

Radio [AM and FM] (47 CFR part 73)	Fee amount	Address
1,200,001–3,000,000 population	8,250	
>3,000,000 population	10,500	
7. *FM Classes B, C, C0, C1 and C2:*		
<=25,000 population	925	FCC, Radio, P.O. Box 979084, St. Louis, MO, 63197–9000.
25,001–75,000 population	1,625	
75,001–150,000 population	3,000	
150,001–500,000 population	3,925	
500,001–1,200,000 population	5,775	
1,200,001–3,000,000 population	9,250	
>3,000,000 population	12,025	
8. FM Construction Permits	750	FCC, Radio, P.O. Box 979084, St. Louis, MO, 63197–9000.
TV (47 CFR, part 73)		
Digital TV (UHF and VHF Commercial Stations):		
1. Markets 1 thru 10	44,650	FCC, TV Branch, P.O. Box 979084, St. Louis, MO, 63197–9000.
2. Markets 11 thru 25	42,100	
3. Markets 26 thru 50	26,975	
4. Markets 51 thru 100	15,600	
5. Remaining Markets	4,750	
6. Construction Permits	4,750	
Satellite UHF/VHF Commercial:		
1. All Markets	1,550	FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Construction Permits	1,300	
Low Power TV, Class A TV, TV/F FM Translator, & TV/FM Booster (47 CFR part 74).	410	FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197–9000.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Radio facilities	Fee amount	Address
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Carriers:		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	.00343	FCC, Carriers, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$605	FCC, Cable, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Cable TV System, Including IPTV (per subscriber).	0.99	

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

(a) The following schedule applies for the listed services:

Fee category	Fee amount	Address
Space Stations (Geostationary Orbit)	$122,400	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
Space Stations (Non-Geostationary Orbit)	132,850	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).	295	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(b) *International Terrestrial and Satellite.* Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year.

International terrestrial and satellite (capacity as of December 31, 2013)	Fee amount	Address
Terrestrial Common Carrier, Satellite Common Carrier, Satellite Non-Common Carrier.	$0.21 per 64 KB Circuit	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(c) *Submarine cable:* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year.

Submarine cable systems (capacity as of Dec. 31, 2013)	Fee amount	Address
< 2.5 Gbps	$10,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	20,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	40,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	81,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	163,900	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

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Proposed Rules

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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 Part 430

[Docket No. EERE–2014–BT–STD–0027]

RIN 1904–AD31

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for Commercial Prerinse Spray Valves

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

ACTION: Notice of public meeting and availability of the Framework Document.

SUMMARY: The U.S. Department of Energy (DOE) is initiating this rulemaking and data collection process to consider amending energy conservation standards for commercial prerinse spray valves. To inform interested parties and to facilitate this process, DOE has prepared a Framework Document that details the analytical approach and preliminary scope of coverage for the rulemaking, and identifies several issues on which DOE is particularly interested in receiving comments. DOE will hold a public meeting to discuss and receive comments on its planned analytical approach and issues it will address in this rulemaking proceeding. DOE welcomes written comments and relevant data from the public on any subject within the scope of this rulemaking. A copy of the Framework Document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100.*

DATES: *Meeting:* DOE will hold a public meeting on September 30, 2014, from 9:00 a.m. to 4:00 p.m. in Washington, DC. Additionally, DOE plans to conduct the public meeting via webinar. You may attend the public meeting via webinar, and registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100.* Participants are responsible for ensuring their systems are compatible with the webinar software.

DOE must receive requests to speak at the public meeting before 4:00 p.m., September 16, 2014. DOE must receive an electronic copy of the statement with the name and, if appropriate, the organization of the presenter to be given at the public meeting before 4:00 p.m., September 23, 2014.

Comments: DOE will accept written comments, data, and information regarding the Framework Document before and after the public meeting, but no later than October 27, 2014.

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. Please note that foreign nationals planning to participate in the public meeting are subject to advance security screening procedures. 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. Please note that any person wishing to bring a laptop computer into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. As noted above, persons may also attend the public meeting via webinar.

Interested parties are encouraged to submit comments electronically. However, comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: SprayValves2014STD0027@ee.doe.gov.* Include docket number EERE–2014–BT–STD–0027 and/or regulatory identification number (RIN) 1904–AD31 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, Framework Document for Commercial Prerinse Spray Valves, Docket No. EERE–2014–BT–STD–0027 and/or RIN 1904–AD31, 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 sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *http://www.regulations.gov,* and will include **Federal Register** notices, framework document, notice of proposed rulemaking, public meeting attendee lists and transcripts, comments, and other supporting documents/materials throughout the rulemaking process. The regulations.gov Web page contains simple instructions on how to access all documents, including public comments, in the docket. The docket can be accessed by searching for docket number EERE–2014–BT–STD–0027 on the regulations.gov Web site. 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.

For 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: John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW.,

Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *john.cymbalsky@ee.doe.gov.*

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

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163, (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering major household appliances (collectively referred to as ''covered products'').[2] EPCA authorizes DOE to establish technologically feasible, economically justified energy conservation standards for covered products or equipment that would be likely to result in significant national energy savings. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

The Energy Policy Act of 2005 (EPACT 2005) expanded EPCA by establishing energy conservation standards for commercial prerinse spray valves, the subject of this notice. (42 U.S.C. 6295(dd)). The existing energy conservation standards for commercial prerinse spray valves can be found at 10 CFR 431.266 and are applicable to commercial prerinse spray valve units manufactured on or after January 1, 2006. This standard was placed in the Code of Federal Regulations (CFR) as part of a technical amendment final rule in October 2005 that placed energy conservation standards, test procedures, and related definitions prescribed by Congress into the CFR. 70 FR 60407 (Oct. 18, 2005). Under 42 U.S.C. 6295(m)(1), within 6 years after issuance of any final rule establishing or amending a standard, DOE is required to publish a notice determining whether to amend such standards. If DOE determines that amendment is warranted, DOE must also issue a notice of proposed rulemaking including new proposed energy conservation standards by that same date. (42 U.S.C. 6295(m)(l)). Therefore, this rulemaking satisfies the requirement under 42 U.S.C. 6295(m)(1) for DOE to review the existing standards for commercial prerinse spray valves.

DOE has prepared the Framework Document to explain the relevant issues, analyses, and processes it anticipates using when considering amended energy conservation standards for commercial prerinse spray valves. The focus of the public meeting noted above will be to discuss the information presented and issues identified in the Framework Document. At the public meeting, DOE will make presentations and invite discussion on the rulemaking process as it applies to commercial prerinse spray valves. DOE will also solicit comments, data, and information from participants and other interested parties.

DOE is planning to conduct in-depth technical analyses in the following areas: (1) Engineering; (2) energy use; (3) product price; (4) life-cycle cost and payback period; (5) national impacts; (6) manufacturer impacts; (7) emission impacts; (8) utility impacts; (9) employment impacts; and (10) regulatory impacts. DOE will also conduct several other analyses that support those previously listed, including the market and technology assessment, the screening analysis (which contributes to the engineering analysis), and the shipments analysis (which contributes to the national impact analysis).

DOE encourages those who wish to participate in the public meeting to obtain the Framework Document and to be prepared to discuss its contents. A copy of the Framework Document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100*.

Public meeting participants need not limit their comments to the issues identified in the Framework Document. DOE is also interested in comments on other relevant issues that participants believe would affect energy conservation standards for these products, applicable test procedures, or the preliminary determination on the scope of coverage. DOE invites all interested parties, whether or not they participate in the public meeting, to submit in writing by October 27, 2014, comments and information on matters addressed in the Framework Document and on other matters relevant to DOE's consideration of coverage of and standards for commercial prerinse spray valves.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be available for purchase from the court reporter and placed on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100.*

After the public meeting and the close of the comment period on the Framework Document, DOE will collect data, conduct the analyses as discussed in the Framework Document and at the public meeting, and review the public comments it receives.

DOE considers public participation to be a very important part of the process for determining whether to amend energy conservation standards and, if so, in setting those amended standards. DOE actively encourages the participation and interaction of the public during the comment period at each stage of the rulemaking process. Beginning with the Framework Document, and during each subsequent public meeting and comment period, interactions with and among members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process. Accordingly, anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on September 4, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–21687 Filed 9–10–14; 8:45 am]

BILLING CODE 6450–01–P

[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).

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0037]

RIN 1904–AC39

Energy Conservation Standards for Automatic Commercial Ice Makers: Availability of Revised Rulemaking Analysis

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of data availability (NODA); request for comment.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including automatic commercial ice makers. EPCA also requires DOE to determine whether more stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. DOE proposed amended energy conservation standards for automatic commercial ice makers in a notice of proposed rulemaking (NOPR) published on March 17, 2014. DOE has since updated its proposed rulemaking analysis estimating the potential economic impacts and energy savings that could result from promulgating an amended energy conservation standard for automatic commercial ice makers. This notice announces the availability of this analysis to give stakeholders an opportunity to review the revised proposed rulemaking analysis and its results, and to give stakeholders an opportunity to comment.

DATES: DOE will accept comments, data, and information regarding this NODA submitted no later than October 14, 2014.

ADDRESSES: Any comments submitted must identify the Notice of Data Availability for Automatic Commercial Ice Makers, and provide docket number EERE–2010–BT–STD–0037 and/or regulatory information number (RIN) 1904–AC39. 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: ACIM-2010-STD-0037@ee.doe.gov.* Include docket EERE–2010–BT–STD–0037 and/or RIN 1904–AC39 in the subject line of the message.

3. *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.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (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 is available for review at *www.regulations.gov,* including **Federal Register** notices, 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.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2010-BT-STD-0037.* The regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *automatic_commercial_ice_makers@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Authority and Background

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment,[2] which includes the focus of this notice: Automatic commercial ice makers.

EPCA prescribes energy conservation standards for cube type automatic commercial ice makers with harvest rates between 50 and 2,500 pounds of ice per 24 hours. (42 U.S.C. 6313(d)(1)) These standards are set out for specific equipment types: Self-contained ice makers using air or water for cooling, ice-making heads using air or water for cooling, and remote condensing ice makers with or without a remote compressor. *Id.* In a final rule published on October 18, 2005, DOE adopted the energy conservation standards and water conservation standards pursuant to this section and placed them under 10 CFR part 431, subpart H, Automatic Commercial Ice Makers. 70 FR 60407, 60415–16.

EPCA requires DOE to review these standards and determine, by January 1, 2015, whether amending the applicable standards is technologically feasible and economically justified. (42 U.S.C. 6313(d)(3)(A)) If amended standards are technologically feasible and economically justified, DOE must issue a final rule by the same date. (42 U.S.C. 6313(d)(3)(B)) EPCA also grants DOE authority to conduct rulemakings to establish new standards for automatic commercial ice makers not covered by 42 U.S.C. 6313(d)(1). (42 U.S.C. 6313(d)(2)(A)) Pursuant to this authority, DOE identified additional automatic commercial ice maker types as candidates for standards to be established in this rulemaking. These include flake and nugget ice makers (collectively ''continuous'' ice makers), as well as batch type ice makers that are not included in the EPCA standards set for cube type ice makers, such as machines with harvest rates greater than 2,500 pounds ice per 24 hours.

DOE initiated the current rulemaking on November 4, 2010 by publishing on its Web site the ''Rulemaking Framework for Automatic Commercial Ice Makers.'' (The Framework document is available at: *www1.eere.energy.gov/buildings/appliance_standards/*

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[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).

commercial/pdfs/acim_framework_2010_11_04.pdf). DOE published a notice in the **Federal Register** announcing the availability of the Framework document, as well as a public meeting to discuss the document. The notice also solicited comment on the matters raised in the document. 75 FR 70852 (Nov. 19, 2010). The Framework document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for automatic commercial ice makers, and identified various issues to be resolved in the rulemaking.

DOE held a public meeting on December 16, 2010, at which it: (1) Presented the contents of the Framework document; (2) described the analyses it planned to conduct during the rulemaking; (3) sought comments from interested parties on these subjects; and (4) in general, sought to inform interested parties about, and facilitate their involvement in, the rulemaking. Major issues discussed at the public meeting included: (1) The scope of coverage for the rulemaking; (2) equipment classes; (3) analytical approaches and methods used in the rulemaking; (4) impacts of standards and burden on manufacturers; (5) technology options; (6) distribution channels, shipments, and end users; (7) impacts of outside regulations; and (8) environmental issues. At the meeting and during the comment period on the Framework document, DOE received many comments that assisted in identifying and resolving issues relevant to this rulemaking.

DOE then gathered additional information and performed preliminary analyses to review potential energy conservation standard levels for this equipment. This process culminated in DOE publishing notice of a second public meeting (the January 2012 notice) to discuss and receive comments regarding the tools and methods DOE used in performing its preliminary analysis, as well as the preliminary analyses results. 77 FR 3404 (Jan. 24, 2012). DOE also invited written comments on these subjects and announced the availability on its Web site of a preliminary analysis technical support document (preliminary TSD). *Id.* (The preliminary TSD is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0037-0026*.) Finally, DOE sought comments concerning other relevant issues that could affect amended energy conservation standards for automatic commercial ice makers, or that DOE should address in this rulemaking. *Id.*

The preliminary TSD provided an overview of DOE's review of the standards for automatic commercial ice makers, discussed the comments DOE received in response to the Framework document, and addressed issues including the scope of coverage of the rulemaking. The document also described the analytical framework used in this rulemaking to consider amended standards for automatic commercial ice makers, including a description of the methodology, the analytical tools, and the relationships between the various analyses that are part of this rulemaking. In addition, the preliminary TSD presented in detail each analysis that DOE performed for this equipment, including descriptions of inputs, sources, methodologies, and results. These analyses, which are described in greater detail in the preliminary TSD, included (1) a market and technology assessment, (2) a screening analysis, (3) an engineering analysis, (4) an energy and water use analysis, (5) a markups analysis, (6) a life-cycle cost (LCC) analysis, (7) a payback period (PBP) analysis, (8) a shipments analysis, (9) a national impact analysis (NIA), and (10) a preliminary manufacturer impact analysis (MIA).

DOE presented the methodologies and results of the analyses set forth in the preliminary TSD at a public meeting held on February 16, 2012 (February 2012 public meeting). Interested parties provided comments on the following issues: (1) Equipment classes; (2) technology options; (3) energy modeling and validation of engineering models; (4) cost modeling; (5) market information, including distribution channels and distribution mark-ups; (6) efficiency levels; (7) life-cycle costs to customers, including installation, repair and maintenance costs, and water and wastewater prices; and (8) historical shipments.

Following the February 2012 public meeting, DOE updated and revised inputs and performed analyses to establish proposed energy conservation standards for automatic commercial ice makers, which were presented in the notice of proposed rulemaking (NOPR) published on March 17, 2014. 79 FR 14845. The NOPR outlined the proposed standard levels, discussed the comments received in response to the preliminary analysis document, and presented the results of the NOPR analysis. The NOPR also included employment, utility, emissions, social cost of carbon, manufacturer impact, and regulatory impact analyses. In addition, the NOPR announced a public meeting, which was held on April 14, 2014, to discuss and receive comments regarding the tools and methods DOE used in the NOPR analysis, as well as the results of that analysis. DOE also invited written comments and announced the availability of a NOPR analysis technical support document (NOPR TSD). *Id.* (The NOPR TSD is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0037-0061*).

The NOPR TSD described in detail DOE's analysis of potential standard levels for automatic commercial ice makers. The document also described the analytical framework used in considering standard levels, including a description of the methodology, the analytical tools, and the relationships between the various analyses. Additionally, it presented each analysis that DOE performed to evaluate automatic commercial ice makers, including descriptions of inputs, sources, methodologies, and results. DOE included the same analyses that were conducted at the preliminary analysis stage, with revisions based on comments received and additional research.

At the public meeting held on April 14, 2014, DOE presented the methodologies and results of the analyses set forth in the NOPR TSD. Interested parties provided comments on a variety of different areas. Some key issues raised by stakeholders included: (1) Whether the energy model accurately predicts efficiency improvements associated with design options; (2) the size restrictions and applications of 22-inch wide ice makers; (3) the efficiency distributions assumed for shipments of ice makers; and (4) the impact on manufacturers relating to redesign of ice maker models, in light of the proposed compliance date of 3 years after publication of the final rule.

In response to comments regarding the energy model used in the analysis, DOE held a public meeting on June 19, 2014 in order to facilitate an additional review of the model, gather additional feedback and data on the energy model, and to allow for a more thorough explanation of DOE's use of the model in the engineering analysis. 79 FR 33877 (June 13, 2014). At that meeting, DOE presented the energy model, demonstrated its operation, and described how it was used in the rulemaking's engineering analysis. DOE indicated in this meeting that it is considering modifications to its NOPR analyses based on the NOPR comments and additional research and information-gathering. (The material for the June 2014 public meeting is available at *http://www.regulations.gov/*

#!documentDetail;D=EERE-2010-BT-STD-0037-00109.)

II. Current Status

DOE is considering the information obtained through stakeholder comments and through additional research and information-gathering. The purpose of this NODA is to notify industry, manufacturers, customer groups, efficiency advocates, government agencies, and other stakeholders of the availability of the revised rulemaking analysis and results, as well as the effect of that information on the analyses prepared in support of the previously published proposed rule.

The comments received since publication of the March 2014 NOPR, including those received at the April 2014 and the June 2014 public meetings, provided inputs which led DOE to revise its analyses. Stakeholders also submitted additional information to DOE's consultant pursuant to non-disclosure agreements regarding efficiency gains and costs of potential design options. In addition, DOE reviewed additional market data, including published ratings of available ice makers, to recalibrate its engineering analysis. Generally, the revisions include modifications of inputs for its engineering, LCC, and NIA analyses, adjustment of its energy model calculations, and more thorough consideration of size-constrained ice maker applications. The analysis revisions addressing size-constrained applications included development of engineering analyses for three size-constrained equipment categories and restructuring of the LCC and NIA analyses to consider size constraints for applicable equipment classes.

Stakeholders commented at the April 2014 public meeting and in written comments on the importance of DOE allowing them an opportunity to review and comment on potential revisions of the analyses. (See, e.g., AHRI, No. 93 at p. 1) In response to these comments, DOE is issuing this NODA to announce the availability of the revised analysis DOE developed to support an amended energy conservation standard for automatic commercial ice makers, as described in section III. DOE may revise the analysis presented in today's NODA based on any new information or data obtained between now and the publication of the final rule concerning energy conservation standards for automatic commercial ice makers. DOE encourages stakeholders to provide any additional data or information that may improve the analysis no later than October 14, 2014.

III. Summary of Updated Rulemaking Analyses

DOE conducted analyses of automatic commercial ice makers in the following areas: (1) Engineering; (2) life-cycle cost and payback period; and (3) national impacts. The revised rulemaking analyses and their respective results (engineering, life-cycle cost, and national impacts spreadsheets) are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/29.*[3] Each spreadsheet includes an introduction describing the various inputs and outputs to the analysis, as well as operation instructions. Also available on the DOE Web site is a document outlining the LCC/PBP and NIA results, a document defining the trial standard levels (TSLs) levels that DOE considered in the NODA analyses, and a spreadsheet with charts showing the TSLs' energy use as functions of harvest capacity.

Summary of Changes to the Engineering Analysis:

- Based on new test data, DOE made changes to the 'Percent Energy Use Reduction' values associated with individual design options. These new values are included in the Engineering Results spreadsheet (column D of the 'Design Option Curves' tab). The 'Updated Analysis' tab details which design options were changed as a result of new test data obtained through (1) Non-Disclosure Agreements with DOE's engineering contractor and (2) comments made during the NOPR comment period.
- Based on new cost data, DOE made changes to the 'Individual cost' values associated with individual design options. These new values are included in the Engineering Results spreadsheet (column I of the 'Design Option Curves' tab). The 'Updated Analysis' tab details which design options were changed as a result of new data obtained through 1) Non-Disclosure Agreements with DOE's engineering contractor and 2) comments made during the NOPR comment period.
- Based on comments made during the NOPR period, DOE added additional cost-efficiency curves for 22-inch width units in the IMH–A-Small-B, IMH–A-Large-B, and IMH–W-Small-B equipment classes, and an additional cost-efficiency curve for the RCU-Small-C equipment class. The new cost-efficiency curves are described in Engineering Results spreadsheet ('Design Option Curves' tab).
- Summary of Changes to the Life-Cycle Cost and Payback Period: As described above, the engineering analysis examined design options and efficiency level improvements for 22-inch units for three equipment classes under a scenario where no increase in equipment size was considered, resulting in two separate cost-efficiency curves (space constrained and non-space constrained). For the LCC/PBP analysis and the NIA, a major source of change was the integration of these two curves for these equipment classes.
- A related source of change was assessing whether the impact of equipment cabinet size increases impose additional installation costs on customers.
- Other revisions include the inclusion of additional installation costs for certain other efficiency improvements (drain water heat exchangers and larger condensers in remote condenser units), changes in the calculation of repair costs to explicitly identify labor and material components, changes to the efficiency distribution of equipment in the baseline market, and changes to the utilization factor used to determine electricity and water usage.

The changes to the LCC and NIA are described in the document entitled ACIM NODA tabulated LCC–NIA results.

IV. Public Participation

DOE is interested in receiving comments on all aspects of the data and analysis presented in the NODA and supporting documentation that can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/29.*

DOE is particularly interested in receiving comments on the changes that were made to the engineering and LCC–NIA as described in Section III.

Submission of Comments

DOE will accept comments, data, and information regarding this notice no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information 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

[3] These spreadsheets are also available on the rulemaking docket at *http://www.regulations.gov/#!docketDetail;D=EERE-2010-BT-STD-0037.* However, the regulations.gov docket does not support macro-enabled files. The fully-functional files with macros-enabled are available on the Department of Energy Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/29.*

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 itself 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 *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

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, 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, that are written in English, and that are 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 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. 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).

Issued in Washington, DC, on August 5, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–21688 Filed 9–10–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0540; Directorate Identifier 2014–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain serial number Lycoming Engines reciprocating engines. This proposed AD was prompted by events of propeller governor shaft set screws coming loose due to improper installation, which could result in engine oil loss, damage to the engine, and damage to the airplane. This proposed AD would require application of Loctite 290, or equivalent, to the threads of the propeller governor shaft set screw at each installation of the set screw in addition to the peening of crankcase hole threads. We are proposing this AD to prevent the propeller governor shaft set screw from coming loose, causing damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by November 10, 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 Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: 800–258–3279; fax: 570–327–7101; Internet: *www.lycoming.com/Lycoming/SUPPORT/TechnicalPublications/ServiceBulletins.aspx.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2014–0540; 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:

Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@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–2014–0540; Directorate Identifier 2014–NE–10–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 issued Special Airworthiness Information Bulletin (SAIB) NE–08–32 on July 3, 2008. The SAIB recommended actions to correct the condition of a propeller governor shaft set screw coming loose. This proposed AD was prompted by additional events of propeller governor shaft set screws coming loose due to improper installation, which could result in the shaft penetrating the plug at the front of the crankcase and causing a loss of engine oil and a loss of engine power. In some reported events, engine oil was deposited on the windshield, restricting pilot visibility. The loose set screw could also enter the rotating system and cause damage to the camshaft and valve lifters. Safety is further diminished if failure occurs during aerobatic maneuvers, especially at low altitudes, due to reduction in pilot reaction time. These conditions, if not corrected, could result in damage to the engine, and damage to the airplane. This proposed AD would require application of Loctite 290, or equivalent, to the threads of the propeller governor shaft set screw at each installation of the set screw in addition to the peening of crankcase hole threads. We are proposing this AD to prevent the propeller governor shaft set screw from coming loose, causing damage to the engine, and damage to the airplane.

Relevant Service Information

We reviewed Lycoming Engines Service Instruction (SI) No. 1343B, dated June 15, 2007. The SI describes procedures for securing the propeller governor shaft set screw.

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 these same type designs.

Proposed AD Requirements

This proposed AD would require application of Loctite 290, or equivalent, to the threads of the propeller governor shaft set screw at each installation of the set screw in addition to the peening of crankcase hole threads.

Differences Between This Proposed AD and the Service Information

Lycoming Engines SI No. 1343B, dated June 15, 2007, specifies the use of Loctite 290, in addition to peening of the crankcase hole threads, to secure the set screw in place. This AD allows the use of Loctite 290, or equivalent thread-locking, anaerobic, single-component sealing compound that meets military specification Mil-S–46163A, Type III, Grade R. The SI also requires these actions at next overhaul, whereas this AD requires these actions at any installation of the propeller governor shaft set screw.

Costs of Compliance

We estimate that this proposed AD would affect about 2,330 engines installed on airplanes of U.S. registry. We also estimate that it will take about 0.1 hours per engine to comply with this AD. The average labor rate is $85 per hour. Prorated parts life will cost about $1 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $22,135.

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 to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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. Amend § 39.13 by adding the following new airworthiness directive (AD):

Lycoming Engines (Type Certificate previously held by Textron Lycoming Division, AVCO Corporation): Docket No. FAA–2014–0540; Directorate Identifier 2014–NE–10–AD.

(a) Comments Due Date

We must receive comments by November 10, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Lycoming Engines wide deck aerobatic reciprocating engines that have either an ''A'' or an ''E'' at the end of the serial number (e.g., L–12345–51A, or L–12345–51E) and are equipped with a front-mounted propeller governor. Affected reciprocating engine models include, but are not limited to Lycoming Engines AEIO–320–D1B; AEIO–360–A1E, –A1E6, –B1H, –H1B; AEIO–540–D4A5, –D4B5, –D4D5, –L1B5, –L1B5D, –L1D5; AEIO–580–B1A; and IO–540–K1K5 (with aerobatic kit installed).

(d) Unsafe Condition

This AD was prompted by events of propeller governor shaft set screws coming loose due to improper installation, which could result in engine oil loss, damage to the engine, and damage to the airplane. We are issuing this AD to prevent the propeller governor shaft set screw from coming loose, causing damage to the engine, and damage to the airplane.

(e) Compliance

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

After the effective date of this AD, at each installation of the propeller governor shaft set screw, secure the set screw in place in accordance with the instructions of Lycoming Engines Service Instruction (SI) No. 1343B, dated June 15, 2007, by using Loctite 290, or equivalent thread-locking, anaerobic, single-component sealing compound that meets military specification Mil–S–46163A, Type III, Grade R, in addition to peening of the crankcase hole threads.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, New York Aircraft Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(g) Related Information

(1) For more information about this AD, contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@faa.gov.*

(2) Lycoming Engines SI No. 1343B, dated June 15, 2007, pertains to the subject of this AD and can be obtained from Lycoming Engines using the contact information in paragraph (g)(3) of this AD.

(3) For service information identified in this AD, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: 800–258–3279; fax: 570–327–7101; Internet: *www.lycoming.com/Lycoming/SUPPORT/TechnicalPublications/ServiceBulletins.aspx.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on September 2, 2014.

Carlos A. Pestana,

Acting Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–21675 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2013–15–10 that applies to certain Rolls-Royce (RR) RB211 turbofan engines. AD 2013–15–10 requires inspecting the intermediate-pressure compressor (IPC) rotor shaft rear balance land for cracks. This AD eliminates a terminating action, expands one inspection and eliminates others. This proposed AD would require inspecting the IPC rotor shaft rear balance land for cracks and eliminate certain other inspections. We are proposing this AD to detect cracking on the IPC rotor shaft rear balance land, which could lead to uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by November 10, 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 Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418; email: *http://www.rolls-royce.com/contact/civil_team.jsp*; Internet: *https://www.aeromanager.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2007–28059; 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 mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The 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: Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England

Executive Park, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–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

On July 22, 2013, we issued AD 2013–15–10, Amendment 39–17526 (78 FR 54149, September 3, 2013), for all RR RB211–Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, 560A2–61, 768–60, 772–60, 772B–60, 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, 895–17, 970–84, 970B–84, 972–84, 972B–84, 977–84, 977B–84, and 980–84 turbofan engines. AD 2013–15–10 requires inspecting the IPC rotor shaft rear balance land for cracks and requires on-wing and in-shop inspections for the Trent 500, 700, 800, and 900 engines. AD 2013–15–10 resulted from detection of cracks in Trent 500, Trent 700 and Trent 800 IPC rotor shaft rear balance lands and analysis that determined similar cracks may exist in Trent 900 engines. We issued AD 2013–15–10 to detect cracking on the IPC rotor shaft rear balance land, which could lead to uncontained engine failure and damage to the airplane.

Actions Since AD 2013–15–10 Was Issued

Since we issued AD 2013–15–10, Amendment 39–17526 (78 FR 54149, September 3, 2013), we determined that repetitive in-shop eddy current inspections (ECIs) are still required for certain RR RB211–Trent 700 and 800 engines even after the terminating action in AD 2013–15–10 was accomplished. We also determined that on-wing inspections are not required for certain modified RR RB211–Trent 500 and 900 engines, and that certain in-shop visual inspections are not required for certain RR RB211–Trent 500, 700, 800, and 900 engines.

Relevant Service Information

We reviewed RR Alert Non-Modification Service Bulletin (NMSB) No. RB.211–72–AG264, Revision 5, dated March 21, 2011; RR Alert NMSB No. RB.211–72–AG270, Revision 4, dated March 21, 2011; RR Alert NMSB No. RB.211–72–AG085, Revision 2, dated July 7, 2011; RR NMSB No. RB.211–72–G448, Revision 3, dated July 7, 2011; RR Alert NMSB No. RB.211–72–AH059, dated December 11, 2012; and RR Alert NMSB No. RB.211–72–AH058, dated December 13, 2012. These service bulletins describe procedures for inspecting the IPC shaft rear balance land on RB211–Trent 500, 700, 800, and 900 engines.

European Aviation Safety Agency AD 2014–0152, dated June 20, 2014, corrected June 25, 2014, includes repetitive in-shop ECI, elimination of repetitive on-wing inspections, and elimination of in-shop visual inspections for certain engines.

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 retain the requirements of AD 2013–15–10 for inspecting the IPC rotor shaft rear balance land for cracks. This proposed AD would also require that the repetitive in-shop ECIs in AD 2013–15–10 be performed even after modifying certain engines. This proposed AD would also eliminate repetitive on-wing inspections for certain other engines, and eliminate certain in-shop visual inspections for all engines.

Costs of Compliance

We estimate that this proposed AD would affect about 136 engines installed on airplanes of U.S. registry. We also estimate that it would take about 14 hours per engine to perform the inspections required by this AD. The average labor rate is $85 per hour. Replacement parts are estimated to cost about $2,271 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $470,696.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the 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 to the extent that it justifies making a regulatory distinction, and

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

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. Amend § 39.13 by removing airworthiness directive (AD) 2013–15–10, Amendment 39–17526 (78 FR 54149, September 3, 2013), and adding the following new AD:

Rolls-Royce plc: Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD.

(a) Comments Due Date

We must receive comments by November 10, 2014.

(b) Affected ADs

This AD supersedes AD 2013–15–10, Amendment 39–17526 (77 FR 54149, September 3, 2013).

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) RB211–Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, 560A2–61, 768–60, 772–60, 772B–60, 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, 895–17, 970–84, 970B–84, 972–84, 972B–84, 977–84, 977B–84, and 980–84 turbofan engines.

(d) Unsafe Condition

This AD was prompted by reports of cracks in Trent 500, Trent 700 and Trent 800 intermediate-pressure compressor (IPC) rotor shaft rear balance lands and analysis that determined similar cracks may exist in Trent 900 engines. We are issuing this AD to detect cracking on the IPC rotor shaft rear balance land, which could lead to uncontained engine failure and damage to the airplane.

(e) Compliance

Comply with this AD unless already done.

(1) RB211–Trent 700 Engines—Rear Balance Land Inspections

(i) Within 625 cycles-in-service (CIS) after June 29, 2012, or before the next flight after the effective date of this AD, whichever occurs later, borescope inspect the IPC rotor shaft rear balance land. Use RB211 Trent 700 Series Propulsion System Alert Non-Modification Service Bulletin (NMSB) No. RB.211–72–AG270, Revision 4, dated March 21, 2011, paragraphs 3.A.(2)(a) through 3.A.(2)(c) and 3.A.(3)(a) through 3.A.(3)(c) for in-shop procedures, or paragraphs 3.B.(2)(a) through 3.B.(2)(c) and 3.B.(4)(a) through 3.B.(4)(c), for on-wing procedures, to do the inspection.

(ii) Thereafter, repeat the inspection within every 625 cycles-since-last inspection (CSLI). You may count CSLI from the last borescope inspection or the last ECI, whichever occurred later.

(iii) At each shop visit after the effective date of this AD, perform an ECI of the IPC rotor shaft rear balance land. Use RB211 Trent 700 and Trent 800 Series Propulsion Systems Alert NMSB No. RB.211–72–AG085, Revision 2, dated July 7, 2011, paragraphs 3.A. through 3.B., to do the inspection.

(iv) To meet the requirement of paragraph (e)(1)(i) of this AD, instead of a borescope inspection, you may perform an ECI using paragraph (e)(1)(iii) of this AD.

(2) RB211–Trent 800 Engines—Rear Balance Land Inspections

(i) Within 475 CIS after June 29, 2012, or before the next flight after the effective date of this AD, whichever occurs later, borescope inspect the IPC rotor shaft rear balance land. Use RB211 Trent 800 Series Propulsion System Alert NMSB No. RB.211–72–AG264, Revision 5, dated March 21, 2011, paragraphs 3.A.(2)(a) through 3.A.(2)(c) and 3.A.(3)(a) through 3.A.(3)(c), for in-shop procedures, or paragraphs 3.B.(2)(a) through 3.B.(2)(c) and 3.B.(4)(a) through 3.B.(4)(c), for on-wing procedures, to do the inspection.

(ii) Thereafter, repeat the inspection within every 475 CSLI. You may count CSLI from the last borescope inspection or the last ECI, whichever occurred later.

(iii) At each shop visit after the effective date of this AD, perform an ECI of the IPC rotor shaft rear balance land. Use RB211 Trent 700 and Trent 800 Series Propulsion Systems Alert NMSB No. RB.211–72–AG085, Revision 2, dated July 7, 2011, paragraphs 3.A. through 3.B., to do the inspection.

(iv) To meet the requirement of paragraph (e)(2)(i) of this AD, instead of a borescope inspection, you may perform an ECI using paragraph (e)(2)(iii) of this AD.

(3) RB211–Trent 500 Engines—Rear Balance Land Inspections

(i) Within 340 CIS after October 8, 2013, or before the next flight after the effective date of this AD, whichever occurs later, borescope inspect the IPC rotor shaft rear balance land. Use RB211 Trent 500 Series Propulsion Systems Alert NMSB No. RB.211–72–AH058, dated December 13, 2012, paragraphs 3.A.(2)(a) through 3.A.(2)(c), 3.A.(3)(a) through 3.A.(3)(d), and 3.A.(5)(a) through 3.A.(5)(c), for on-wing procedures, to do the inspection.

(ii) Thereafter, repeat the inspection within every 340 CSLI. You may count CSLI from the last borescope inspection or the last ECI, whichever occurred later.

(iii) At each shop visit after the effective date of this AD, perform an ECI of the IPC rotor shaft rear balance land. Use RB211 Trent 500 and Trent 900 Series Propulsion Systems NMSB No. RB.211–72–G448, Revision 3, dated July 7, 2011, paragraphs 3.D.(4) through 3.D.(5), 3.D.(6)(f) through 3.D.(7)(w), 3.D.(8)(f) through 3.D.(8)(w), and 3.D.(11) to do the inspection.

(iv) To meet the requirement of paragraph (e)(3)(i) of this AD, instead of a borescope inspection, you may perform an ECI using paragraph (e)(3)(iii) of this AD.

(4) RB211–Trent 900 Engines—Rear Balance Land Inspections

(i) Within 280 flight cycles after October 8, 2013, or before the next flight after the effective date of this AD, whichever occurs later, borescope inspect the IPC rotor shaft rear balance land. Use RB211 Trent 900 Series Propulsion Systems Alert NMSB No. RB.211–72–AH059, dated December 11, 2012, paragraphs 3.A.(2)(a) through 3.A.(2)(c), 3.A.(3)(a) through 3.A.(3)(d), and 3.A.(5)(a) through 3.A.(5)(c) for on-wing procedures, to do the inspection.

(ii) Thereafter, repeat the inspection within every 280 CSLI. You may count CSLI from the last borescope inspection or the last ECI, whichever occurred last.

(iii) At each shop visit after the effective date of this AD, perform an ECI of the IPC rotor shaft rear balance land. Use RB211 Trent 500 and Trent 900 Series Propulsion Systems NMSB No. RB.211–72–G448, Revision 3, dated July 7, 2011, paragraphs 3.D.(4) through 3.D.(5), 3.D.(6)(f) through 3.D.(7)(w), 3.D.(8)(f) through 3.D.(8)(w), and 3.D.(11) to do the inspection.

(iv) To meet the requirement of paragraph (e)(4)(i) of this AD, instead of a borescope inspection, you may perform an ECI using paragraph (e)(4)(iii) of this AD.

(5) RB211–Trent 500, RB211–Trent 700, RB211–Trent 800, and RB211–Trent 900 Engines IPC Balance Weight Removal

(i) RB211–Trent 500 engines. At the next shop visit after the effective date of this AD, remove the IPC balance weights, part numbers (P/Ns) AS44695–150, AS44695–175, AS44695–200, AS44695–225, AS44695–250, AS44695–275, and AS44695–300.

(ii) RB211–Trent 700 engines. At the next shop visit after the effective date of this AD, remove the IPC balance weights, P/Ns AS44695–150, AS44695–175, AS44695–200, AS44695–225, AS44695–250, AS44695–275, and AS44695–300.

(iii) RB211–Trent 800 engines. At the next shop visit after the effective date of this AD, remove the IPC balance weights, P/Ns AS44695–150, AS44695–175, AS44695–200, AS44695–225, AS44695–250, AS44695–275, and AS44695–300.

(iv) RB211–Trent 900 engines. At the next shop visit after the effective date of this AD, remove the IPC balance weights, P/Ns AS44695–150, AS44695–175, AS44695–200, AS44695–225, AS44695–250, AS44695–275, and AS44695–300.

(v) Once you have removed the IPC balance weights, P/Ns AS44695–150, AS44695–175, AS44695–200, AS44695–225, AS44695–250, AS44695–275, and AS44695–300, do not re-install them on any IPC shaft rear balance land.

(6) RB211–Trent 500, RB211–Trent 700, RB211–Trent 800, and RB211–Trent 900 Engines—Terminating Action to Repetitive Borescope Inspections

(i) Removal of the IPC balance weights as described in paragraph (e)(5) of this AD terminates the repetitive borescope inspections of paragraphs (e)(1) through (e)(4) of this AD. However, at each shop visit you must still do the ECI required by paragraphs (e)(1) through (e)(4) of this AD.

(ii) Reserved.

(f) Credit for Previous Actions

(1) RB211–Trent 700 Engines

(i) If you borescope inspected an RB211–Trent 700 engine, before the effective date of this AD, using RB211 Trent 700 Series Propulsion System Alert NMSB No. RB.211–72–AG270, Revision 1, dated December 14, 2009; or Revision 2, dated December 21, 2010; or Revision 3, dated February 25, 2011, you have met the requirements of paragraph (e)(1)(i) of this AD.

(ii) If you eddy current inspected an RB211–Trent 700 engine, before the effective date of this AD, using RB211 Trent 700 and Trent 800 Series Propulsion Systems Alert NMSB No. RB.211–72–AG085, Revision 1, dated September 27, 2010, you met the ECI requirement of paragraph (e)(1)(iii) of this AD. However, you are still required to perform the repetitive inspections required by paragraphs (e)(1)(ii) and (e)(1)(iii) of this AD.

(2) RB211–Trent 800 Engines

(i) If you borescope inspected an RB211–Trent 800 engine, before the effective date of this AD, using RB211 Trent 800 Series Propulsion System Alert NMSB No. RB.211–72–AG264, Revision 3, dated December 21, 2010; or Revision 4, dated February 25, 2011, you met the requirements of paragraph (e)(2)(i) of this AD.

(ii) If you eddy current inspected an RB211–Trent 800 engine, before the effective date of this AD, using RB211 Trent 700 and Trent 800 Series Propulsion Systems Alert NMSB No. RB.211–72–AG085, Revision 1, dated September 27, 2010, you met the ECI requirement of paragraph (e)(2)(i) of this AD. However, you are still required to perform the repetitive inspections required by paragraphs (e)(2)(ii) and (e)(2)(iii) of this AD.

(3) RB211–Trent 500 Engines

(i) If you borescope inspected an RB211–Trent 500 engine, before the effective date of this AD, using RB211 Trent 500 and Trent 900 Series Propulsion Systems NMSB No. RB.211–72–G448, Revision 2, dated December 23, 2010, you met the requirement of paragraph (e)(3)(i) of this AD.

(ii) If you eddy current inspected an RB211–Trent 500 engine, before the effective date of this AD, using RB211 Trent 500 and Trent 900 Series Propulsion Systems NMSB No. RB.211–72–G448, Revision 2, dated December 23, 2010, you met the ECI requirement of paragraph (e)(3)(iii) of this AD. However, you are still required to perform the repetitive inspections required by paragraphs (e)(3)(ii) and (e)(3)(iii) of this AD.

(4) RB211–Trent 900 Engines

(i) If you borescope inspected an RB211–Trent 900 engine, before the effective date of this AD, using RB211 Trent 500 and Trent 900 Series Propulsion Systems NMSB No. RB.211–72–G448, Revision 2, dated December 23, 2010, you met the requirements of paragraph (e)(4)(i) of this AD.

(ii) If you eddy current inspected an RB211–Trent 900 engine, before the effective date of this AD, using RB211 Trent 500 and Trent 900 Series Propulsion Systems NMSB No. RB.211–72–G448, Revision 2, dated December 23, 2010, you met the ECI requirement of paragraph (e)(4)(i) of this AD. However, you are still required to perform the repetitive inspections required by paragraphs (e)(4)(ii) and (e)(4)(iii) of this AD.

(g) Definition

For the purpose of this AD, a shop visit is defined as the introduction of an engine into the shop and disassembly sufficient to expose the IPC module rear face.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency, AD 2014–0152, dated June 20, 2014 and corrected on June 25, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2007–28059.

(3) RR Alert NMSB No. RB.211–72–AG264, Revision 5, dated March 21, 2011; RR Alert NMSB No. RB.211–72–AG270, Revision 4, dated March 21, 2011; RR Alert NMSB No. RB.211–72–AG085, Revision 2, dated July 7, 2011; RR NMSB No. RB.211–72–G448, Revision 3, dated July 7, 2011; RR Alert NMSB No. RB.211–72–AH059, dated December 11, 2012; and RR Alert NMSB No. RB.211–72–AH058, dated December 13, 2012, which are not incorporated by reference in this AD, can be obtained from Rolls-Royce plc, using the contact information in paragraph (i)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418; Internet: *http://www.rolls-royce.com/contact/civil_team.jsp.*

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on August 28, 2014.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–21677 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter 1

[Docket Number No. FAA–2014–0463]

Policy on the Non-Aeronautical Use of Airport Hangars; Extension for Comments

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed policy; 30 day extension for comments.

SUMMARY: The Federal Aviation Administration (FAA) has recently issued a notice of proposed policy. Significant interest among the aviation community, industry representatives, and congressional representatives has compelled the FAA to extend the comment period by 30 days. FAA will consider comments submitted to the docket by Monday, October 6, 2014.

DATES: Comments regarding this policy must be received on or before October 6, 2014.

ADDRESSES: You may send comments [identified by Docket Number FAA–2014–0463] 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 electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Manager, Airport Compliance Division, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–4629.

SUPPLEMENTARY INFORMATION: *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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Statutory Authority

This notice is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, section 47122(a).

Issued in Washington, DC, on September 5, 2014.

Randall S. Fiertz,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2014–21697 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–9643; File No. S7–09–14]

RIN 3235–AL41

Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only by Eligible Contract Participants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing a rule under the Securities Act of 1933 to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants will not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of price quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a facility that either is registered as a national securities exchange or as a security-based swap execution facility, or is exempt from registration as a security-based swap execution facility pursuant to a rule, regulation, or order of the Commission, would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

DATES: Comments should be received on or before November 10, 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*);
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–09–14 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 S7–09–14. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are 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; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing Rule 135d under the Securities Act of 1933 (''Securities Act'').[1]

I. Background

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')[2] into law. Title VII of the Dodd-Frank Act (''Title VII'') provides the Securities and Exchange Commission (''SEC'' or the ''Commission'') and the Commodity Futures Trading Commission (''CFTC'') with the authority to regulate over-the-counter derivatives. Under Title VII, the CFTC regulates ''swaps,'' the SEC regulates ''security-based swaps,'' and the CFTC and SEC jointly regulate ''mixed swaps.''[3]

Title VII amended the Securities Act and the Securities Exchange Act of 1934 (''Exchange Act'')[4] to include ''security-based swaps'' in the definition of ''security'' for purposes of those statutes.[5] As a result, ''security-based swaps'' are subject to the provisions of the Securities Act and the Exchange Act and the rules and regulations thereunder applicable to securities. The Securities Act requires that any offer and sale of a security must either be registered under the Securities Act or be made pursuant to an exemption from registration.[6] As a result, counterparties entering into security-based swap transactions need either to rely on an available exemption from the registration requirements of the Securities Act or register such transactions. Title VII amended the Securities Act to require that security-based swap transactions involving persons who are not eligible contract participants[7] must be registered under the Securities Act.[8]

[1] 15 U.S.C. 77a *et seq.*

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] Section 712(d) of the Dodd-Frank Act provides that the SEC and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, shall jointly 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.'' These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term ''eligible contract participant,'' in Section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)], as re-designated and amended by Section 721 of the Dodd-Frank Act. The SEC and the CFTC adopted final rules further defining these terms. *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Release No. 34–66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012), and *Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Release No. 33–9338 (Jul. 18, 2012), 77 FR 48208 (Aug. 13, 2012) (''Product Definitions Adopting Release'').

[4] 15 U.S.C. 78a *et seq.*

[5] *See* Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

[6] *See* 15 U.S.C. 77e.

[7] The term ''eligible contract participant'' is defined in Section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)]. The definition of the term ''eligible contract participant'' in the Securities Act refers to the definition of ''eligible contract participant'' in the Commodity Exchange Act. *See* Section 5(e) of the Securities Act [15 U.S.C. 77e(e)]. The eligible contract participant definition includes several categories of persons: Financial institutions; insurance companies; investment companies; commodity pools; business entities, such as corporations, partnerships, and trusts; employee benefit plans; government entities, such as the United States, a State or local municipality, a foreign government, a multinational or supranational government entity, or an instrumentality, agency or department of such entities; market professionals, such as broker dealers, futures commission merchants, floor brokers, and investment advisors; and natural persons with a specified dollar amount invested on a discretionary basis. The SEC and the CFTC adopted final rules further defining the term ''eligible contract participant.'' *See* footnote 3 above.

[8] *See* Section 768(b) of the Dodd-Frank Act (adding new Section 5(d) of the Securities Act [15 U.S.C. 77e(d)]) (Notwithstanding the provisions of

Transactions in security-based swaps historically have occurred through bilateral trades in the over-the-counter market.[9] Currently, security-based swap dealers can locate counterparties for transactions in security-based swaps by using various methods, including electronic trading platforms.[10] Security-based swap dealers may solicit transactions in security-based swaps from their institutional client base via phone calls, email, and in-person meetings. Clients sometimes contact security-based swap dealers who are well known in the market to request a quote for a particular transaction. In addition, security-based swap dealers may opt to locate counterparties by engaging the services of an inter-dealer broker. According to a commenter, security-based swap dealers also disseminate trading interest in security-based swaps by sending messages via on-line information services such as Bloomberg.[11] These electronic messages are sent only to accounts with whom security-based swap dealers and brokers have pre-existing relationships.[12] Security-based swap dealers also may communicate pricing information or quotes for security-based swaps through electronic trading platforms that require pre-clearance for access and are accessible only to approved customers. These platforms include single-dealer request for quote platforms, aggregator-type platforms, multi-dealer request for quote platforms, limit order book systems, and electronic brokering platforms.[13] Certain of these platforms may become security-based swap execution facilities (''security-based SEFs'')[14] upon the full implementation of Title VII, but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate will not be known until we adopt final rules implementing the statutory provisions of Title VII governing the registration and regulation of security-based SEFs.[15]

Title VII has added a requirement that security-based swaps be traded on regulated trading platforms or exchanges in certain situations. Title VII contains a mandatory clearing provision that requires security-based swap transactions to be submitted for clearing to a clearing agency if such security-based swap is one that the Commission has determined is required to be cleared, unless an exception from mandatory clearing applies (''mandatory clearing requirement'').[16] This section of Title VII further provides that for security-based swaps that are subject to the mandatory clearing requirement, transactions in such security-based swaps must be executed on an exchange or on a registered or exempt security-based SEF, unless no exchange or security-based SEF makes such security-based swap available for trading (''mandatory trade execution requirement'').[17] If a security-based swap transaction is not subject to the mandatory clearing requirement, the transaction may still be cleared on a voluntary basis by a clearing agency if the clearing agency has rules that permit it to clear the security-based swap.[18] Security-based swap transactions, whether or not subsequently cleared, may be executed on a security-based SEF.[19]

Any facility for trading or processing security-based swaps, including some of the electronic trading platforms currently used by security-based swap dealers to disseminate quotes to their clients, must be registered as a security-based SEF or as a national securities exchange.[20] Once registered, a security-based SEF may make security-based swaps available for trading and facilitate trade processing of security-based swaps. We believe that security-based SEFs, as well as exchanges that post or trade security-based swaps, should help to provide greater transparency and a more competitive environment for the trading of security-based swaps by providing venues for multiple parties to execute trades in security-based swaps and also by serving as conduits for information regarding trading interest in security-based swaps.[21] While security-based swap transactions currently are effected through the over-the-counter market, rather than on regulated markets, with the full implementation of Title VII, such transactions will occur both through regulated markets, such as registered or exempt security-based SEFs and national securities exchanges, and through over-the-counter transactions under certain circumstances.

Title VII amends the Exchange Act to add various new statutory provisions to govern the regulation of security-based SEFs, including provisions relating to who may access such trading platforms (known as an ''impartial access requirement'') and the availability of bid, offer, or other price information regarding security-based swaps.[22] The

section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).)). Section 105(c)(1) of the Jumpstart Our Business Startups Act (the ''JOBS Act'') redesignated paragraph (d) of Section 5 of the Securities Act as paragraph (e). *See* Public Law 112–106, 126 Stat. 306 (2012).

[9] *See* letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, The Securities Industry and Financial Markets Association (''SIFMA''), and Robert Pickel, Chief Executive Officer, International Swaps and Derivatives Association (''ISDA''), dated Apr. 20, 2012 (''SIFMA/ISDA Letter''). The SIFMA/ISDA letter was submitted in response to the request for comment in *Exemptions for Security-Based Swaps,* Release No. 33–9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011) (''Interim Final Exemptions Adopting Release''). In considering whether the exemptions adopted in the Interim Final Exemptions Adopting Release were necessary or appropriate, the Commission requested information about how security-based swaps are currently transacted and will be transacted following the full implementation of Title VII. In response to the request for comment, the SIFMA/ISDA Letter provided a description of how the security-based swaps market functions and how it may function following the full implementation of Title VII. *See* SIFMA/ISDA Letter.

[10] *See* SIFMA/ISDA Letter.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *See* Section 761 of the Dodd-Frank Act (adding Section 3(a)(77) of the Exchange Act [15 U.S.C. 78c(a)(77)] (defining the term ''security-based swap execution facility'')), and *Registration and Regulation of Security-Based Swap Execution Facilities,* Release No. 34–63825 (Feb. 2, 2011) 76 FR 10948 (Feb. 28, 2011) (''Security-Based SEF Proposing Release'').

[15] *See* Security-Based SEF Proposing Release.

[16] *See* Section 763(a) of the Dodd-Frank Act (adding Section 3C of the Exchange Act [15 U.S.C. 78c–3]).

[17] *Id.*

[18] *See Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012) (''Cleared SBS Exemptions Adopting Release'').

[19] *Id.*

[20] *See* Section 763(c) of the Dodd-Frank Act (adding Section 3D(a)(1) of the Exchange Act [15 U.S.C. 78c-4(a)(1)]). We view this requirement as applying only to a facility that meets the definition of ''security-based swap execution facility'' in Section 3(a)(77) of the Exchange Act. Under the Dodd-Frank Act, security-based swaps that that are not subject to the mandatory trade execution requirement would not have to be traded on a registered security-based SEF and could continue to be traded in the over-the-counter market for security-based swaps. *See* Security-Based SEF Proposing Release.

[21] *See* Security-Based SEF Proposing Release.

[22] *See* Section 763 of the Dodd-Frank Act (adding Sections 3C and 3D of the Exchange Act [15 U.S.C. 78c–3 and 78c–4]). We have proposed rules to implement the statutory provisions regarding the regulation of security-based SEFs. *See* Security-Based SEF Proposing Release. To be registered as a security-based SEF a trading platform must comply with certain enumerated core principles, one of which is that a security-based SEF must provide market participants with impartial access to become participants in the security-based SEF. *See* Section 3D(d) of the Exchange Act [15 U.S.C. 78c–4(d)]. We have proposed rules to implement the impartial access requirement that would set forth the categories of persons that would be permitted to have direct access to trading on a security-based SEF as a participant and also the terms and

Continued

impartial access requirement would require a security-based SEF to establish objective standards for granting impartial access to trading on the security-based SEF. The proposed rules for regulating security-based SEFs would impose an affirmative requirement for security-based SEFs to admit as participants all eligible persons that meet those standards for becoming a participant.[23] Further, the proposed rules for regulating security-based SEFs would require security-based SEFs to provide at least a basic functionality to allow any participant on a security-based SEF the ability to make and display executable bids or offers accessible to all other participants on the security-based SEF, if the participant chooses to do so.[24] Consequently, registered security-based SEFs may be unable to limit the number or types of persons that have access to quotes on their trading platforms. For example, following the full implementation of Title VII, the rules of security-based SEFs and national securities exchanges may require the publication or distribution of quotes for security-based swaps to be available to all participants in these platforms. As is the case today, participants in these platforms may be able to further disseminate such quotes, including through on-line information services, without restriction depending on the particular rules of these platforms. As a result, such quotes may be available to any person on an unrestricted basis.

The operation of security-based SEFs and national securities exchanges that post bids, offers, or prices or that operate as trading platforms for security-based swaps, whether currently or following full implementation of Title VII, could affect the availability of exemptions from the registration requirements of the Securities Act for security-based swaps whose quotes are publicly available on or through such trading platforms or national securities exchanges.[25] Currently, quote or price information on security-based swaps on or through trading platforms used by security-based swap dealers may be available to the dealers' clients or others at the dealer's discretion. Certain of these trading platforms, as well as others, may become registered security-based SEFs, which may affect the platform's ability to limit participant access to the trading platforms and, therefore, may enable a variety of individuals or entities to view quotes on such platforms.

We have previously taken action with respect to security-based swap transactions under the Securities Act, the Exchange Act, and the Trust Indenture Act of 1939 (''Trust Indenture Act'')[26] while we sought input on the ways in which security-based swaps were transacted prior to the enactment of Title VII and could be transacted following the full implementation of Title VII, including through the use of trading platforms for security-based swaps. In July 2011, as a result of security-based swaps being included in the definition of ''security'' under the Securities Act and the Exchange Act and thereby becoming subject to the provisions of those statutes and the rules and regulations thereunder applicable to securities, we adopted interim final rules to provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that prior to July 16, 2011 (''Title VII effective date'')[27] were ''security-based swap agreements'' and are defined as ''securities'' under the Securities Act and the Exchange Act as of the Title VII effective date due solely to the provisions of Title VII (collectively, the ''interim final exemptions'').[28] The interim final exemptions exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met.[29] We adopted amendments to the interim final exemptions to extend the expiration dates in the interim final exemptions to February 11, 2017.[30] If we adopt rules under this proposal, we may determine to alter the expiration dates in the interim final exemptions as part of that rulemaking, including possibly shortening the expiration dates in the interim final exemptions.[31]

We adopted the interim final exemptions because, among other things, we were concerned about disrupting the operation of the security-based swaps market while we evaluated the implications for security-based swaps under the Securities Act and the Exchange Act as a result of the inclusion of the term ''security-based swap'' in the definition of ''security'' for purposes of those statutes.[32]

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conditions that the security-based SEF would need to adopt for granting such access. *See* Security-Based SEF Proposing Release. The impartial access requirement is analogous to the fair access requirement for national securities exchanges under Section 6(b)(2) of the Exchange Act, which also imposes an affirmative duty to admit qualified broker-dealers as members. *See* 15 U.S.C. 78f(b)(2) (''[T]he rules of the exchange [must] provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange . . .'').

[23] *See* Security-Based SEF Proposing Release. This proposed requirement is in contrast to the current structure of security-based swap trading platforms, as noted above, in which the trading platform operators and the security-based swap dealers have discretion over authorizing participants to access the platform and to see quotes for security-based swaps from the security-based swap dealers.

[24] *See* Security-Based SEF Proposing Release.

[25] *See, e.g.,* Section 4(a)(2) of the Securities Act (formerly Section 4(2)) exempts transactions by an issuer not involving any public offering from the registration requirements of Section 5 of the Securities Act. 15 U.S.C. 77d(a)(2).

[26] 15 U.S.C. 77aaa *et seq.*

[27] The provisions of Title VII generally were effective on July 16, 2011 (360 days after enactment of the Dodd-Frank Act), unless a provision requires a rulemaking. If a Title VII provision requires a rulemaking, it will go into effect not less than 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* Section 774 of the Dodd-Frank Act.

[28] *See* Rule 240 under the Securities Act [17 CFR 230.240], Rules 12a–11 and Rule 12h–1(i) under the Exchange Act [17 CFR 240.12a–11 and 17 CFR 240.12h–1], and Rule 4d–12 under the Trust Indenture Act of 1939 (''Trust Indenture Act'') [17 CFR 260.4d–12]. *See also* Interim Final Exemptions Adopting Release. The category of security-based swaps covered by the interim final exemptions involves those that would have been defined as ''security-based swap agreements'' prior to the enactment of Title VII. *See* Section 2A of the Securities Act [15 U.S.C. 77b(b)–1)] and Section 3A of the Exchange Act [15 U.S.C. 78c–1], each as in effect prior to the Title VII effective date. For example, the vast majority of security-based swap transactions involve single-name credit default swaps, which would have been ''security-based swap agreements'' prior to the Title VII effective date. In contrast, the definition of ''security-based swap agreement'' did not include security-based swaps that are based on or reference only loans and indexes only of loans. The Division of Corporation Finance issued a no-action letter that addressed the availability of the interim final exemptions to offers and sales of security-based swaps that are based on or reference only loans or indexes only of loans. *See* Cleary Gottlieb Steen & Hamilton LLP (Jul. 15, 2011). This no-action letter will remain in effect for so long as the interim final exemptions remain in effect.

[29] The security-based swap that is exempt must be a security-based swap agreement (as defined prior to the Title VII effective date) and entered into between eligible contract participants (as defined prior to the Title VII effective date). *See* Rule 240 under the Securities Act [17 CFR 230.240]. *See also* Interim Final Exemptions Adopting Release.

[30] *See Extension of Exemptions for Security-Based Swaps,* Release No. 33–9545 (Feb. 5, 2014), 79 FR 7570 (Feb. 10, 2014).

[31] We are requesting comment on whether to shorten or further extend the expiration dates in the interim final exemptions.

[32] *Id.* Prior to the Title VII effective date, security-based swap agreements that became security-based swaps on the Title VII effective date were outside the scope of the federal securities laws, other than the anti-fraud and certain other provisions. *See* Section 2A of the Securities Act [15 U.S.C. 77b(b)–1)] and Section 3A of the Exchange Act [15 U.S.C. 78c–1], each as in effect prior to the Title VII effective date. Some market participants were concerned that because of the different types of trading platforms being used to effect transactions in security-based swaps there could be questions

At the time of adoption of the interim final exemptions in July 2011, we requested comment on various aspects of the interim final exemptions.[33] In response to the request for comment, commenters expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act, including the exemption in Section 4(a)(2), for security-based swap transactions entered into solely between eligible contract participants due to the operation of certain trading platforms and the publication or distribution of other information regarding security-based swaps.[34] Commenters indicated that certain communications involving security-based swaps, such as the publication or distribution of price quotes, may be available on or through trading platforms on an unrestricted basis following the full implementation of Title VII.[35] They were concerned that this unrestricted access could affect the availability of exemptions from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2), for such security-based swap transactions.[36] As we understand, currently such communications generally are not available on the trading platforms on an unrestricted basis because the trading platform operators and the security-based swap dealers have discretion over authorizing participants to access trading platforms and to see quotes for security-based swaps from the security-based swap dealers using such trading platforms.[37]

The publication or distribution of price quotes for security-based swaps that are traded or processed on or through trading platforms could be viewed as offers of those security-based swaps within the meaning of Section 2(3) of the Securities Act,[38] and such communications would require compliance with the registration provisions of Section 5 of the Securities Act unless there is an available exemption from such registration requirements. Further, such communications also may be considered offers to persons who are not eligible contract participants, even if such persons are not permitted to purchase the security-based swaps. Under Section 5(e) of the Securities Act, it is unlawful to make offers or sales of security-based swaps to persons who are not eligible contract participants unless the security-based swaps are registered under the Securities Act.[39]

The rule proposed in this release is intended to further the goal of Title VII to bring the trading of security-based swaps onto regulated trading platforms and avoid unintended consequences arising from the operation of security-based swap trading platforms, including security-based SEFs and national securities exchanges, following the full implementation of Title VII by permitting market participants to effect security-based swap transactions without concern that price quotes on trading platforms made with respect to such security-based swap transactions may implicate the registration requirements of the Securities Act. If there are no Securities Act exemptions available with respect to a security-based swap transaction because the publication or distribution of price quotes for the security-based swaps that are traded or processed on or through trading platforms is viewed as an offer of such security-based swap, including to persons who are not eligible contract participants, the required registration of such transactions could impede the operation of, and the trading of security-based swaps on or through, these trading platforms. This, in turn, could potentially impede price discovery of security-based swap transactions. Accordingly, we believe that the rule proposed in this release is necessary to enable market participants to effect security-based swap transactions with eligible contract participants in reliance on available exemptions from the registration requirements of the Securities Act and avoid potential Securities Act violations for unregistered offers to persons who are not eligible contract participants, and to assure that there are not unintended consequences for the operation of security-based swap trading platforms following the full implementation of Title VII.

In proposing this rule, we have considered comment letters received to date on the interim final exemptions, including comment letters we received in response to the request for comment in an earlier proposing release regarding exemptions for security-based swap transactions involving an eligible clearing agency.[40] As noted above, some commenters expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act arising from the publication or distribution of price quotes for security-based swaps that are traded on or processed on or through trading platforms. Some commenters also expressed concern about the effect on the availability of Securities Act exemptions arising from other published communications that they characterized as research,[41] but the comment letters did not provide detail regarding the types of research materials that are distributed, the manner in which such research materials are distributed, or the basis for characterizing such communications as research. We are requesting further comment regarding these matters. In addition, while some commenters suggested broader exemptions for security-based swap transactions entered into solely between eligible contract participants under the Securities Act, the Exchange Act, and the Trust Indenture Act, they did not provide any specific examples of why broader exemptions are necessary. Thus, at this time, we are proposing a Securities Act rule that is tailored to address commenters' identified concerns regarding the publication or distribution of price quotes arising from the operation of trading platforms, rather than broader exemptions under the Securities Act, the Exchange Act, or the Trust Indenture Act. We are requesting comment on whether or not we should take a different approach.

II. Discussion of the Proposed Rule

We are proposing Rule 135d under the Securities Act to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants will not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based

regarding the availability of exemptions under the Securities Act and the Exchange Act.

[33] *See* Interim Final Exemptions Adopting Release. The Commission also requested comment on certain of these matters in an earlier proposing release regarding exemptions for security-based swap transactions involving an eligible clearing agency. *See Exemptions For Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9222 (Jun. 9, 2011), 76 FR 34920 (Jun. 15, 2011) (''Cleared SBS Exemptions Proposing Release'').

[34] *See* SIFMA/ISDA Letter and letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated Dec. 21, 2012 (''SIFMA Letter''). *See also* letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, Robert Pickel, Chief Executive Officer, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated Jan. 31, 2012 (''FSR/ISDA/SIFMA Letter''), and letter from Scott Pintoff, General Counsel, GFI Group Inc., dated Jul. 25, 2011 (''GFI Letter''). The FSR/ISDA/SIFMA Letter and GFI Letter were submitted in response to our request for comment in the Cleared SBS Exemptions Proposing Release.

[35] *Id.*

[36] *Id.*

[37] *See* SIFMA/ISDA Letter.

[38] *See* 15 U.S.C. 77b(3).

[39] *See* footnote 8 above and accompanying text.

[40] *See* footnote 34 above and accompanying text.

[41] *See* SIFMA/ISDA Letter and SIFMA Letter. These communications are discussed further below in Section II in the discussion of the comments the Commission has received on the interim final exemptions.

swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of price quotes (''SBS price quotes'') relating to security-based swaps [42] that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a facility that either is registered as a national securities exchange or as a security-based SEF, or is exempt from registration as a security-based SEF pursuant to a rule, regulation, or order of the Commission (an ''eligible trading platform''), would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

The publication or distribution of SBS price quotes otherwise could be considered offers of those securities within the meaning of Sections 2(3) and 5 of the Securities Act, including to persons who are not eligible contract participants, if the SBS price quotes are available on an unrestricted basis. If considered offers, the publication or distribution of SBS price quotes may affect the availability of exemptions from the registration requirements of the Securities Act, including the exemption in Section 4(a)(2), and may be offers of security-based swaps to non-eligible contract participants. The proposed rule would allow such communications to be made without being considered to be an offer for purposes of Section 5 of the Securities Act.

The proposed rule would apply to the initial publication or distribution of the SBS price quotes on eligible trading platforms, as well as any subsequent republication or redistribution of the SBS price quotes on or through mediums other than eligible trading platforms, including on-line information services. It is possible that participants in eligible trading platforms that receive SBS price quotes could further disseminate the SBS price quotes without restriction. Because we do not believe that the SBS price quotes should be considered offers for purposes of Section 5 of the Securities Act under the conditions in the proposed rule, we do not believe that the treatment of such SBS price quotes under the proposed rule should depend on who publishes or distributes the SBS price quotes or where the SBS price quotes are published or distributed, so long as only persons who are eligible contract participants may purchase the securities that are the subject of the SBS price quotes.

The proposed rule would apply to the publication or distribution of price quotes of security-based swaps, including any guarantees of such security-based swaps that are securities. Security-based swaps may be guaranteed to provide protection against a counterparty's default. A guarantee of a security is itself a security for purposes of the Securities Act.[43] As a result, the publication or distribution of SBS price quotes also may be viewed as offers of any guarantees of the security-based swaps that are the subject of the SBS price quotes. We believe that the proposed rule should apply with respect to any guarantee of a security-based swap provided as part of the security-based swap transaction. Because we believe that a guarantee of a security-based swap is part of the security-based swap transaction, the proposed rule also would deem the publication or distribution of SBS price quotes to not constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase any guarantees of the security-based swaps that are the subject of the SBS price quotes.

The proposed rule would apply with respect to SBS price quotes, which could take a number of forms depending on the type of trading platform model, including indicative quotes, executable quotes, bids and offers, and other pricing information and other types of quote information that may develop in the future. We are not proposing to define the specific type of SBS price quotes with respect to which the proposed rule would apply because we do not want to limit the types of trading platform models that currently or may in the future exist.[44] This approach is intended to allow flexibility in the proposed rule as organized markets for the trading of security-based swaps continue to develop, including following the full implementation of Title VII.

The security-based swaps market currently is characterized by bilateral negotiation in the over-the-counter market, is largely decentralized, and many instruments are not standardized.[45] The lack of uniform rules concerning the trading of security-based swaps and the one-to-one nature of trade negotiation in the security-based swaps market has resulted in the formation of distinct types of venues for the trading of these securities, such as single-dealer request for quote platforms, aggregator-type platforms, multi-dealer request for quote platforms, limit order book systems, and electronic brokering platforms. According to commenters, a single-dealer request for quote platform is a trading platform on which a security-based swap dealer may post quotes for security-based swaps transactions in various asset classes that the security-based swap dealer is willing to trade.[46] These trading platforms currently require pre-clearance for access and are accessible exclusively by the security-based swap dealers' approved customers. When a customer wishes to effect a security-based swap transaction, the customer requests a quote, the security-based swap dealer provides one, and if the customer accepts the security-based swap dealer's quote, the transaction is executed electronically.[47]

Commenters describe an aggregator-type platform as a trading platform that combines two or more single-dealer request for quote platforms.[48] In these trading platforms, both the aggregator and the security-based swap dealers currently must authorize participants to access the platform and see quotes from the security-based swap dealers. Although a participant can simultaneously view quotes from multiple security-based swap dealers, the participant can request a quote from

[42] The term ''security-based swap'' includes mixed swaps. A mixed swap is defined as a security-based swap that also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer). *See* Section 3(a)(68)(D) of the Exchange Act [15 U.S.C. 78c(a)(68)(D)]. *See also* Section IV of the Product Definitions Adopting Release.

[43] *See* Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)].

[44] According to commenters, the five trading platforms models discussed below represent broadly the various types of models for the trading of security-based swaps in existence today. *See* SIFMA/ISDA Letter. These examples may not represent every single method in existence today, and the discussion below is intended to give an overview of the models without providing the nuances of each particular type. As noted above, certain of these trading platforms may become security-based SEFs following the full implementation of Title VII, but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate will not be known until we adopt final rules implementing the statutory provisions of Title VII governing the registration and regulation of security-based SEFs. *See* footnote 15 above and accompanying text.

[45] *See* SIFMA/ISDA Letter.

[46] *Id.*

[47] *Id.*

[48] *Id.*

only one security-based swap dealer at a time.[49]

Further, commenters describe a multi-dealer request for quote platform as a trading platform on which participants can request a quote for a security-based swap transaction from multiple security-based swap dealers at the same time.[50] The security-based swap dealers then send quotes back to the participant, which the participant may choose to accept and execute. Participants currently must be authorized by both the system operator and the security-based swap dealers in order to request quotes from security-based swap dealers through a multiple dealer request for quote platform.[51]

According to commenters, a limit order book system is a trading platform on which firm bids and offers are posted, on an anonymous basis, for all participants in the platform to see, and bids and offers are then matched on price-time priority and other established parameters and trades are executed accordingly.[52] The identities of the parties currently are withheld until a transaction occurs. The bid and offers in a limit order book system are firm and all participants in the platform currently can view these bids and offers before placing their own bids and offers.[53]

Finally, commenters described an electronic brokering platform as a trading platform on which bids and offers are displayed.[54] All participants in the platform currently can enter bids and offers, and observe others entering bids and offers. Unlike exchanges, security-based swap electronic brokering platforms do not automatically match bids and offers in order to execute trades.[55] Typically, once a buyer and seller express interest in a trade at the price posted on the electronic trading platform, an inter-dealer broker would assist them in negotiating a final trade over the telephone.[56]

The proposed rule addresses price quotes relating to security-based swaps that are traded or processed on or through registered or exempt security-based SEFs and national securities exchanges because the Title VII provisions applicable to these entities, as well as existing requirements applicable to national securities exchanges, require them to make their trading platforms available or price quotes on their platforms available to all participants without limitation. The proposed rule is intended to avoid unintended consequences for the operation of these trading platforms following the full implementation of Title VII and to allow market participants to continue to effect security-based swap transactions, including on or through these trading platforms, in reliance on available exemptions from the registration requirements of the Securities Act.

The proposed rule covers price quotes for security-based swaps and any guarantees of such security-based swaps that may be purchased only by persons who are eligible contract participants.[57] We believe that the publication or distribution of price quotes for security-based swaps that may only be purchased by eligible contract participants should not be considered offers of such security-based swaps or any guarantees of such security-based swaps that are securities, including to persons who are not eligible contract participants, for purposes of Section 5 of the Securities Act. The proposed rule is designed to permit security-based swap transactions between eligible contract participants to continue to be able to rely on available exemptions from the registration requirements of the Securities Act without unintended consequences for the operation of security-based SEFs and national securities exchanges that post or trade security-based swaps following the full implementation of Title VII. Security-based swaps that are not registered under the Securities Act are permitted to be sold only to eligible contract participants, and therefore we are limiting the proposed rule to the publication or distribution of price quotes for security-based swaps that may be purchased only by eligible contract participants.[58] The exemptions from the registration requirements of Section 5 of the Securities Act set forth in Sections 3 and 4 of the Securities Act are not available for security-based swap transactions that involve persons who are not eligible contract participants.[59]

We note that all security-based swap transactions entered into solely between eligible contract participants will be subject to the comprehensive regulatory regime of Title VII once it has been fully implemented, including security-based swap transaction reporting requirements, trade acknowledgments and verification, and business conduct standards.[60] In particular, the business conduct standards generally require, among other things, disclosure by security-based swap dealers and major security-based swap participants to counterparties of (i) the material risks and characteristics of the security-based swap, and certain clearing rights, (ii) the material incentives or conflicts of interest that a security-based swap dealer or major security-based swap participant may have in connection with the security-based swap, and (iii) the daily mark of the security-based swap.[61] The proposed business conduct rules, if adopted as proposed, also would require security-based swap dealers and major security-based swap participants to verify that a counterparty meets the eligibility requirements of an eligible contract participant.[62] The Title VII regulatory regime will apply to security-based swaps transactions regardless of whether SBS price quotes relating to such transactions are available on an unrestricted basis. As a result of the other regulatory provisions of Title VII applicable to security-based swap transactions, we do not believe that our approach in the proposed rule is inconsistent with the protection of

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* We understand that limit order book systems are not yet in operation for the trading of security-based swaps in the United States but exist for the trading of security-based swaps in Europe. *Id.*

[53] *See* SIFMA/ISDA Letter.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] These proposed provisions are intended to identify the types of security-based swaps for which the publication or distribution of SBS price quotes would not be deemed under the proposed rule to be offers for purposes of Section 5 of the Securities Act. Any transaction in security-based swaps that are the subject of such SBS price quotes would have to be effected in compliance with the Securities Act and nothing relating to such transactions would affect whether such SBS price quotes when published or distributed were offers of such security-based swaps.

[58] *See* footnote 8 above and accompanying text. A comment letter submitted in connection with the SBS Cleared Exemptions Proposing Release suggested a simplified disclosure and registration scheme for those security-based swaps transactions involving clearing agencies that may involve persons who are not eligible contract participants. *See* letter from Bruce Bolander, Gibson, Dunn & Crutcher LLP, dated Aug. 22, 2011. Commission staff is evaluating the feasibility of a simplified disclosure and registration scheme for security-based swaps issued by registered or exempt clearing agencies that may be offered and sold to persons who are not eligible contract participants.

[59] *See* footnote 8 above and accompanying text.

[60] *See, e.g., Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010); *Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Release No. 34–63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011); and *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Release No. 34–64766 (Jun. 29, 2011), 76 FR 42396 (Jul. 18, 2011) (''Business Conduct Standards Proposing Release'').

[61] *See* Section 15F(h)(3)(B) of the Exchange Act [15 U.S.C. 78o–10(h)(3)(B)]. *See also* Business Conduct Standards Proposing Release.

[62] *See* Section 15F(h)(3)(A) of the Exchange Act [15 U.S.C. 78o–10(h)(3)(A)]. *See also* Business Conduct Standards Proposing Release.

investors. While these Title VII protections apply to security-based swap transactions with any participant, there are additional protections provided to non-eligible contract participants. In particular, non-eligible contract participants may only purchase security-based swaps that are subject to an effective registration statement.[63]

We note that although the proposed rule provides that the publication or distribution of SBS price quotes would not be deemed to be an offer for purposes of Section 5 of the Securities Act, the proposed rule would not otherwise affect the provisions of any exemptions from the registration requirements of the Securities Act. As a result, market participants would still need to make a determination as to whether an exemption from the registration provisions of the Securities Act is available with respect to a security-based swap transaction, including whether such transaction complies with any applicable conditions of the exemption. Finally, we note that because the proposed rule relates solely to the treatment of certain communications involving SBS price quotes as offers for purposes of Section 5 of the Securities Act, the proposed rule does not limit in any way the scope or applicability of the antifraud or other provisions of the federal securities laws, including Section 17(a) of the Securities Act, relating to both oral and written material misstatements and omissions in the offer and sale of securities, including security-based swaps.[64]

The proposed rule would apply to any communication of SBS quotes for security-based swap transactions effected bilaterally in the over-the-counter market or on or through eligible trading platforms, whether or not subsequently cleared in transactions involving an eligible clearing agency.[65] Following the full implementation of Title VII, security-based swap transactions will be effected either in the over-the-counter market or on eligible trading platforms, either voluntarily or because the transaction is subject to the mandatory trade execution requirement.[66] These transactions subsequently may be cleared in transactions involving an eligible clearing agency, either voluntarily or because the security-based swap is subject to the mandatory clearing requirement.[67] Regardless of whether these transactions subsequently are cleared in transactions involving an eligible clearing agency, the proposed rule is needed so that the publication or distribution of SBS price quotes will not cause unintended consequences for the operation of eligible trading platforms and the ability of market participants to rely on available exemptions from the registration requirements of the Securities Act, or require that such transactions be registered under the Securities Act because they are viewed as offers to non-eligible contract participants.

We believe that the proposed rule is a measured response to commenters' concerns and is necessary or appropriate in the public interest. One of the goals of Title VII is to bring the trading of security-based swaps onto regulated trading platforms, such as security-based SEFs and national securities exchanges. The Title VII provisions applicable to security-based SEFs and national securities exchanges, as well as existing requirements applicable to national securities exchanges, require these trading platforms to make their platforms available or price quotes on their platforms available to all participants without limitation. If the publication or distribution of SBS price quotes is unrestricted, no Securities Act exemptions may be available with respect to transactions in the security-based swaps that are the subject of the SBS price quotes because such communications may be viewed as an offer of those security-based swaps, including to persons who are not eligible contract participants. The required registration of such transactions could have unintended consequences affecting the operation of and the trading of security-based swaps on or through these trading platforms, as well as the ability of market participants to effect security-based swap transactions bilaterally or on or through these trading platforms. For example, security-based swap dealers may not engage in security-based swap transactions if the dissemination of price quotes for security-based swaps on these trading platforms could jeopardize the availability of exemptions from the registration requirements of the Securities Act. Such action could affect the number of price quotes for and the liquidity of certain types of security-based swaps, which could have a detrimental effect on the liquidity and price discovery of security-based swap transactions. Accordingly, we believe the proposed rule is needed so that the publication or distribution of SBS price quotes will not cause unintended consequences for the operation of eligible trading platforms, affect the ability of market participants to rely on available exemptions from the registration requirements of the Securities Act, or require that such transactions be registered under the Securities Act because they are viewed as offers to non-eligible contract participants.

We also believe that the proposed rule is consistent with the protection of investors. The proposed rule covers price quotes for security-based swaps and any guarantees of such security-based swaps that may be purchased only by persons who are eligible contract participants. Title VII provides that security-based swaps not registered under the Securities Act can only be sold to eligible contract participants.[68] In addition, the proposed rule relates solely to the treatment of certain communications involving SBS price quotes as offers for purposes of Section 5 of the Securities Act and would preserve the other protections of the federal securities laws, including our ability to pursue an antifraud action in the offer and sale of the securities under Section 17(a) of the Securities Act. Treating the publication or distribution of SBS price quotes as not being offers would not harm non-eligible contract participants because they will not be able to purchase such security-based swaps. The additional protections of the federal securities laws requiring the registration of offers and sales of security-based swaps that non-eligible contract participants may purchase would continue to apply to security-based swap transactions involving non-eligible contract participants.

Further, as a result of the regulatory provisions of Title VII applicable to security-based swap transactions, security-based swap transactions entered into solely between eligible contract participants would be subject to the comprehensive regulatory regime of Title VII once it has been fully implemented, regardless of whether SBS price quotes relating to such security-based swap transactions are available on an unrestricted basis. The proposed rule

[63] *See* footnote 8 above and accompanying text.

[64] *See* 15 U.S.C. 77q(a).

[65] For security-based swap transactions involving an eligible clearing agency, the exemptions we adopted under the Securities Act, the Exchange Act, and the Trust Indenture Act would continue to be available. *See* Rule 239 under the Securities Act [17 CFR 230.239], Rules 12a–10 and 12h–1(h) under the Exchange Act [17 CFR 240.12a–10 and 240.12h–1(h)], and Rule 4d–11 under the Trust Indenture Act of 1939 [17 CFR 260.4d–11]. *See also* Cleared SBS Exemptions Adopting Release. These exemptions do not apply to security-based swap transactions not involving an eligible clearing agency, even if the security-based swaps subsequently are cleared in transactions involving an eligible clearing agency. *Id.*

[66] *See* footnote 17 above and accompanying text.

[67] *See* footnote 16 above and accompanying text.

[68] *See* footnote 8 above.

also would enable security-based swap dealers to disseminate price quotes for security-based swaps on eligible trading platforms on an unrestricted basis without concern that such dissemination could jeopardize the availability of exemptions from the registration requirements of the Securities Act. Unrestricted access to these price quotes on eligible trading platforms would provide increased market transparency by providing all investors with the same information on the pricing of security-based swap transactions. Therefore, based on the foregoing, we believe that the proposed rule is necessary or appropriate in the public interest, and consistent with the protection of investors.

We received three comment letters regarding the interim final exemptions.[69] One commenter opposed any exemptions for security-based swaps, including the interim final exemptions, but did not provide any explanation for the reason.[70] The other two commenters supported the interim final exemptions and stated their view that the interim final exemptions were necessary and appropriate steps to prevent disruption of the security-based swaps market and to ensure the orderly implementation of Title VII.[71] These commenters stated that security-based swap dealers may publish or distribute reports that they characterize as research that may be broadly disseminated and could be available on an unrestricted basis, which these commenters believed could affect the availability of exemptions from the registration requirements of the Securities Act for transactions involving the security-based swaps that are the subject of such reports.[72] These commenters also provided an overview of the security-based swaps market as it functions today and how it may function following the full implementation of Title VII.[73] These commenters indicated that the security-based swaps market currently functions as an ongoing series of bilateral trades between eligible contract participants.[74] Participants in the security-based swaps market primarily consist of security-based swap dealers, banks, large corporations, insurance companies, asset managers, hedge funds, and other investment vehicles.[75] Although individuals can qualify as eligible contract participants,[76] these commenters indicated that the security-based swaps market is institutional in nature and in practice only a small number of participants are natural persons (generally high net worth individuals).[77]

As discussed above, some commenters expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act for security-based swap transactions entered into solely between eligible contract participants due to the operation of security-based swap trading platforms and the publication or distribution of other information regarding security-based swaps.[78] Based on these commenters' concerns regarding the availability of exemptions from the registration requirements of the Securities Act, these commenters requested that we adopt permanent relief from the registration requirements of Section 5 of the Securities Act for offers and sales of security-based swaps [79] solely between eligible contract participants.[80] They believed that this relief is needed to avoid market disruption that could result from market participants having to determine whether exemptions from the registration requirements of the Securities Act are available due to the unrestricted availability of certain communications on security-based swap trading platforms following the full implementation of Title VII. Further, these commenters also requested relief under the Exchange Act for offers and sales of security-based swaps solely between eligible contract participants. They were concerned that ambiguity regarding the definition of a ''class'' as applied to security-based swaps could raise concerns regarding the registration requirements of Section 12(g) of the Exchange Act.[81] Finally, these commenters requested relief from Section 304(d) of the Trust Indenture Act for security-based swaps entered into solely between eligible contract participants. They believed that the protections of the Trust Indenture Act are not necessary in the context of such transactions because such transactions involve contracts between two counterparties who are capable of enforcing obligations under the security-based swaps directly.[82]

Although not submitted in connection with the interim final exemptions, we received two comment letters from four commenters regarding the proposed exemptions for security-based swap transactions involving an eligible clearing agency discussing issues arising with respect to security-based swap transactions not involving an eligible clearing agency.[83] One commenter suggested that we provide permanent exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into between eligible contract participants and effected through any trading platform similar to the proposed exemptions for security-based swap transactions involving an eligible clearing agency.[84]

[69] *See* SIFMA/ISDA Letter, SIFMA Letter, and letter from Tom Nappi, dated Jul. 14, 2011 (''Nappi Letter'').

[70] *See* Nappi Letter.

[71] *See* SIFMA/ISDA Letter and SIFMA Letter.

[72] *Id.* SIFMA believes that these communications would be within the definition of ''research report'' contained in Rules 137(e), 138(d), and 139(d) under the Securities Act but would not satisfy the terms of those safe harbor provisions because of the nature of the security-based swap transactions. *See* SIFMA Letter.

[73] *See* SIFMA/ISDA Letter.

[74] *Id.*

[75] *See* footnote 7 above for a discussion of the eligible contract participant definition.

[76] An individual can qualify as an eligible contract participants if such individual has amounts invested on a discretionary basis, the aggregate of which is in excess of (i) $10,000,000 or (ii) $5,000,000, provided such individual also enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by such individual. *See* Section 1a(18)(A)(xi) of the Commodity Exchange Act.

[77] *See* SIFMA/ISDA Letter.

[78] *See* SIFMA/ISDA Letter and SIFMA Letter. For example, these commenters stated, ''In light of the nature of the [security-based swaps] market discussed above, we request that the Commission provide for relief from the Securities Act registration requirement. Although we believe the sophisticated nature of [ECPs] in the [security-based swaps] market and the usual manner in which transactions in this market are conducted today, and will in the future be conducted on [security-based SEFs], qualify these transactions for the section 4[(a)](2) exemption from registration under the Securities Act for any transaction by an issuer 'not involving any public offering,' there may be questions as to whether the full range of [security-based swaps] transactions, as described above, qualify for this exemption.'' *See* SIFMA/ISDA Letter.

[79] The category of security-based swaps that would be covered by this request for relief is broader in some ways than the category of security-based swaps covered by the interim final exemptions. As noted in footnote 28 above, the interim final exemptions apply to security-based swaps that were defined as ''security-based swap agreements'' prior to the Title VII effective date. That definition of ''security-based swap agreement'' did not include security-based swaps that are based on or reference only loans and indexes only of loans. *See* footnote 28 above.

[80] *See* SIFMA/ISDA Letter and SIFMA Letter. These commenters limited their request for relief to security-based swap transactions not involving an eligible clearing agency. *Id.* As noted above, we adopted exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions involving an eligible clearing agency. *See* footnote 65 above.

[81] *See* SIFMA/ISDA Letter.

[82] *Id.*

[83] *See* FSR/ISDA/SIFMA Letter and GFI Letter. These letters were submitted in response to our request for comment in the Cleared SBS Exemptions Proposing Release.

[84] *See* GFI Letter. This commenter did not provide any explanation as to why such exemption was needed, including how security-based swap trading

Continued

The other commenters suggested that we provide exemptions under Section 12(g) of the Exchange Act and the Trust Indenture Act for security-based swap transactions entered into solely between eligible contract participants similar to the proposed exemptions for security-based swap transactions involving an eligible clearing agency.[85]

Commenters have requested broad exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions not involving an eligible clearing agency that are entered into solely between eligible contract participants. We are not proposing such exemptions because commenters' primary concern appears to relate to the impact of certain communications involving security-based swaps made on or through trading platforms on the availability of exemptions from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2). We believe that the proposed rule under the Securities Act is appropriately tailored to address commenters' identified concerns regarding the availability of exemptions from the registration requirements of the Securities Act for offers and sales of security-based swaps solely between eligible contract participants. Therefore, we are not proposing a broad-based Securities Act exemption at this time.

With respect to the commenters that raised concerns regarding the effect of publication of communications regarding security-based swaps that they characterized as research, one of these commenters noted that security-based swap dealers and their affiliates produce these communications generally about credit default swaps and provide them to their existing and prospective clients.[86] This commenter stated that such written communications are prepared either by fundamental credit analysts, who may use credit default swaps as one expression of a particular issuer's credit risk in comparison to the outstanding debt securities of that issuer or another issuer, or credit strategists, who may also use credit default swaps to compare relative credit risk between different issuers.[87] This commenter also stated that these written communications may contain statements that could theoretically be construed as offers to sell the security-based swaps mentioned in such reports within the meaning of Section 2(3) of the Securities Act.[88]

Although we are not proposing to include these other written communications involving security-based swaps within the scope of the proposed rule, we are considering whether a broader exclusion from the definition of offer than simply for SBS price quotes would be appropriate as part of this rulemaking. A commenter requested broader relief for security-based swap communications, but it did not provide us with sufficient information to understand why a broader treatment would be necessary. For example, the commenter only addressed one type of security-based swap—credit default swaps. The commenter also did not provide sufficient information about the types and contents of such communications, the distribution methods and restrictions for such communications, or the basis for characterizing such communications as research in order for us to evaluate the appropriate treatment of such communications. Further, the commenter did not explain whether security-based swap dealers engage in security-based swap transactions with their existing or prospective clients who receive or access such communications. In this regard, we note that the examples of such communications provided by the commenter appear to include buy/sell recommendations with respect to certain security-based swaps.[89] If the security-based swap dealers are entering into transactions involving such security-based swaps, such communications may be issuer offering materials rather than research. In order for us to analyze whether a broader exclusion from the definition of offer than simply for SBS price quotes would be appropriate as part of this rulemaking, we believe that we need additional information about such communications. We are requesting additional comment below regarding such communications.

We also do not believe that a broad-based exemption from Section 12(g) of the Exchange Act is needed at this time. Commenters have identified two scenarios that could raise questions regarding whether a type of security-based swap would be a ''class'' for purposes of Section 12(g).[90] The scenarios identified by commenters are based on several assumptions regarding how the security-based swaps market will develop following the full implementation of Title VII. Given that Title VII has not been fully implemented and we do not know how the security-based swaps market will develop following the full implementation of Title VII, we do not believe that there is sufficient information at this time to propose a broad-based exemption from Section 12(g) of the Exchange Act. In addition, it is not clear why the protections of the Exchange Act, including periodic reporting and information about the security-based swap on an ongoing basis would not be needed, especially given the counterparty risk involved in security-based swap transactions and the risks relating to the security-based swap itself. Moreover, issuers of security-based swaps that are security-based swap dealers or major security-based swap participants or their affiliates are likely to be subject to the reporting requirements of the Exchange Act and would be able to satisfy their periodic reporting obligations even if security-based swaps became subject to such reporting requirements.[91]

Finally, we do not believe that a broad-based exemption from Section

platforms operate, that would enable us to evaluate whether relief is necessary or appropriate. *See* Cleared SBS Exemptions Adopting Release.

[85] *See* FSR/ISDA/SIFMA Letter. These commenters requested relief under the Exchange Act and the Trust Indenture Act, but did not request relief under the Securities Act. However, two of these commenters subsequently submitted the SIFMA/ISDA Letter to request relief under the Securities Act. *See* footnote 80 above and accompanying text.

[86] *See* SIFMA Letter.

[87] *Id.*

[88] *Id.*

[89] *Id.* Commenters provided the following examples: ''We continue to recommend buying [XYZCo] 5-year [credit default swaps] vs. selling [ABCCo] 5 year [credit default swaps]''; ''Market technicals could drive spreads tighter from here but we would consider buying protection in the low 300 bps area''; ''We'd recommend buying [JKLCo]sub [credit default swaps] at 267bp and selling [TUVCo] sub at 215bp, paying 52bp''; and ''We'd also recommend buying [JKLCo] senior [credit default swaps] versus [TUVCo] senior, paying just 11bp.'' *Id.*

[90] Commenters identified two scenarios involving ''security-based swaps that would be similar to one another as a result of the standardized ISDA documentation that may set the majority of terms of the security-based swap. First, although a type of security-based swap may be cleared by a derivatives clearing agency generally, a particular security-based swap would not be cleared in the event that one of the counterparties to the security-based swap qualifies for, and elects to take advantage of, the end user exception to mandatory clearing. Second, it is theoretically possible that the Commission could designate a security-based swap for mandatory clearing because of its level of standardization, but the security-based swap may not be cleared because there is not a clearing agency that is willing to accept the security-based swap for clearing.'' *See* FSR/ISDA/SIFMA Letter.

[91] For an issuer of security-based swaps that is not subject to the reporting requirements of the Exchange Act, the JOBS Act's increase in the threshold number of record holders triggering registration of a class of equity security under Section 12(g) of the Exchange Act to 2,000 persons or 500 persons who are not accredited investors at the end of the relevant fiscal year reduces the likelihood of such issuer triggering such registration requirements. *See* Section 12(g)(1)(A) of the Exchange Act [15 U.S.C. 78l(g)(1)(A)].

304(d) of the Trust Indenture Act is needed at this time. Commenters based their request for relief under the Trust Indenture Act on the rationale we provided in the Interim Final Exemptions Adopting Release to support our determination to adopt an interim final rule providing an exemption from Section 304(d) of the Trust Indenture Act. However, we note that the Trust Indenture Act provides an exemption for any security offered and sold in a transaction that is exempt from the registration requirements of the Securities Act under Section 4 of the Securities Act, such as the exemption set forth in Section 4(a)(2) of the Securities Act.[92] As a result, unregistered security-based swap transactions effected in reliance on the exemption in Section 4(a)(2) of the Securities Act generally are exempt from the indenture qualification provisions of the Trust Indenture.

Moreover, the broad exemptions requested by commenters would result in all security-based swap transactions entered into solely between eligible contract participants being exempt from most provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act. Title VII included security-based swaps in the definition of ''security'' under the Securities Act and the Exchange Act, thereby making security-based swap transactions subject to the provisions of the Securities Act and the Exchange Act, including the rules and regulations thereunder, applicable to ''securities.'' Further, no other derivative securities that are traded in the over-the-counter market, including derivative securities that are entered into bilaterally and then subsequently cleared, have broad-based exemptions from those provisions.[93] We currently are not persuaded that we should treat security-based swaps differently from other derivative securities.

Request for Comment

1. Should we provide that the publication or distribution of SBS price quotes will not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase the security-based swaps that are the subject of the SBS price quotes or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act? Why or why not? Should we take a different approach?

2. The proposed rule would apply to the initial publication or distribution of SBS price quotes on eligible trading platforms, as well as any subsequent republication or redistribution of the SBS price quotes on or through mediums other than eligible trading platforms, including on-line information services. Should the proposed rule cover the subsequent dissemination of SBS price quotes on mediums other than eligible trading platforms or by any participant through any means? Or should the proposed rule be limited in any way with respect to such subsequent dissemination? Why or why not?

3. The proposed rule would apply to the security-based swaps that are the subject of the SBS price quotes and any guarantees of such security-based swaps that are securities. Should the proposed rule apply to guarantees of such security-based swaps? Why or why not? Are there other securities that are part of a security-based swap transaction to which the proposed rule also should apply?

4. What types of price quotes for security-based swaps are disseminated on or through eligible trading platforms and how are they disseminated? Would the proposed rule facilitate the dissemination of quotes for security-based swaps on eligible trading platforms? Would the proposed rule need to be modified in any way to facilitate the dissemination of such quotes? How do eligible trading platform participants receive or gain access to such quotes?

5. The proposed rule covers price quotes for security-based swaps and any guarantees of such security-based swaps that may be purchased only by persons who are eligible contract participants. This proposed provision is intended to identify the types of security-based swaps for which the publication or distribution of SBS price quotes would not be deemed under the proposed rule to be offers for purposes of Section 5 of the Securities Act. Is this identifying characteristic appropriate? Why or why not? Do we need to provide more specificity about this identifying characteristic? Are there additional or different identifying characteristics that we should consider? If so, why?

6. The proposed rule addresses price quotes relating to security-based swaps that are traded or processed on or through security-based SEFs and national securities exchanges. Should the types of trading platforms covered by the proposed rule be limited to security-based SEFs and national securities exchanges? Why or why not? Are there other security-based swap trading platforms that should be covered by the proposed rule? If so, why? For example, will security-based swaps, such as mixed swaps, be traded or processed on or through swap execution facilities that are not registered either as a national securities exchange or as a security-based swap execution facility, or are not exempt from such registration?

7. Are price quotes for security-based swaps initially published or distributed through mediums other than eligible trading platforms? For example, we understand that currently some security-based swap dealers disseminate price quotes for security-based swaps by sending messages via Bloomberg. If so, how are those price quotes disseminated through these other mediums? How do market participants receive or gain access to those price quotes? Are those price quotes available on an unrestricted basis? Should the proposed rule also apply to those price quotes or similar communications? Why or why not?

8. The proposed rule would apply to SBS price quotes. Should the proposed rule apply to these types of communications? Why or why not? We are not proposing to include a definition of SBS price quotes in order to allow flexibility in the proposed rule as trading platforms for the trading of security-based swaps continue to develop. Should we define these types of communications? If so, how?

9. (a) Should we specify that other types of written communications, such as communications that have been called research, regarding security-based swaps, would not be considered offers for purposes of Section 5 of the Securities Act? If so, why? Please describe in detail what other types of communications should be covered by the rule. What characteristics do such communications have that would distinguish them from being offers of the security-based swaps that are discussed in such communications? If we should not treat such communications as offers for purposes of Section 5 of the Securities Act, what conditions should apply to the use of such communications?

(b) What specific types of information, opinions, and recommendations are included in such communications regarding the security-based swaps and the underlying reference issuers and/or securities? Do such communications include strategies for buying or selling security-based swaps? Are such communications related to industries, entities, or particular offerings of

[92] *See* Section 304 of the Trust Indenture Act [15 U.S.C. 77ddd].

[93] Unlike other derivative securities, Title VII amended Section 5 of the Securities Act to prohibit offers or sales of security-based swaps to persons who are not eligible contract participants unless the security-based swaps are registered under the Securities Act. *See* footnote 8 above.

security-based swaps? Do such communications involve security-based swaps other than credit default swaps? Do such communications include information, opinions, or recommendations with respect to securities other than security-based swaps or an analysis of securities other than security-based swaps? Are such communications similar to or different from the research reports contemplated by Rules 137, 138 and 139 of the Securities Act? Please explain in detail. If different or if such communications regarding the security-based swaps and the underlying reference issuers and/or securities do not satisfy the conditions of Rules 137, 138 or 139 of the Securities Act, please explain in detail why such communications should be treated differently from other communications under the Securities Act.

(c) With respect to communications that some commenters call research, what is the basis for characterizing those communications as research? Do security-based swap dealers enter into transactions involving the security-based swaps that are the subject of the communications they publish or distribute? If so, why would the security-based swap dealers not be the issuers of such security-based swaps for purposes of the Securities Act? If security-based swap dealers are the issuers of such security-based swaps, why should the offering communications contained in those communications not be considered issuer offering materials?

(d) How are the communications disseminated and to whom are they made available? Are there any restrictions on who may access these communications? Can non-eligible contract participants access these communications?

(e) Should we consider alternative approaches to address the commenters' concerns regarding the use of communications that the commenters characterize as research? For example, should we consider a rule that would provide as follows: A security-based swap dealer's publication or distribution of a written communication that includes information, opinions, or recommendations with respect to security-based swaps or an analysis of security-based swaps would be considered for purposes of Section 5 of the Securities Act not to constitute an offer of such security-based swaps or any guarantees of such security-based swaps that are securities if such written communication (i) does not include strategies for buying or selling security-based swaps and (ii) is included in an issuer-specific or industry research report that also includes information, opinions, or recommendations with respect to or an analysis of different types of securities other than only security-based swaps? Are there other alternative approaches that we should consider that may address the commenters' concerns regarding the effect that the publication or distribution of the communication may have on the availability of an exemption from the registration requirements of the Securities Act? If so, please provide detailed explanations.

10. Are there other types of communications involving security-based swaps to which the proposed rule also should apply? If so, explain in detail the types of communications, how are they disseminated, who publishes or distributes the communications, whether any person enters into a security-based swap transaction as a result of such communication, and why the proposed rule should apply.

11. We are not proposing broad-based exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into solely between eligible contract participants. Rather, to address commenters concerns regarding the availability of exemptions from the registration requirements of the Securities Act, we are proposing a rule under the Securities Act to provide that certain communications involving SBS price quotes would not be deemed to constitute offers of the security-based swaps that are the subject of the SBS price quotes or any guarantees of such security-based swaps that are securities. Would the proposed rule address commenters' concerns regarding the availability of exemptions from the registration requirements of the Securities Act? Why or why not? Should we take a different approach such as providing a broad-based exemption as suggested by some commenters? Would the broad-based exemptions requested by commenters be necessary or appropriate if the proposed rule were adopted? Would such a broad-based exemption materially affect the type and level of disclosures available to eligible contract participants entering into security-based swap transactions? Are there any other impediments arising from the application of the registration provisions of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act to security-based swap transactions following the expiration or withdrawal of the interim final exemptions? How should we address those impediments and what are the economic implications? Would it be appropriate, in light of the inclusion of security-based swaps in the definition of security, to treat security-based swaps differently, including with respect to disclosures, from other derivative securities traded in the over-the-counter market, which do not have broad-based exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act?

12. Which counterparty in a non-cleared security-based swap transaction should be considered to have the obligation to comply with the registration requirements of the Exchange Act applicable to classes of securities? Should we address this issue at this time? Why or why not?

13. If we adopt the rule under this proposal, we may also determine to alter the expiration dates in the interim final exemptions as part of that rulemaking. If we make such a determination, should we consider whether to shorten or further extend beyond the effective date of the rule that we may adopt under this proposal the expiration dates of the exemptions in the interim final exemptions? If so, why?

III. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rule, specific issues discussed in this release, and other matters that may have an effect on the proposed rule. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Economic Analysis

We are proposing a rule under the Securities Act to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants would not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of SBS price quotes related to securities-based swaps that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a trading system or platform that is registered either as a national securities exchange or a security-based SEF, or is exempt from registration as a security-based SEF, would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase the security-based swaps

that are the subject of the SBS price quotes or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

We are sensitive to the economic consequences and effects, including costs and benefits, of our rules. The discussion below addresses the potential economic consequences and effects of the proposed rule and alternatives, including the costs and benefits, as well as the potential effects on efficiency, competition, and capital formation.[94]

The proposed rule does not itself establish the scope or nature of the substantive requirements that will be imposed on security-based swaps following the full implementation of Title VII or their related costs and benefits. We anticipate that the rules implementing the substantive requirements under Title VII, including the requirements relating to the registration and regulation of security-based SEFs and external business conduct standards for security-based swap dealers and major security-based swap participants, will be subject to their own economic analysis,[95] and we have not yet adopted final rules that would fully implement Title VII and subject security-based swaps to such substantive requirements. The costs and benefits described below therefore are those that may arise in connection with the proposed rule.

A. Baseline

To assess the economic impact of the proposed rule, we are using as our baseline the regulation of security-based swaps as it exists at the time of this proposal, taking into account applicable rules adopted by the Commission, including interim final exemptions affecting security-based swaps under the Securities Act and the Exchange Act. Our analysis incorporates the statutory and regulatory provisions that currently govern security-based swaps under the federal securities laws.

As part of the economic analysis of the cross-border adopting release, we provided an extensive description of the current security-based swaps market, including a detailed analysis of the participants in the security-based swaps market and the levels of security-based swap trading activity.[96] While the proposing release here addresses only a narrow piece of the security-based swaps market, and we discuss the specific baseline for this proposal below, we note that the additional information about the overall security-based swaps market in the cross-border adopting release may provide additional context for the discussion below. In particular, we noted in the cross-border adopting release that the participation in one significant part of the security-based swaps market—single-name credit default swaps—entailed thousands of counterparties to transactions, but with much of the activity concentrated among a relatively small number of dealer entities. The notional size of the single-name credit default swaps market is in the trillions of dollars annually, corresponding to hundreds of thousands of individual transactions, and with approximately 80% of transactions between dealers. Among the non-dealer market participants, private funds are the largest constituent group followed by Dodd-Frank Act-defined special entities and investment companies registered under the Investment Company Act of 1940. More broadly, the analysis shows that although the dollar volume of transactions in security-based swaps market is large, it does not span a large set of market participants as compared to other securities markets.

Prior to the enactment of Title VII, certain security-based swaps—specifically those security-based swaps that are within the definition of ''security-based swap agreement'' as in effect prior to the Title VII effective date—were outside the scope of the federal securities laws, other than the anti-fraud and certain other provisions.[97] Up until that time, transactions involving these types of security-based swaps were effected without concerns about complying with the registration requirements of the Securities Act and the Exchange Act, or the indenture provisions of the Trust Indenture Act.

Title VII amended the Securities Act and the Exchange Act to include ''security-based swaps'' in the definition of ''security'' for purposes of those statutes.[98] As a result, on the Title VII effective date ''security-based swaps'' became subject to the provisions of the Securities Act and the Exchange Act and the rules thereunder applicable to ''securities.'' The Securities Act requires that any offer and sale of a security must be either registered under the Securities Act or made pursuant to an exemption from registration.[99] As a result, market participants entering into security-based swap transactions must either be able to rely on an available exemption from the registration requirements of the Securities Act or register such transactions under the Securities Act. In addition, certain provisions of the Exchange Act relating to the registration of classes of securities and the indenture qualification provisions of the Trust Indenture Act also may apply to certain types of security-based swaps. The provisions of Section 12 of the Exchange Act, without an exemption, require that security-based swaps be registered before a transaction could be effected on a national securities exchange.[100] In addition, registration of a class of security-based swaps under Section 12(g) of the Exchange Act could be required if the security-based swap is considered an equity security and held of record by either 2,000 persons or 500 persons who are not accredited investors at the end of the relevant fiscal year.[101] Further, without an exemption, the Trust Indenture Act could require qualification of an indenture for security-based swaps considered to be debt.[102]

As noted above,[103] we adopted interim final exemptions that provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that would have been defined as ''security-based swap agreements'' prior to the Title VII effective date provided certain conditions are met. The interim final exemptions exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other

[94] Section 2(b) of the Securities Act requires that the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 77b(b). We have integrated our consideration of these issues into this economic analysis.

[95] *See* footnotes 15 and 60 above and accompanying text.

[96] *See Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities,* Release No. 34–72472 (June 25, 2014), 79 FR 47277 (Aug. 12, 2014) (''Cross-Border Adopting Release'').

[97] *See* Section 2A of the Securities Act [15 U.S.C. 77b(b)–1)] and Section 3A of the Exchange Act [15 U.S.C. 78c–1], each as in effect prior to the Title VII effective date. The definition of ''security-based swap agreement'' included the definition of ''swap agreement,'' which required that the agreement, contract or transaction be ''subject to individual negotiation'' and be between eligible contract participants.

[98] *See* Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

[99] *See* Section 5 of the Securities Act [15 U.S.C. 77e].

[100] *See* Section 12(a) of the Exchange Act [15 U.S.C. 78l(a)].

[101] *See* Section 12(g)(1)(A) of the Exchange Act [15 U.S.C. 78l(g)(1)(A)].

[102] *See* 15 U.S.C. 77aaa *et seq.*

[103] *See* footnote 28 above and accompanying text. *See also* footnote 30 above and accompanying text.

than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided that the transactions are entered into solely between eligible contract participants. Currently, certain market participants may rely on the interim final exemptions to continue to enter into security-based swap transactions as they did prior to the Title VII effective date without concern they would have to comply with the provisions of the Securities Act, the registration provisions of the Exchange Act applicable to a class of security-based swaps, or the indenture provisions of the Trust Indenture Act.

The interim final exemptions are not available, however, for transactions involving all security-based swaps. The security-based swaps covered by the interim final exemptions are only those that would have been ''security-based swap agreements'' prior to the Title VII effective date, which is a narrower category of security-based swaps than under Title VII.[104] In addition, the persons who may enter into security-based swaps covered by the interim final exemptions may be different from those entering into ''security-based swap agreements'' prior to the Title VII effective date because the definition of ''eligible contract participant'' under Title VII is narrower than the pre-Title VII definition.[105] Any security-based swap transaction that cannot rely on the interim final exemptions would have to rely on another available exemption from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2), or would have to be registered under the Securities Act. However, no Securities Act exemptions are available with respect to security-based swap transactions involving persons who are not eligible contract participants because Title VII amended the Securities Act to require that all offers and sales of security-based swaps to non-eligible contract participants must be registered under the Securities Act.[106]

The interim final exemptions are self-executing and as such are available without any action by the Commission or its staff. As a result, market participants must make their own determinations as to whether such exemptions are available with respect to a particular security-based swap transaction. Given that such exemptions are self-executing, we do not have any data or other quantifiable information regarding the use of such exemptions, including which market participants are effecting transactions in reliance on such exemptions or the number of transactions effected in reliance on such exemptions.

We adopted the interim final exemptions because, among other things, we were concerned about disrupting the operation of the security-based swaps market while we evaluated the implications for security-based swaps under the Securities Act and the Exchange Act as a result of the inclusion of the term ''security-based swap'' in the definition of ''security'' for purposes of those statutes.[107] At the time of the adoption of the interim final exemptions, we requested comment on various aspects of the interim final exemptions. In response, commenters raised concerns regarding the effect that certain communications involving security-based swaps, such as the publication or distribution of SBS price quotes, that may be available on or through trading platforms on an unrestricted basis, could have on the availability of exemptions under the Securities Act, including the exemption in Section 4(a)(2).[108] We subsequently extended the expiration date of the interim final exemptions to February 11, 2017.[109]

If we do not adopt the proposed rule or take other action, the interim final rules will expire on February 11, 2017, and the baseline at that stage would be different from the current baseline. Rather than attempt to define an additional, speculative, baseline for that scenario, we have addressed and analyzed it in the discussion of alternatives below.

B. Analysis of the Proposed Rule

We have considered the comments we received and engaged in an initial evaluation of the implications for security-based swaps as securities under the Securities Act and the Exchange Act. Based on these actions, we are proposing a rule under the Securities Act so that market participants may effect security-based swap transactions with eligible contract participants in reliance on available exemptions from the registration requirements of the Securities Act and avoid potential Securities Act violations for unregistered offers to persons who are not eligible contract participants, and so that there are not unintended consequences for the operation of security-based swap trading platforms following the full implementation of Title VII. Under the proposed rule, certain communications involving security-based swaps would not be considered ''offers'' for purposes of Section 5 of the Securities Act. However, unlike the current interim final exemptions, the proposed rule is not itself an exemption from the registration requirements of the Securities Act; the proposed rule would deem certain communications as not constituting offers. As a result, while the types of communications covered by the proposed rule would not be considered offers, market participants engaging in any security-based swap transaction would have to either satisfy the conditions of existing exemptions under the Securities Act, such as the exemption in Section 4(a)(2), or register such transactions under the Securities Act.

The proposed rule would apply to all security-based swaps and not only those defined as ''security-based swap agreements.'' As we previously noted, security-based swaps are transacted through hundreds of thousands of individual transactions annually, but because the available registration exemptions are self-executing, we do not know what fraction of market participants that engage in these transactions currently rely on the interim final exemptions when entering into security-based swap transactions as opposed to other exemptions from registration under the Securities Act, such as the exemption in Section 4(a)(2).[110] For transactions involving

[104] *See* Section 3(a)(68) of the Exchange Act for the definition of ''security-based swap.'' 15 U.S.C. 78c(a)(68). *See* footnote 28 above regarding the definition of ''security-based swap agreement.''

[105] The amendments to the definition of ''eligible contract participant'' increased the dollar threshold for certain persons and, with respect to natural persons, replaced a ''total assets'' test with an ''amounts invested on a discretionary basis'' test. *See* Section 1a(12) of the Commodity Exchange Act [7 U.S.C. 1a(12)], as in effect prior to the Title VII effective date, and Section 1(a)(18) of the Commodity Exchange Act, as re-designated and amended by Section 721 of the Dodd-Frank Act. The definition of the term ''eligible contract participant'' in the Securities Act and in the Exchange Act refers to the definition of ''eligible contract participant'' in the Commodity Exchange Act. *See* footnote 7 above.

[106] *See* footnote 8 above and accompanying text.

[107] *See* footnote 32 above and accompanying text.

[108] *See* footnote 34 above and accompanying text.

[109] *See* footnote 30 above and accompanying text.

[110] Given that these exemptions, including the exemption in Section 4(a)(2) of the Securities Act are self-executing, we do not have any data or other quantifiable information regarding the number of market participants that may be effecting security-based swap transactions in reliance on these exemptions, including the exemption in Section 4(a)(2). However, we believe that a significant portion of market participants engaging in these transactions are eligible to rely on the interim final exemptions because the vast majority of security-based swap transactions involve single-name credit default swaps, which would have been ''security-based swap agreements'' prior to the Title VII effective date. *See* footnotes 103 and 104 above and accompanying text.

security-based swaps that do not satisfy the conditions of the interim final exemptions, the proposed rule would assist market participants in evaluating how they should analyze certain communications that may affect their transactions. In particular, market participants would be able to conduct their analysis regarding the availability of exemptions from the registration requirements of the Securities Act without concern that certain communications would impact the availability of such exemptions.

The proposed rule would be self-executing in that the publication or distribution of SBS price quotes would be treated as not constituting an offer to buy or purchase the security-based swaps that are the subject of the SBS price quotes or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act without any action by the Commission or its staff. Because the proposed rule would be self-executing, the only cost of being able to rely on the proposed rule would be to determine its applicability. In addition, the proposed rule would not create any new filing, reporting, recordkeeping, or disclosure reporting requirements for any market participants.

Treating the types of communications covered by the proposed rule as not constituting offers would have minimal economic consequences or effects on the ability of market participants to enter into security-based swap transactions compared with the baseline.[111] For example, as compared to the baseline, the proposed rule would not affect the ability of market participants to enter into security-based swap transactions in reliance on available exemptions under the Securities Act, such as the exemption in Section 4(a)(2). While the interim final exemptions have limited conditions,[112] which differ from the conditions of the exemption under Section 4(a)(2) (including with respect to the communications that are the subject of the proposed rule), some security-based swap transactions engaged in after the Title VII effective date may have been effected in reliance on Section 4(a)(2) rather than the interim final exemptions. Further, the protections that currently exist under the interim final exemptions and under Section 4(a)(2) would still apply. For example, the interim final exemptions do not apply to the antifraud provisions of the federal securities laws, including Section 17(a) of the Securities Act.

The proposed rule would not impose new requirements on market participants. Further, because the proposed rule would be available with respect to any security-based swap transaction involving an eligible contract participant, we do not believe that the proposed rule would impair competition between the different types of trading venues and methods that differ in their level and existence of public SBS price quotes. Moreover, we believe that the proposed rule would further the goal of Title VII to bring the trading of security-based swaps onto regulated trading platforms, which should help further the objective of greater transparency and a more competitive environment for the trading of security-based swaps. As a result, we believe that increased transparency and competitiveness in the security-based swaps market could help lower transactions costs associated with market participant hedging (risk mitigating) strategies and thereby lower the cost of capital and facilitate the capital formation process.

We believe that the costs associated with providing that the publication or distribution of SBS price quotes are not deemed to be offers to persons who are not eligible contract participants are minimal. The proposed rule would not impose additional costs on market participants to determine the eligible contract participant status of a person.[113] In addition, persons who are not eligible contract participants would not be permitted to purchase any security-based swaps whose price quotes are within the scope of the proposed rule and the Securities Act registration requirements would continue to apply to security-based swaps transactions involving such non-eligible contract participants. As a result of these limitations, the exclusion of the SBS price quotes from being deemed offers should not increase the potential for unlawful sales of security-based swaps to non-eligible contract participants.

We recognize that a consequence of the proposed rule may be that fewer offers and sales of security-based swaps may be registered under the Securities Act (with the consequent unavailability of certain remedies) to the extent that parties enter into such transactions in reliance on exemptions that may not otherwise be available if the publication or distribution of SBS price quotes were considered to be an offer for purposes of Section 5 of the Securities Act. A registration statement or prospectus supplement covering the offer and sale of the securities in security-based swap transactions may provide certain information about the market participants, the security-based swap contract terms, and the identification of the particular reference securities, issuers, or loans underlying the security-based swaps. Further, while an investor would be able to pursue an antifraud action in connection with the purchase and sale of the securities in these security-based swap transactions under Section 10(b) of the Exchange Act, an investor would not be able to pursue civil remedies under Section 11 or 12(a)(2) of the Securities Act because the offer and sale of the securities in these security-based swap transactions would not be registered under the Securities Act. In addition, an investor may be limited in its ability to pursue civil remedies under Section 12(a)(1) of the Securities Act because the publication or distribution of quotes for security-based swaps would not be deemed to be an offer for purposes of Section 5 of the Securities Act. We could still pursue an antifraud action in the offer and sale of the securities in these security-based swap transactions under Section 17(a) of the Securities Act.

We note, however, that although the proposed rule would mean that a registration statement under the Securities Act may not be required for these transactions, the business conduct standards provisions of the Dodd-Frank Act would, among other things, require, upon implementation, that certain disclosures be made to certain eligible contract participants.[114] Those would include (i) the material risks and characteristics of the security-based swap, and certain clearing rights, (ii) the material incentives or conflicts of interest that a security-based swap dealer or major security-based swap participant may have in connection with the security-based swap, and (iii) the daily mark of the security-based

[111] The economic consequences and effects of the proposed rule are deemed minimal because of the baseline, which takes into account the interim final exemptions and the fact that Title VII has not been fully implemented. Once the interim final rules expire or otherwise terminate, the economic consequences and effects of the proposed rule would be as discussed under ''Alternatives Considered'' below.

[112] *See* footnotes 104 and 105 above and accompanying text. In that regard we note, for example, that security-based swaps based on single loans would not be within the definition of ''security-based swap agreement'' in effect prior to the Title VII effective date.

[113] The determination of whether a person is an eligible contract participant is part of the proposed Title VII business conduct rules that, if adopted as proposed, would require that security-based swap dealers and major security-based swap participants verify the eligible contract participant eligibility of their security-based swap counterparties. *See* footnote 62 above and accompanying text.

[114] *See* footnote 61 above and accompanying text.

swap.[115] The Commission has proposed rules to implement the business conduct standards provisions of the Dodd-Frank Act.[116] For instance, under the proposed business conduct standards rules, the required disclosure of the daily mark would consist of, for a cleared security-based swap, providing counterparties with the daily end-of-day settlement price received by the security-based swap dealer or major security-based swap participant from the appropriate clearing agency, and, for an uncleared security-based swap, the midpoint between the bid and offer prices for a particular security-based swap, or the calculated equivalent of the midpoint as of the close of business.[117] While the information proposed to be conveyed in the daily mark is not equivalent to that in a registration statement, we believe it could provide a counterparty with a useful and meaningful reference point against which to assess, among other things, the calculation of variation margin for a security-based swap or portfolio of security-based swaps, and otherwise inform the counterparty's understanding of its financial relationship with the security-based swap dealer or major security-based swap participant. Moreover, because under the proposed business conduct standards rules security-based swap dealers and major security-based swap participants would be required to provide the same valuation to all of their counterparties, and because counterparties could interact with multiple security-based swap dealers and major security-based swap participants, counterparties would have greater confidence of equal treatment as they would have the ability to observe when valuations differ among security-based swap dealers and major security-based swap participants.

As noted above, to the extent that a security-based swap transaction does not meet the conditions of the interim final exemptions, the counterparties to such transaction likely are effecting the transaction in reliance on an available exemption from the registration requirements of the Securities Act, such as the exemption set forth in Section 4(a)(2). The proposed rule would benefit these counterparties because they could conduct their analysis regarding the availability of an exemption from the registration requirements of the Securities Act without concern that the publication or distribution of SBS price quotes for the security-based swap that is the subject of the transaction may compromise the availability of an exemption. The proposed rule also would benefit these counterparties by providing that the publication or distribution of SBS price quotes would not be deemed to be an offer of the security-based swaps that are the subject of such SBS price quotes to persons who are not eligible contract participants. As noted above, no exemptions from the registration requirements of the Securities Act are available with respect to offers of security-based swaps to persons who are not eligible contract participants. As a result, without the proposed rule, these counterparties would be required to register the transaction and incur the costs associated with such registration if the publication or distribution of SBS price quotes were viewed as offers of the related security-based swaps to persons who are not eligible contract participants.

C. Alternatives Considered

1. Alternative of Not Proposing a Rule at This Time

One alternative to the proposed rule that we considered was to take no action at this time to address issues arising under the Securities Act for certain communications involving security-based swaps. This alternative would affect all security-based swap transactions, including those currently relying on the interim final exemptions. At this time, all security-based swap transactions either have to be registered under the Securities Act or rely on another available exemption from registration, such as the exemption in Section 4(a)(2) or the interim final exemptions to the extent available. If we take no action at this time with respect to the treatment of certain communications involving security-based swaps, the publication or distribution of SBS price quotes could be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase the security-based swaps that are the subject of such communications or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act, including to persons who are not eligible contract participants. If considered offers, such communications could affect the availability of exemptions from the registration requirements of the Securities Act for transactions involving the security-based swaps that are the subject of such communications or any guarantees of such security-based swaps that are securities. If no Securities Act exemptions are available with respect to a security-based swap transaction because such communications are viewed as an offer of the security-based swaps that are the subject of such communications, including to persons who are not eligible contract participants, such transactions would have to be registered under the Securities Act. The economic consequences and effects of not proposing a rule under the Securities Act addressing the treatment of SBS price quotes are discussed below.

We believe that taking no action could disrupt and impose unnecessary costs on this segment of the security-based swaps market because it would mean that uncertainty may remain as to whether certain communications involving SBS price quotes would be deemed to be offers for purposes of Section 5 of the Securities Act. If considered offers, these communications could affect the availability of exemptions under the Securities Act, including the exemption in Section 4(a)(2). The proposed rule would allow SBS price quotes to be published or distributed without the risk that such communications would be considered offers for purposes of Section 5 of the Securities Act. Without the proposed rule, the risk that the communications would be deemed offers might lead some market participants either to not engage in these security-based swap transactions, which could impede the market, or to register the offer and sale of the security-based swap transactions, which could increase costs for market participants.

We believe the proposed rule would facilitate capital formation and promote efficiency by lowering the costs of security-based swap transactions relative to what would be required without the proposed rule in the event the interim final exemptions expire. Without the proposed rule and following the expiration of the interim final exemptions, we believe that the operation of the registration provisions of the Securities Act could have unintended consequences for the operation of security-based swap trading platforms and the ability of market participants to enter into these security-based swap transactions in reliance on available exemptions from the registration requirements of the Securities Act following the full implementation of Title VII. Following the expiration of the interim final exemptions, we anticipate that the proposed rule would facilitate a more efficient market place for these security-based swap transactions.

[115] *Id.*

[116] *See* Business Conduct Standards Proposing Release.

[117] *Id.*

Without the proposed rule, a market participant may choose not to continue to participate in these types of transactions if compliance with the registration requirements of the Securities Act is required. This could curtail the use of trading platforms and venues that make use of broad communications methods that involve the public dissemination of SBS price quotes. As noted above, one of the goals of Title VII is to bring the trading of security-based swaps onto regulated trading platforms. The Securities Act registration costs could limit the incentive for market participants to engage in security-based swaps transactions on regulated trading platforms if the dissemination of price quotes for security-based swaps could jeopardize the availability of exemptions from the registration requirements of the Securities Act, including the exemption in Section 4(a)(2). In response to the lack of an available exemption from registration, some market participants may also seek to restructure their operations to minimize their transactions in, or contact with, the United States in an effort to avoid having to register these transactions under the Securities Act. If market participants were to determine not to engage in security-based swap transactions due to the lack of an available exemption from registration, or to restructure their operations and thus avoid U.S. exposure because of the lack of such an exemption, such actions could affect the number of price quotes for, and the liquidity of, certain types of security-based swaps, which could have a detrimental effect on the liquidity and price discovery of security-based swap transactions. This effect would be inconsistent with the increased transparency tenets central to Title VII.

If market participants continue to engage in these security-based swap transactions without the proposed rule and register these transactions under the Securities Act, costs would be associated with such registration. Additionally, there is unlikely to be a commensurate benefit to registration given that the investors typically in greater need of the investor protections provided by registration are likely not to be eligible contract participants, and therefore ineligible to purchase any security-based swaps whose price quotes are within the scope of the proposed rule. While the use of a shelf registration statement may be available to some participants and would lessen the costs of registration compared to the costs for participants who were not able to use a shelf registration statement, there would be costs in either scenario.[118] Certain market participants that are unable to register an offering under the Securities Act using a shelf registration statement may be at a competitive disadvantage because they would not be able to realize the reduced costs of shelf registration.

2. Other Alternatives

Although at this time we are not proposing to include within the scope of the proposed rule certain other communications involving security-based swaps that commenters have indicated are included in research reports, we are considering whether a broader exclusion from the definition of offer than simply for SBS price quotes would be appropriate as part of this rulemaking. Currently, we do not have sufficient information to evaluate the appropriate treatment of such communications. For example, commenters did not define or explain the contours of what would constitute ''research'' and why an exclusion for such communications is necessary. We are concerned that if it were defined or applied too broadly, it would include information indistinguishable from traditional issuer offering materials and may not be the appropriate subject of an exclusion from the definition of offer. As with any other communication that may be an offer of securities subject to Section 5 of the Securities Act, we would evaluate a research report within the security-based swaps market as we would evaluate research reports in similar securities markets, including privately offered equity, debt, security options, or other security derivatives. Therefore, we are requesting additional comment regarding such communications. Based on the information we receive, we may or may not take action with respect to such communications under the Securities Act.

We are asking a number of questions regarding the treatment of communications involving security-based swaps contained in research reports. Among the questions we are asking is whether we should we consider a rule that would provide as follows: A security-based swap dealer's publication or distribution of a written communication that includes information, opinions, or recommendations with respect to security-based swaps or an analysis of security-based swaps would be considered for purposes of Section 5 of the Securities Act not to constitute an offer of such security-based swaps or any guarantees of such security-based swaps that are securities if such written communication (i) does not include strategies for buying or selling security-based swaps and (ii) is included in an issuer-specific or industry research report that also includes information, opinions, or recommendations with respect to or an analysis of different types of securities other than only security-based swaps?

If we determine to treat certain communications involving security-based swaps considered to be research reports as not constituting offers, there could be economic consequences and effects, including effects on efficiency, competition, and capital formation. Some of these consequences and effects would be the same as discussed above with respect to the treatment of SBS price quotes under the proposed rule. For example, under the baseline, these communications are not taken into account in determining the availability of an exemption from Securities Act registration for those security-based swap transactions satisfying the conditions of the interim final rules. Further, upon expiration of the interim final rules, such communications would have to be analyzed to determine if they constituted an offer of security-based swaps and, if so, whether the registration requirements of the Securities Act were implicated or if there was an available exemption from such requirements. If such

[118] Certain market participants could reduce the registration burden by using the Form S–3 registration statement for their securities offerings. We previously have estimated that 50 or fewer entities ultimately may have to register with us as security-based swap dealers. *See* Cross-Border Adopting Release. These entities (or their affiliates) are likely to be seasoned or well-known seasoned issuers that are eligible to use the Form S–3 registration statement for their securities offerings. In particular, these entities (or their affiliates) are likely to have a Form S–3 shelf registration statement that is effective under the Securities Act. A shelf registration statement covers the offer and sale of securities that are not necessarily to be sold in a single offering immediately upon effectiveness; instead, the securities are typically sold in a number of ''takedowns'' over a period of time or on a continuous basis. A shelf registration statement allows issuers to conduct multiple types and amounts of securities offerings using the same registration statement. If these entities (or their affiliates) are required to register the offer and sale of the securities in security-based swap transactions, they would likely use their shelf registration statements for the offerings. For takedowns off their shelf registration statements, an entity (or its affiliate) would file a prospectus supplement under the Securities Act that contains the specific terms of the offering. As a result of the shelf registration procedure, these entities (including their affiliates) would incur lower costs relating to the takedown for each security-based swap transaction than they would otherwise incur if they had to use a non-shelf registration statement for the security-based swap transactions. While the use of a shelf registration statement would reduce the registration burden for qualifying market participants, it may not be available to all market participants.

communications constituted offers of security-based swaps, it may affect the availability of exemptions from the registration requirements of the Securities Act, and the dealer or its affiliate may not be able to use such communications to find customers to act as counterparties in security-based swap transactions with the dealer or its affiliate to the extent it seeks to rely on such exemptions. As a result, treating such communications as not constituting offers may promote efficiency by assisting dealers and their affiliates in finding customers and also by assisting investors in engaging in potential transactions.

However, we note that research by dealers or their affiliates on security-based swaps could be used by their clients to enter into transactions with them that differ from other types of securities transactions. In particular, and unlike an equity or debt security, a security-based swap could entail an ongoing financial commitment (economic exposure) between the dealer (or its affiliate making the recommendation) and the client, who must be an eligible contract participant, whereby a client loss could result in a dealer gain of equal measure. The dealer (or its affiliate) would, at least initially, take the opposite economic exposure as the client who is otherwise informed on their transaction decision by the dealer or its affiliate's research. In these instances, when the recommending entity also takes the opposite economic exposure of the client who is basing their investment decision on the recommendation, the research may not be considered independent.

We have requested comment regarding the costs, benefits and effects of such communications, including whether and how many security-based swap transactions are entered into as a result of such communications, and whether such transactions are entered into with the entity publishing the research reports or its affiliate.

D. Request for Comment

We request comment on all aspects of this economic analysis, including the costs and benefits associated with the proposed rule. We also request comment on the potential effects the proposed rule may have on efficiency, competition, and capital formation. We seek estimates of these costs, benefits, and effects, as well as any costs, benefits, and effects not already identified herein. Commenters should provide analysis and empirical data to support their views on the costs, benefits, and effects associated with the proposed rule.

We also request comment on all aspects of our discussion regarding the number of entities that may be required to register as security-based swap dealers and their ability to use the shelf registration procedure to register the offer and sale of securities in a security-based swap transaction, including the costs of such registration.

Finally, we request comment on all aspects of our discussion regarding the possible approach with respect to certain communications involving security-based swaps that commenters have indicated are included in research reports, including the potential costs and benefits of such approach and the potential effects such approach may have on efficiency, competition, and capital formation. In particular, would the economic consequences and effects of such a rule, as well as the potential effects of such a rule on efficiency, competition, and capital formation, be similar to those discussed above with respect to the treatment of SBS price quotes under the proposed rule? If not, how would they differ and why? We seek estimates of these costs, benefits, and effects, as well as any costs, benefits, and effects not already identified herein. Commenters should provide analysis and empirical data to support their views on the costs, benefits, and effects associated with such approach.

V. Paperwork Reduction Act

The proposed rule would do not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[119] nor would it create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, we are not submitting the proposed rule to the Office of Management and Budget for review in accordance with the PRA.[120] We request comment on whether our conclusion that there are no collections of information is correct.

VI. Consideration of Impact on the Economy

Under the Small Business Regulatory Enforcement Fairness Act of 1996,[121] 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. We request comment on the potential impact of the proposed rule 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 and other factual support for their view to the extent possible.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'')[122] requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[123] of the Administrative Procedure Act,[124] 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.'' 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.[125]

We are proposing a rule under the Securities Act to provide that certain communications involving security-based swaps that may be purchased only by eligible contract participants would not be deemed for purposes of Section 5 of the Securities Act to constitute offers of such security-based swaps or any guarantees of such security-based swaps that are securities. Under the proposed rule, the publication or distribution of price quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants and are traded or processed on or through a facility that either is registered as a national securities exchange or as a security-based swap execution facility, or is exempt from registration as a security-based swap execution facility pursuant to a rule, regulation, or order of the Commission, would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act.

For purposes of the RFA, under our rules, an issuer, other than an

[119] 44 U.S.C. 3501 *et seq.*

[120] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[121] 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).

[122] 5 U.S.C. 601 *et seq.*

[123] 5 U.S.C. 603(a).

[124] 5 U.S.C. 551 *et seq.*

[125] *See* 5 U.S.C. 605(b).

investment company, is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[126] Based on our understanding of the security-based swaps market, including our existing information about participants in the security-based swaps market, we believe that the proposed rule would apply to few, if any, small entities.[127] For this reason, we do not believe that the proposed rule would have a significant economic impact on a substantial number of small entities. We encourage written comments regarding this certification.

VIII. Statutory Authority and Text of the Proposed Rule

The rule described in this release is being proposed under the authority set forth in Sections 5, 19, and 28 of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Rule

For the reasons set out above, we are proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

[126] *See* Rule 157 under the Securities Act [17 CFR 230.157].

[127] As noted above, we previously have estimated that 50 or fewer entities ultimately may have to register with us as security-based swap dealers. *See* footnote 118 above and accompanying text. We believe that these entities generally would be major banks or other large financial market participants, which would not be small entities for purposes of the RFA. *See* Cross-Border Adopting Release. These entities account for the vast majority of the transactions in the security-based swaps market as measured on a notional basis. For example, according to an analysis regarding the market for single-name credit default swaps performed by our Division of Economic and Risk Analysis (then Division of Risk, Strategy, and Financial Innovation), these entities account for approximately 94 percent of the transactions in the single-name credit default swaps market as measured on a notional basis. *See* Information regarding activities and positions of participants in the single-name credit default swap market (Mar. 15, 2012), which is available at *http://www.sec.gov/comments/s7-39-10/s73910-154.pdf.* According to data published by the Bank for International Settlements, single-name credit default swaps comprise approximately 94 percent of the total security-based swaps market as measured on a notional basis. *See* Semiannual OTC derivatives statistics at end-June 2012, Table 19: Amounts outstanding of over-the-counter (OTC) derivatives, which is available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Section 230.135d is added to read as follows:

§ 230.135d Certain communications involving security-based swaps.

For the purposes only of Section 5 of the Act (15 U.S.C. 77e), the publication or distribution of quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) and are traded or processed on or through a trading system or platform that either is registered as a national securities exchange under Section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or as a security-based swap execution facility under Section 3D(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–4(a)), or is exempt from registration as a security-based swap execution facility under Section 3D(a) of the Securities.

Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission, shall not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase such security-based swaps or any guarantees of such security-based swap that are securities.

Dated: September 8, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21676 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0719]

RIN 1625–AA09

Drawbridge Operation Regulation; Biscayne Bay, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes modifying the operating schedule that governs the East Venetian Causeway Bridge across Miami Beach Channel, Miami-Dade County, Florida. For approximately nine months, the West Venetian Causeway Bridge will remain in the open position to complete necessary repairs. This rule is proposed to ensure that vehicular traffic will be able to access and depart from the Venetian Causeway via the East Venetian Causeway Bridge while these repairs are completed.

DATES: Comments and related material must reach the Coast Guard on or before October 14, 2014.

Requests for public meetings must be received by the Coast Guard on or before September 26, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0719 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 instructions on submitting comments. To avoid duplication, please use only one of these methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Gene Stratton of the Coast Guard, telephone 305–415–6740, email *allen.e.stratton@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

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this proposed 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 proposed rulemaking (USCG–2014–0719), 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 (*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 via *http://www.regulations.gov,* 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 phone 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–2014–0719] 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period 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–2014–0719) 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 September 26, 2014, using one of the methods specified under **ADDRESSES**. Please explain why one 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**.

B. Basis and Purpose

Due to the emergency replacement of the approach span leading to the West Venetian Causeway Bridge across the Atlantic Intracoastal Waterway, Miami, Florida, the roadway will be closed from November 1, 2014 until August 1, 2015. As a result, the bridge owner will place the West Venetian Causeway Bridge in the open to navigation position.

This road closure action will require all Venetian Islands visitors and residents to use the East Venetian Causeway Bridge.

The vertical clearance of the East Venetian Causeway Bridge is five feet above mean high water and the horizontal clearance is 57 feet between fenders. Existing regulations require the Biscayne Bay East Venetian Causeway Bridge to open on signal except from 7 a.m. to 7 p.m., Monday through Friday (excluding Federal holidays) when the bridge must only open on the hour and half hour. Both the Mayor of Miami-Dade County and the Mayor of Miami Beach have requested that the Coast Guard consider closing the East Venetian Causeway Bridge to all marine traffic for the estimated nine-month period of bridge repair at the approach span on West side of the Venetian Islands. To ensure that vessel traffic unable to transit under the bridge in the closed position can continue to use this waterway while repairs are made to the West Venetian Causeway Bridge, the Coast Guard proposes a temporary amendment to this regulation requiring the East Venetian Causeway Bridge to open at 10:30 a.m. and 7:30 p.m. seven days a week from 7 a.m. on November 1, 2014 to 11:59 p.m. on August 15, 2015.

C. Discussion of Proposed Rule

This proposed rule will temporarily modify the operating schedule of the Venetian Causeway Bridge (East) at 33 CFR 117.269. Under the proposed rule, vessels will be able to pass through the East Venetian Causeway Bridge twice per day, 10:30 a.m. and 7:30 p.m. This restricted bridge opening period will allow vehicular traffic to access and depart from the Venetian Causeway while repairs are made to the West Venetian Causeway Bridge. Emergency vessels will be passed through the bridge at any time.

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 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 Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This regulatory action will not have a significant economic impact as vessels will still be able to transit the bridge at the scheduled intervals or transit the West Venetian Causeway Bridge. Therefore, it will meet the reasonable needs of navigation while accommodating the increased vehicular traffic.

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 would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge who will then need to seek the alternate route, which is some cases could add an additional ½ hour to ¾ hour to their transit time to the ocean in each direction.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic may transit the West Venetian Causeway Bridge during the period this regulation is enforced. In the closed position, vessels with a vertical clearance of less than 5 feet may transit the East Venetian Causeway Bridge. The bridge will continue to open two times per day, 10:30 a.m. and 7:30 p.m., to accommodate vessels unable to transit under the East Venetian Causeway Bridge or through the West Venetian Causeway Bridge.

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 (Pub. L. 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 would call for no 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 have determined that it 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 will not result in such an expenditure, we do discuss the effects of this proposed 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

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 guides 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 simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.269 [Suspended]

■ 2. From 7 a.m. on November 1, 2014 to 11:59 p.m. on August 15, 2015, suspend § 117.269.

■ 3. From 7 a.m. on November 1, 2014 to 11:59 p.m. on August 15, 2015, add temporary § 117.T269 to read as follows:

§ 117.T269 Biscayne Bay

The Venetian Causeway Bridge (East) shall remain closed to navigation except that it shall open at 10:30 a.m. and 7:30 p.m. daily.

Dated: August 18, 2014.

John H. Korn,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2014–21681 Filed 9–10–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0983]

RIN 1625–AA09

Drawbridge Operation Regulation; Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Amtrak Bridge across the Thames River, mile 3.0, at New London, Connecticut. Under this notice of proposed rulemaking the bridge would open to 75 feet above mean high water instead of the full open position of 135.3 feet unless a full bridge opening is requested. It is expected that this change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before November 10, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0983 using any one of the following methods:

(1) *Federal Rulemaking 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 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 proposed rule, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Program, telephone 212–668–7165, email *judy.k.leung-yee@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:

Tables of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

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 (USCG–2013–0983), 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 (*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 via *http://www.regulations.gov,* 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 phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2013–0983 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period 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–2013–0983) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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 using one of the four methods specified under **ADDRESSES**. Please explain why one 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**.

B. Basis and Purpose

The Amtrak Bridge across the Thames River, mile 3.0, at New London, Connecticut, has a vertical clearance in the closed position of 29.4 feet at mean high water and 31.8 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.224.

The waterway users are both recreational and commercial vessels.

The owner of the bridge, National Passenger Railroad Corporation (Amtrak), is requesting an exception to the requirement to fully open the bridge to its full 135.3 foot height above mean

high water when not required for a vessel to pass under safely. Amtrak submitted the request to the Coast Guard to change the drawbridge operation regulations to allow the Amtrak Bridge to open to 75 feet above mean high water for smaller vessels which comprise the majority of the requested openings. The Amtrak Bridge will perform a full bridge opening of 135.3 feet above mean high water when requested to do so.

The existing regulations require the bridge to open immediately on signal for public vessels of the United States and commercial vessels; except that, when a train scheduled to cross the bridge without stopping has passed the Midway, Groton, or New London stations and is in motion toward the bridge, the bridge must not be opened for the passage of any vessel until the train has crossed the bridge. The bridge shall open as soon as practicable for all other vessels but no later than 20 minutes after the signal to open is given.

Under this proposed rule the draw would open on signal as stated above but only to 75 feet above mean high water; except, when a full opening to 135.3 feet above mean high water is requested. The bridge tender is aware of the vertical clearance from the low steel chord of the bridge to the water level by a sensor displaying distance on the Operator Control Panel housed in the Drawbridge Control Room at the bridge. A selector switch is placed in the 75 foot position or full lift (135.3 feet) position by the bridge tender prior to operations depending on the vessel requirements.

C. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.224 to allow the Amtrak Railroad Bridge to open on signal to only 75 feet above mean high water unless a full opening to 135.3 feet above mean high water is requested.

We analyzed the bridge opening data for the Amtrak Railroad Bridge during calendar year 2013, comparing the number of bridge openings to 135.3 feet and the number of bridge openings to 75 feet for each month of the year.

The bridge opening breakdown for 2013 is as follows:

Month	Total openings	Openings to 135 feet	Openings to 75 feet
January	98	17	81
February	58	8	50
March	62	2	60
April	83	12	71
May	220	40	180
June	255	38	217
July	257	42	215
August	243	34	209
September	227	26	201
October	216	25	191
November	84	8	76
December	97	6	91
Totals	1,900	258	1,642

Out of the total 1900 bridge openings, only 13.57% were to the 135.3 foot elevation and the remaining 86.43% were to the 75 foot elevation.

As a result the Coast Guard believes that allowing the Amtrak Railroad Bridge to open to 75 feet, except when a request to open to 135.3 feet is requested, is reasonable based on the low number requests to open to 135 feet and to match actual operations.

Due to the unique nature of the drawbridge operation for this Amtrak Bridge, the Coast Guard also proposes to alter the lighting requirements to better meet the needs of navigation at this drawbridge. In accordance with 33 CFR § 118.85, the center of the navigational channel under the operable span will be marked by a range of two green lights when the vertical span is open to navigation. The Coast Guard proposes to allow one solid green light and one flashing green light when the bridge is at the 75 footmark and two solid green lights when the bridge is fully opened to 135.3 feet.

We believe this proposed rule will continue to meet the reasonable needs of navigation while also improving drawbridge efficiency of operation.

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 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 Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rule is not a significant regulatory action because the bridge will open fully for any vessel upon request.

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 would not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reason: The bridge will open fully for all vessel traffic at all times upon request.

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**, 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 would call for no 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 have determined that it 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This 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

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 guides 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 simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

List of Subjects in 33 CFR Part 117 Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.224 to read as follows:

§ 117.224 Thames River.

The draw of the Amtrak Railroad Bridge, mile 3.0, at New London, shall operate as follows:

(a) The draw shall open on signal to 75 feet above mean high water for all vessel traffic unless a full bridge opening to 135.3 feet above mean high water is requested.

(b) The 75 foot opening will be signified by a range light display with one solid green light and one flashing green light and the full 135.3 foot opening will be signified with two solid green range lights.

(c) The draw shall open on signal for public vessels of the United States and commercial vessels; except that, when a train scheduled to cross the bridge without stopping has passed the Midway, Groton, or New London stations and is in motion toward the bridge, the lift span shall not be opened until the train has crossed the bridge.

(d) The draw shall open on signal as soon practicable for all other vessel traffic but no later than 20 minutes after the signal to open is given.

Dated: August 22, 2014,

V.B. Gifford, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2014–21680 Filed 9–10–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA–2014–0052; Notice 2]

RIN 2127–AL51

Schedule of Fees

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: NHTSA is correcting a notice of proposed rulemaking that appeared in the **Federal Register** of July 31, 2014 (79 FR 44363). The document contained an incorrect Regulatory Identification Number (RIN). The corrected RIN is 2127–AL51.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA, (202) 366–5288.

SUPPLEMENTARY INFORMATION: The heading of the notice of proposed rulemaking published in the **Federal Register** of July 31, 2014, in FR Doc. 2014–17852, on page 44363, contained an incorrect RIN, ''2127–AL09.'' The correct RIN is ''2127–AL51.'' To advise the public of this error, we are publishing this notice of correction.

Correction of Publication

Accordingly, the notice of proposed rulemaking Schedule of Fees published in the **Federal Register** of July 31, 2014, in FR Doc. 2014–17852, is corrected as follows: On page 44363, in the heading, ''RIN 2127–AL09'' is corrected to read ''RIN 2127–AL51.''

Dated: September 4, 2014.

Daniel C. Smith,

Senior Associate Administrator, for Vehicle Safety.

[FR Doc. 2014–21638 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140324263–4705–01]

RIN 0648–BE12

Atlantic Highly Migratory Species; Transshipment, Port Inspection, and Vessel Identification

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise the regulations governing transshipment and international port inspection for vessels with Atlantic highly migratory species (HMS) permits to implement recommendations adopted at recent meetings of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The proposed rule would expand the current prohibition on transfer at sea to include any tuna, tuna-like species, or other Atlantic HMS both at sea and in port inside the Atlantic Ocean, and also prohibit the transfer of Atlantic HMS by U.S. vessels outside of the Atlantic Ocean and its surrounding seas. However, tuna purse seine vessels would still be allowed to transfer Atlantic bluefin tuna from the catcher vessel to the receiving vessel in certain limited circumstances. Additionally, the proposed rule would revise current regulations for U.S.-permitted vessels landing tuna, tuna-like species, or other HMS in foreign ports or making port calls in foreign ports to update information and reporting procedures. NMFS is also notifying vessels with HMS permits of a proposed requirement that they provide an International Maritime Organization (IMO)/Lloyd's Registry (LR) number on their permit application by no later than January 1, 2016. The purpose of this proposed rule is to ensure U.S. compliance with ICCAT recommendations and to facilitate implementation of international monitoring, control, and surveillance measures for Atlantic HMS.

DATES: Written comments must be received on or before October 14, 2014.

ADDRESSES: You may submit comments, identified by ''NOAA–NMFS–2014–0063'', by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0063,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Rick Pearson, Atlantic Highly Migratory Species Management Division, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701.

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.

NMFS will also conduct a public conference call and webinar to solicit public comments on this proposed rule on September 19, 2014. For specific information, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and other relevant documents are available from the Atlantic Highly Migratory Species Management Division Web site at *www.nmfs.noaa.gov/sfa/hms.*

FOR FURTHER INFORMATION CONTACT: Rick Pearson at 727–824–5399, or LeAnn Hogan at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries are managed under the Consolidated HMS FMP and regulations at 50 CFR part 635, pursuant to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Atlantic Tunas Convention Act (ATCA). Under ATCA, the Secretary promulgates such regulations as may be necessary and appropriate to carry out ICCAT recommendations. In 2012 and 2013, ICCAT adopted binding measures for its Contracting Parties to further combat illegal, unregulated, and unreported (IUU) fishing activities. Consistent with these recent ICCAT recommendations, this proposed rule would implement domestic regulations for vessels that are issued HMS permits, or are required to be issued HMS permits, pertaining to transfer at sea and transshipment, and international port inspection. It also notifies owners of commercial HMS-permitted vessels that are 20 meters or greater in length overall of the need to obtain an IMO/LR number by no later than January 1, 2016.

Transfer at Sea and Transshipment

ICCAT Recommendation 12–06 expands and strengthens ICCAT's previously adopted program for transshipment. Specifically, it eliminates a broad exemption for vessels under 24 meters, expands coverage to all ICCAT species whether transshipped

within or outside the Convention Area, increases observer access to documents onboard both transshipping and carrier vessels, and requires data to be provided on ICCAT-managed species by stock, as well as on other species being transshipped if they were caught in association with ICCAT species. These changes were designed to enhance the quality of data collected for use in compliance assessments and for scientific purposes, and will help eliminate any incentive for vessels to transship outside of the ICCAT convention area in order to circumvent ICCAT rules. Current domestic transfer at sea regulations already prohibit the transfer at sea of Atlantic HMS within the Convention Area (i.e., all waters of the Atlantic Ocean including adjacent seas), regardless of where the fish were harvested. These regulations also require that permitted vessels offload Atlantic HMS to permitted dealers, thereby precluding transfers in port. In this rulemaking, NMFS is proposing to amend these regulations to expand the prohibition on transfer at sea to include any tuna, tuna-like species, or other HMS within the Convention Area both at sea or in port, and to also prohibit the transfer of these species at sea outside of the Convention Area, regardless of where the fish were harvested. With these minor changes, it would become unlawful for HMS-permitted vessels (or vessels required to have an HMS permit) to transfer tuna, tuna-like species, or other HMS in port or at sea, both within or outside the Convention Area. However, tuna purse seine vessels would continue to be allowed to transfer only Atlantic bluefin tuna from the catcher vessel to the receiving vessel provided that the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

The HMS transfer at sea prohibition was first implemented in 1999 (64 FR 29090, May 28, 1999) in conjunction with publication of the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) and was analyzed in the environmental impact statement for that action. The transfer at sea regulation has remained largely unchanged since then, with only two minor amendments in 2010 and 2011. This proposed action would not significantly alter the regulation. Also, there have been no known transfers of Atlantic tuna, tuna-like species, or other HMS by U.S. permitted vessels outside of the Convention Area (e.g., in the Panama Canal or Pacific Ocean). Thus, the proposed action is limited in magnitude and not a significant change from the original environmental action. It is not expected to result in socio-economic impacts on U.S. fishermen.

Port Inspection

ICCAT Recommendation 12–07 establishes a scheme for minimum standards for inspection in port that revises and strengthens ICCAT's previous port inspection program (Recommendation 97–10). The term ''port States'' refers to countries where vessels are landing fish or making port calls. The term ''flag States'' refers to countries that have permitted fishing vessels. Pursuant to Recommendation 12–07, port State responsibilities include: (1) Designating and publicizing their ports where foreign fishing vessels can land or transship ICCAT-managed species that have not previously been landed or transshipped at port; (2) requiring advance notice from foreign fishing vessels seeking to enter those ports; (3) deciding whether or not to grant entry to such vessels in consideration of the information received; and, (4) carrying out inspections of at least five percent of landing or transshipment operations made by foreign vessels once in port. The provisions of Recommendation 12–07 are to be applied to foreign fishing vessels equal to or greater than 12 meters in length overall. Notwithstanding the above minimum standards, port States may adopt more stringent port inspection requirements.

ICCAT Recommendation 12–07 also requires that flag States take necessary action to ensure that Masters facilitate safe access to the fishing vessel, cooperate with the competent authorities of the port State, facilitate the inspection and communication and not obstruct, intimidate or interfere, or cause other persons to obstruct, intimidate or interfere with port State inspectors in the execution of their duties.

The United States Coast Guard (USCG) operates the advance notice of arrival system applicable to foreign vessels seeking entry to U.S. ports, and such vessels are subject to inspection by NOAA and USCG personnel under other existing law. NOAA, USCG, and other relevant Federal agencies are in inter-agency discussions on implementation of those provisions of Recommendation 12–07 that pertain to U.S. responsibilities as a port State, such as advance notice of arrival by foreign fishing vessels. Full implementation of those provisions will require separate, additional rulemaking in the future by one or more U.S. agencies and may be addressed in concert with other port State requirements stemming from measures adopted by other Regional Fishery Management Organizations (RFMOs) as well as the Agreement on Port State Measures to Prevent and Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing, adopted by the United Nations Food and Agricultural Organization (FAO) in 2009, should the United States become a party. The U.S. Senate gave its advice and consent for ratification of this treaty in April 2014 and Congress is currently considering implementing legislation.

In this action, NMFS is only proposing to implement certain provisions of Recommendation 12–07. Specifically, this proposed rule would revise current regulations applicable to U.S.-permitted vessels landing tuna, tuna-like species, or other HMS in foreign ports or making port calls in foreign ports, which are codified at 50 CFR part 635. The proposed action would revise § 635.52 to include technical and electronic equipment, records, and other relevant documents deemed necessary to ensure compliance with ICCAT measures as examples of what may be inspected by an authorized officer of a port State when offloading tuna, tuna-like species or other HMS in a foreign port or when making a port call in foreign ports. This rule also proposes to add new language at § 635.53 to inform U.S. vessel operators of the information that they must provide to the port State prior to arrival in a foreign port. Finally, this rule adds § 635.54, which notifies U.S. vessels of the updated procedures for the port State when reporting the results of any port inspection conducted by an authorized foreign port State inspector. The proposed regulations are necessary to maintain consistency with current ICCAT recommendations and to ensure that U.S. permitted fishing vessels have the most current information available to comply with the requirements of foreign countries pursuant to ICCAT Recommendation 12–07. These changes are limited in magnitude and are not expected to result in socio-economic impacts on U.S. fishermen.

Unique Vessel Identifiers

ICCAT Recommendation 13–13 requires vessels 20 meters or greater to obtain an IMO/LR number by no later than January 1, 2016. Current HMS regulations at 50 CFR 635.4(h) are sufficient to comply with this Recommendation, as they allow NMFS to collect required supporting documents, which would include an IMO/LR number, as a condition for obtaining an HMS permit and for being included on the ICCAT list of

authorized large scale fishing vessels. Permit applications that do not contain the required supporting documents are considered incomplete. However, NMFS will need to amend the HMS permit applications to add a new field for the IMO/LR number. NMFS intends to amend the permit applications so that affected constituents can provide their IMO/LR number on the application for their 2015 permits. Therefore, through this rulemaking, NMFS is informing affected constituents about the need to obtain an IMO/LR number and to provide that number on their permit application by no later than January 1, 2016. No regulatory changes are currently being proposed to comply with ICCAT Recommendation 13–13.

Technical Correction

A final rule to lift trade restrictions on bigeye tuna from Bolivia and Georgia was published in the **Federal Register** on August 29, 2012 (77 FR 52259). The prohibition on the import of bigeye tuna from Bolivia and Georgia at 50 CFR 635.71(b)(29) was inadvertently not removed by NMFS in that final rule. A technical correction to remove and reserve § 635.71(b)(29) is included in this proposed rule.

Request for Comments

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* or by mail. NMFS solicits comments on this proposed rule by October 14, 2014.

Public Conference Call and Webinar

NMFS will hold a public hearing via conference call and webinar to provide an opportunity for the public to comment on the proposed management measures. The conference call and webinar will be conducted on September 19, 2014.

TABLE 1—DATE AND TIME OF PUBLIC CONFERENCE CALL AND WEBINAR

Date	Time	Location	Address
September 19, 2014	2:00–4:00 p.m.	Public Conference Call & Webinar.	To participate in conference call, call: (888) 282–0568, Passcode: 3095296. To participate in webinar, go to: *https://noaa-meets.webex.com/noaa-meets/j.php?MTID=m49d28c3aebcdf2f294fb4ddb86f27506* Meeting Number: 998 128 071. Meeting Password: NOAA.

Requests for auxiliary aids should be directed to Rick Pearson at (727) 824–5399 at least 7 days prior to the conference call and webinar. The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the meeting, a representative of NMFS will explain the ground rules (e.g., attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). The NMFS representative will structure the meeting so that all participating members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This action has been preliminarily determined to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216–6, subject to further consideration after public comment. A draft memorandum for the file has been prepared that sets forth the decision to use a categorical exclusion because the rule would implement minor adjustments to the regulations and would not have a significant effect, individually or cumulatively, on the human environment. A final determination will be made prior to publication of the final rule for this action.

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

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). ICCAT Recommendation 13–13 requires commercial vessels 20 meters or greater to obtain an International Maritime Organization (IMO) or Lloyd's Registry (LR) number by no later than January 1, 2016. To comply with this Recommendation, as a condition for obtaining an HMS permit, NMFS will require that an IMO/LR number be provided on the HMS permit application from affected constituents by no later than January 1, 2016. A permit application will be considered incomplete if an IMO/LR number is not provided by an affected constituent. An amendment to OMB Control Number 0648–0205 (Southeast Region Federal Fisheries Permit Family of Forms) and Control Number 0648–0327 (HMS Vessel Permits) will be subsequently submitted to the Office of Management and Budget for approval.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule is necessary to implement recent recommendations of ICCAT, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. Under ATCA, the Secretary promulgates such regulations as may be necessary and appropriate to carry out ICCAT recommendations.

In 1997, ICCAT adopted binding measures to address the transfer at sea of ICCAT-managed species (Recommendation 97–11), and port inspection procedures for vessels landing ICCAT-managed species in foreign ports (Recommendation 97–10). These recommendations were first implemented domestically in 1999 (64 FR 29090, May 28, 1999) in conjunction with publication of the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). In 2012 and 2013, ICCAT strengthened these recommendations to further combat IUU fishing activities. Accordingly, NMFS is preparing a proposed rule to implement the recent ICCAT recommendations to demonstrate U.S. compliance and facilitate implementation of

international monitoring, control, and surveillance measures for Atlantic HMS.

Current domestic regulations at 50 CFR 635.29 prohibit the transfer at sea of Atlantic HMS within the Convention Area. Current regulations at 50 CFR 635.31 also require that permitted vessels offload Atlantic HMS to permitted dealers, thereby precluding transfers in port. The proposed action would extend the current prohibition on transfer at sea to any tuna, tuna-like species, or other HMS between vessels, both in port and at sea, within the Convention Area, and also prohibit the transfer of these species at sea outside of the Convention Area. The proposed action to extend the prohibition on transfer at sea applies to all HMS-permitted vessels, of which there are approximately 30,000 vessels (21,686 Angling; 4,059 commercial tuna; 3,968 Charter/Headboat; 556 limited access swordfish and shark; 73 Incidental Squid Trawl; 16 Caribbean Small Boat; and, approximately 100 swordfish General Commercial).

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467 (June 12, 2014)). The rule increased the size standard from $19.0 to $20.5 million for finfish fishing, from $5 to $5.5 million for shellfish fishing, and from $7.0 million to $7.5 million for other marine fishing, for-hire businesses, and marinas. Id. at 33656, 33660, and 33666.

The proposed rule for this action was analyzed using the old size standards. Under the previous size standards, all 30,000 HMS-permitted vessels were considered to be small entities for purposes of the Regulatory Flexibility Act. In light of the new size standards, implemented on June 12, 2014, NMFS has reviewed the analyses prepared for this action. The new standards do not result in any more entities being considered small and the new size standards do not affect NMFS' decision to certify this action. NMFS solicits public comment on the analyses in light of the new size standards.

Although this rule impacts a significant number of small entities, there have been no known transfers of Atlantic HMS by U.S. permitted vessels outside of the Convention Area (e.g., in the Panama Canal or Pacific Ocean). Because the current regulations prohibit the transfer of tuna, tuna-like species, or other HMS at sea and in port, and because there have been no known transfers of HMS at sea outside the Convention Area, the proposed action to expand the prohibition on transfer at sea is not expected to result in socioeconomic impacts on U.S. fishermen.

Current domestic regulations at 50 CFR 635.52 indicate that a vessel's ''catch, gear, and relevant documents, including fishing logbooks and cargo manifests'' are subject to inspection to verify compliance with ICCAT measures when landing ICCAT-managed species in a foreign port. Consistent with ICCAT Recommendation 12–07, NMFS is proposing to include ''equipment'' (including technical and electronic equipment), ''records,'' and ''any documents the authorized officer deems necessary to determine compliance with ICCAT conservation and management measures'' as examples of what may be inspected by an authorized officer of a port State when offloading tuna, tuna-like species or other HMS in a foreign port or when making a port call in foreign ports. The proposed action to notify U.S. vessels of requirements for port inspection when offloading HMS in foreign ports or making port calls in foreign ports would affect approximately 10 vessels that have offloaded HMS in foreign ports since April 2013 (note: These vessels offloaded to HMS-permitted dealers). All 10 vessels are considered to be small under the SBA's new size standards. The proposed action would not significantly alter current regulations, but would merely provide updated information.

This rule also proposes to revise § 635.53 to inform U.S. vessel operators of the information that they must provide to the port State prior to arrival in a foreign port. We do not anticipate that this requirement will impact a significant amount of vessels, as approximately 10 U.S. vessels have offloaded HMS in foreign ports since April 2013. NMFS is not proposing to add any new requirements on U.S. vessels with this revision. In addition, because port States are not regulated entities of the United States, there are no economic impacts to U.S. regulated entities.

This rule also proposes to revise § 635.54, and would merely describe the procedures for reporting by the port State the results of any port inspection conducted by an authorized foreign port State inspector. NMFS is not proposing to add any new requirements on U.S. vessels with this revision. In addition, because port States are not regulated entities of the United States, there are no economic impacts to U.S. regulated entities.

The requirement to obtain an IMO/LR number by no later than January 1, 2016, would apply to all commercial vessels 20 meters or larger in length which is approximately 253 vessels. However, 113 of these vessels already have an IMO/LR number. The remaining 140 vessels would have to obtain a number. These numbers are free of charge and are issued by IHS Maritime on behalf of the International Maritime Organization. The application process is available online at *http://www.imonumbers.lrfairplay.com/*. The burden associated with this requirement will be analyzed in the Paperwork Reduction Act submission prepared for a revision or change to OMB 0648–0205 (Southeast Region Federal Fisheries Permit Family of Forms) and OMB 0648–0327 (HMS Vessel Permits).

These regulations are necessary to maintain consistency with current ICCAT recommendations and to ensure that U.S.-permitted fishing vessels have the most current information available regarding ICCAT recommendations. The proposed changes in this rule are very limited in magnitude. They are not expected to result in socioeconomic impacts on U.S. fishermen.

Finally, this rule makes a technical correction to remove and reserve § 635.71(b)(29), which was inadvertently not removed when the final rule lifting trade restrictions on bigeye tuna from Bolivia and Georgia was published in the **Federal Register** on August 29, 2012. This provision is a housekeeping measure to ensure that the regulations are clear and consistent.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 8, 2014.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. Section 635.29 is revised to read as follows:

§ 635.29 Transfer at sea and transshipment.

(a) A person who owns or operates a vessel issued a permit, or required to be issued a permit, under § 635.4 may not, transfer any tuna or tuna-like species, or other HMS, at sea or in port, regardless of where the fish was harvested, except

as provided in paragraph (c) of this section.

(b) For the purposes of this part, ''transfer'' means the act of ''transshipping'' as defined at 50 CFR 300.301. Notwithstanding the definition of ''harvest'' at § 600.10 of this chapter, for the purposes of this part, transfer also includes, but is not limited to, moving or attempting to move a tuna that is on fishing gear or other gear in the water from one vessel to another vessel.

(c) An owner or operator of a vessel for which a Purse Seine category Atlantic Tunas category permit has been issued under § 635.4 may transfer large medium and giant Atlantic BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

■ 3. Section 635.51 is revised to read as follows:

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to conduct inspections for the purpose of determining compliance with ICCAT conservation and management measures and who possesses identification issued by the authorized officer's national government.

■ 4. Section 635.52 is revised to read as follows:

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT that have not been previously landed or transshipped at port, as well as the vessel's catch, gear, equipment, records, and any documents the authorized officer deems necessary to determine compliance with ICCAT conservation and management measures, are subject to inspection when in a port of any ICCAT contracting or cooperating non-contracting party. A list of ports, designated by ICCAT contracting or cooperating non-contracting parties, to which foreign vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT may seek entry is available on the ICCAT Web site.

(b) While in port, the master, crewmember, or any other person on a U.S. vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT must cooperate with an authorized officer during the conduct of an inspection, including by facilitating safe boarding. ICCAT recommendations require that inspections be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

■ 5. Section 635.53 is revised to read as follows:

§ 635.53 Prior notification.

(a) U.S. vessels carrying tuna or tuna-like species or other HMS that are seeking to enter the port of another ICCAT contracting or cooperating party must provide to the port State, at least 72 hours before the estimated time of arrival at the port or in accordance with any other time period specified by the foreign government, the following information:

(1) Vessel identification (External identification; Name; Flag State; ICCAT Record No., if any; IMO No., if any; and international radio call sign);

(2) Name of the designated port, as referred to in the ICCAT register, to which it seeks entry and the purpose of the port call;

(3) Fishing authorization or, where appropriate, any other authorization held by the vessel to support fishing operations on ICCAT-managed species and/or fish products originating from such species;

(4) Estimated date and time of arrival in port;

(5) In kilograms, the estimated quantities of each ICCAT-managed species and/or fish products originating from such species to be held on board and to be landed, with associated catch areas;

(6) Other information, as requested by the foreign ICCAT contracting or cooperating non-contracting party, to determine whether a vessel has engaged in IUU fishing, or related activities;

(b) After receiving information pursuant to paragraph (a) of this section, the foreign ICCAT contracting or cooperating non-contracting party should decide whether to authorize or deny the entry of a vessel into its port.

■ 6. Section 635.54 is added to read as follows:

§ 635.54 Reports.

Owners and operators of U.S. vessels subject to inspection under § 635.23 are hereby notified that the ICCAT recommendation establishing a scheme for minimum standards for inspection in port requires that:

(a) Upon completion of the inspection, the authorized officer shall provide the Master of the U.S. fishing vessel with the inspection report containing the findings of the inspection, including any violations found and possible subsequent measures that could be taken by the foreign ICCAT contracting or cooperating non-contracting party. The Master of the U.S. vessel is entitled to add or have added to the report any comments or objections, and to add his or her own signature as an acknowledgement of receipt,

(b) Copies of the inspection report shall also be provided by the port State to the ICCAT Secretariat and, as appropriate, to NMFS and other contracting or cooperating non-contracting parties of ICCAT,

(c) Any enforcement action taken by the foreign ICCAT contracting or cooperating non-contracting party in response to an infringement shall be reported to the United States and to the ICCAT Secretariat, and

(d) The foreign ICCAT contracting or cooperating non-contracting party shall refer any infringements found that do not fall within its jurisdiction, or with respect to which it has not taken action, to the flag State of the vessel (i.e., to NMFS).

■ 7. In § 635.71:

■ a. Remove and reserve paragraph (b)(29);

■ b. Add paragraph (a)(57): and

■ c. Revise paragraphs (b)(21), (c)(2), (d)(5), and (e)(5); to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(57) Transfer in port or at sea any tuna, tuna-like species, or other HMS, as specified in § 635.29(a).

(b) * * *

(21) Transfer a tuna, except as may be authorized for the transfer of Atlantic BFT between purse seine vessels, as specified in § 635.29(c).

* * * * *

(c) * * *

(2) Transfer a billfish in port or at sea, as specified in § 635.29(a).

* * * * *

(d) * * *

(5) Transfer a shark in port or at sea, as specified in § 635.29(a).

* * * * *

(e) * * *

(5) Transfer a swordfish in port or at sea, as specified in § 635.29(a).

* * * * *

[FR Doc. 2014–21694 Filed 9–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140429387–4738–01]

RIN 0648–XD276

Atlantic Highly Migratory Species; 2015 Atlantic Shark Commercial Fishing Season

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish opening dates and adjust quotas for the 2015 fishing season for the Atlantic commercial shark fisheries. Quotas would be adjusted as allowable based on any over- and/or underharvests experienced during 2014 and previous fishing seasons. In addition, NMFS proposes season openings based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: Written comments must be received by October 14, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0077, 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-2014-0077,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

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

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Accounting for Under- and Overharvests

This proposed rule would adjust the quota levels for the different shark stocks and management groups for the 2015 Atlantic commercial shark fishing season based on over- and underharvests that occurred during 2014 and previous fishing seasons, consistent with existing regulations at 50 CFR 635.27(b)(2). Over- and underharvests are accounted for the following year in the same region and/or fishery in which they occurred, except that large overharvests may be spread over a number of subsequent fishing years, up to a maximum of 5 years. Shark stocks or management groups that contain one or more stocks that are overfished, have overfishing occurring, or that have an unknown status, will not have underharvest carried over in the following year. Stocks that are not overfished and have no overfishing occurring may have any underharvest carried over in the following year, up to 50 percent of the base quota.

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2014 underharvests cannot be carried over to the 2015 fishing season because those stocks or management groups have been determined to be overfished, overfished with overfishing occurring, or have an unknown status. Thus, for all of these management groups, the 2015 proposed quotas would be equal to the appropriate base quota minus any overharvests that occurred in 2014 and previous fishing seasons, as applicable.

For the Gulf of Mexico blacktip shark management group, which has been determined not to be overfished and have no overfishing occurring, available underharvest (up to 50 percent of the base quota) from the 2014 fishing season can be applied to the 2015 quota, and NMFS proposes to do so in 2015.

2015 Proposed Quotas

This rule proposes adjustments to the base commercial quotas due to over- and underharvests that occurred in 2014 and previous fishing seasons, where allowable, taking into consideration the stock status as required under existing regulations.

The quotas in this proposed rule are based on dealer reports received as of August 15, 2014. In the final rule, NMFS will adjust the quotas based on dealer reports received as of October or November 2014. NMFS is not specifying the date, but would choose a date from middle October to middle November based on the timing of the final rule. In past season rules, NMFS has used dates from October 18 through November 26, depending on the timing of the final rule. Thus, all of the 2015 proposed quotas for the respective stocks and management groups will be subject to further adjustment after NMFS considers the October/November dealer reports. All dealer reports that are received after the October or November date will be used to adjust the 2016 quotas, as appropriate.

In the final rule establishing quotas for the 2014 shark season (78 FR 70500; November 26, 2013), NMFS decided to spread out the 2012 overharvest of the blacknose shark quota across 5 years in both the Atlantic and Gulf of Mexico regions. Thus, in this rule, the blacknose shark quota will be reduced by 0.5 mt dw for the Atlantic region. This reduction will happen each year through 2018. The 0.5 mt dw reduction

represents 3 percent of the Atlantic region blacknose quota. In the Gulf of Mexico region, accounting for the overharvest over 5 years results in a 0.2 mt dw reduction that will be taken from the Gulf of Mexico regional base quota every year through 2018. This reduction represents 10 percent of the Gulf of Mexico region blacknose baseline quota. Thus, before accounting for any landings from 2014, the 2015 adjusted annual quota for the Atlantic blacknose shark management group would be 17.5 mt dw (38,638 lb dw), while the adjusted annual quota for the Gulf of Mexico blacknose shark management group would be 1.8 mt dw (4,076 lb dw).

The proposed 2015 quotas by species and management group are summarized in Table 1; the description of the calculations for each stock and management group can be found below.

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Table 1. 2015 Proposed Quotas and Opening Dates for the Atlantic Shark Management Groups. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data as of August 15, 2014; final quotas are subject to change based on landings as of October or November 2014. 1 mt = 2,204.6 lb.

Management Group	Region	2014 Annual Quota (A)	Preliminary 2014 Landings [1] (B)	Adjustments (C)	2015 Base Annual Quota (D)	2015 Proposed Annual Quota (D+C)	Season Opening Dates
Blacktip Sharks	Gulf of Mexico	274.3 mt dw (604,626 lb dw)	200.9 mt dw (442,861 lb dw)	73.4 mt dw (161765 lb dw) [2]	256.6 mt dw (565,700 lb dw)	330.0 mt dw (727,465 lb dw)	January 1, 2015
Aggregated Large Coastal Sharks		151.2 mt dw (333,828 lb dw)	152.7 mt dw (336,466 lb dw)	- 1.4 mt dw (3,046 lb dw) [3]	157.5 mt dw (347,317 lb dw)	156.1 mt dw (344,271 lb dw)	
Hammerhead Sharks		25.3 mt dw (55,722 lb dw)	13.8 mt dw (30,447 lb dw)	-	25.3 mt dw (55,722 lb dw)	25.3 mt dw (55,722 lb dw)	
Aggregated Large Coastal Sharks	Atlantic	168.9 mt dw (372,552 lb dw)	56.7 mt dw (124,931 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)	June 1, 2015
Hammerhead Sharks		27.1 mt dw (59,736 lb dw)	3.3 mt dw (7,381 lb dw)	-	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)	
Non-Sandbar LCS Research	No regional quotas	50.0 mt dw (110,230 lb dw)	9.9 mt dw (21,752 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)	January 1, 2015
Sandbar Shark Research		116.6 mt dw (257,056 lb dw)	30.1 mt dw (66,265 lb dw)	-	116.6 mt dw (257,056 lb dw)	116.6 mt dw (257,056 lb dw)	
Non-Blacknose Small Coastal Sharks	Gulf of Mexico	68.3 mt dw (150,476 lb dw)	44.4 mt dw (97,960 lb dw)	-	45.5 mt dw (100,317 lb dw)	45.5mt dw (100,317 lb dw)	

Blacknose Sharks		1.8 mt dw (4,076 lb dw)	0.8 mt dw (1,724 lb dw)	-0.2 mt dw (-437 lb dw) [4]	2.0 mt dw (4,513 lb dw)	1.8 mt dw (4,076 lb dw)	
Non-Blacknose Small Coastal Sharks	Atlantic	264.1 mt dw (582,333 lb dw)	100.7 mt dw (222,010 lb dw)	-	176.1 mt dw (388,222 lb dw)	176.1 mt dw (388,222 lb dw)	
Blacknose Sharks		17.5 mt dw (38,638 lb dw)	17.5 mt dw (38,681 lb dw)	-0.5 mt dw (-1,154 lb dw) [4]	18.0 mt dw (39,749 lb dw)	17.5 mt dw (38,638 lb dw)	
Blue Sharks	No regional quotas	273.0 mt dw (601,856 lb dw)	7.8 mt dw (17,157 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)	
Porbeagle Sharks		1.3 mt dw (2,874 lb dw)	0.1 mt dw (248 lb dw)	-	1.7 mt dw (3,748 lb dw)	1.7 mt dw (3,748 lb dw)	
Pelagic Sharks Other Than Porbeagle or Blue		488 mt dw (1,075,856 lb dw)	109.3 mt dw (241,013 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)	

[1] Landings are from January 1, 2014, through August 15, 2014, and are subject to change.

[2] This adjustment accounts for underharvest in 2014. Therefore, the Gulf of Mexico blacktip shark adjusted would be 330.0 mt dw for the 2015 fishing season.

[3] This adjustment accounts for overharvest in 2013 and 2014. In the final rule establishing the 2014 quotas (78 FR 70500; November 26, 2013), the 2013 Gulf of Mexico aggregated LCS quota was overharvested by 6.2 mt dw (13,489 lb dw). After the final rule establishing the 2014 quotas published, late dealer reports indicated the quota was overharvested by an additional 0.1 mt dw (408 lb dw). In 2014, the 2014 Gulf of Mexico aggregated LCS quota was overharvested by 1.3 mt dw (2,638 lb dw). While the numbers in the table shows the landings were overharvested by 1.5 mt dw (152.7 - 151.2 mt dw), this result is due to multiple rounding errors when converting between lb dw and mt dw. NMFS establishes the quota in mt dw but dealers report in lb dw. When the same calculation is conducted in lb dw and then converted to mt dw, the overharvest equals 1.4 mt dw (336,466-333,828= 2,638 lb dw) Thus, NMFS is proposing to reduce the 2015 base annual quota based on the additional 2013 overharvest and overharvest from 2014.

[4] This adjustment accounts for overharvest in 2012 and 2014. After the final rule establishing the 2012 quotas published, late dealer reports indicated the blacknose shark quota was overharvested by 3.5 mt dw (7,742 lb dw). In the final rule establishing the 2014 quotas, NMFS implemented a 5-year adjustment of the overharvest amount by the percentage of landings in 2012. Thus, NMFS will reduce the Gulf of Mexico blacknose sharks by 0.2 mt dw (437 lb dw) and the Atlantic blacknose sharks by 0.5 mt dw (1,111 lb dw) for the next 5 years. In 2014, the 2014 Atlantic blacknose shark quota was overharvested by less than 0.1 mt dw (43 lb dw). Thus, NMFS is proposing to reduce the 2015 base annual quota based on the additional 2014 overharvest and overharvest from 2012.

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1. Proposed 2015 Quotas for the Blacktip Sharks in the Gulf of Mexico Region

The 2015 proposed quota for blacktip sharks in the Gulf of Mexico region is 330.0 mt dw (727,465 lb dw). As of August 15, 2014, preliminary reported landings for blacktip sharks in the Gulf of Mexico region were at 73 percent (200.9 mt dw) of their 2014 quota levels. Reported landings have not exceeded the 2014 quota to date, and the fishery was closed on June 2, 2014 (79 FR 31227). Gulf of Mexico blacktip sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), any underharvests for blacktip sharks within the Gulf of Mexico region therefore could be applied to the 2015 quotas as allowable. During the 2014 fishing season to date, the Gulf of Mexico blacktip shark quota has been underharvested by 73.4 mt dw (161,765 lb dw). Accordingly, NMFS proposes to increase the 2015 Gulf of Mexico blacktip shark quota to adjust for anticipated underharvests in 2014 as allowed. The proposed 2015 adjusted base annual quota for Gulf of Mexico blacktip sharks is 330.0 mt dw (727,465 lb dw) (256.6 mt dw annual base quota + 73.4 mt dw 2014 underharvest = 330.0 mt dw 2015 adjusted annual quota).

2. Proposed 2015 Quotas for the Aggregated Large Coastal Sharks in the Gulf of Mexico Region

The 2015 proposed quota for aggregated LCS in the Gulf of Mexico region is 156.1 mt dw (344,271 lb dw). As of August 15, 2014, preliminary reported landings for aggregated LCS in the Gulf of Mexico region were at 101 percent (152.7 mt dw) of their 2014 quota levels. Reported landings have exceeded the 2014 quota to date, and the fishery was closed on May 20, 2014 (79 FR 28849). In addition, there was unaccounted Gulf of Mexico aggregated LCS overharvest in 2013. In the final rule establishing the 2014 quotas, the 2013 Gulf of Mexico aggregated LCS quota was overharvested by 6.2 mt dw (13,489 lb dw). After the final rule establishing the 2014 quotas published, late dealer reports indicated the quota was overharvested by an additional 0.1 mt dw (408 lb dw). Thus, NMFS is proposing to reduce the 2015 base annual quota based on the additional 2013 overharvest and overharvest from 2014. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2)(i), NMFS is proposing to adjust 2015 quotas for aggregated LCS in the Gulf of Mexico region due to overharvests in 2013 and 2014. The proposed 2015 adjusted base annual quota for Gulf of Mexico aggregated LCS is 156.1 mt dw (344,271 lb dw) (157.5 mt dw annual base quota − 0.1 mt dw 2013 overharvest − 1.2 mt dw 2014 overharvest = 156.1 mt dw 2015 adjusted annual quota).

3. Proposed 2015 Quotas for the Aggregated Large Coastal Sharks in the Atlantic Region

The 2015 proposed quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). As of August 15, 2014, preliminary reported landings for aggregated LCS in the Atlantic region were at 34 percent (56.7 mt dw) of their 2014 quota levels. Reported landings have not exceeded the 2014 quota to date. Given the unknown status of some of the shark species within the Atlantic aggregated LCS management group, any underharvests cannot be accounted for pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2015 quotas for aggregated LCS in the Atlantic region, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

4. Proposed 2015 Quotas for Hammerhead Sharks in the Gulf of Mexico and Atlantic Region

The 2015 proposed commercial quotas for hammerhead sharks in the Gulf of Mexico and Atlantic regions are 25.3 mt dw (55,722 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. As of August 15, 2014, preliminary reported landings for hammerhead sharks were at 55 percent (13.8 mt dw) of their 2014 quota levels in the Gulf of Mexico region, and were at 12 percent (3.3 mt dw) of their 2014 quota levels in the Atlantic region. Reported landings have not exceeded the 2014 quota to date. Given the overfished status of hammerhead sharks, any underharvests cannot be accounted for pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2015 quotas for hammerhead sharks in the Gulf of Mexico and Atlantic regions, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

5. Proposed 2015 Quotas for Research Large Coastal Sharks and Sandbar Sharks Within the Shark Research Fishery

The 2015 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for research LCS and 116.6 mt dw (257,056 lb dw) for sandbar sharks. Within the shark research fishery, as of August 15, 2014, preliminary reported landings of research LCS were at 20 percent (9.9 mt dw) of their 2014 quota levels, and sandbar shark reported landings were at 26 percent (30.1 mt dw) of their 2014 quota levels. Reported landings have not exceeded the 2014 quota to date. Under § 635.27(b)(2)(ii), because sandbar sharks and scalloped hammerhead sharks within the research LCS management group have been determined to be either overfished or overfished with overfishing occurring, underharvests for these management groups would not be applied to the 2015 quotas. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2015 quotas in the shark research fishery because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

6. Proposed 2015 Quotas for the Non-Blacknose Small Coastal Sharks in the Gulf of Mexico Region

The 2015 proposed annual commercial quotas for non-blacknose SCS in the Gulf of Mexico region is 45.5 mt dw (100,317 lb dw). As of August 15, 2014, preliminary reported landings of non-blacknose SCS were at 65 percent (44.4 mt dw) of their 2014 quota levels in the Gulf of Mexico region. Reported landings have not exceeded the 2014 quota to date. Given the unknown status of bonnethead sharks within the Gulf of Mexico non-blacknose SCS management group, any underharvests cannot be accounted for pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2015 quotas for non-blacknose SCS in the Gulf of Mexico region, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

7. Proposed 2015 Quotas for the Non-Blacknose Small Coastal Sharks in the Atlantic Region

The 2015 proposed annual commercial quotas for non-blacknose

SCS in the Atlantic region is 176.1 mt dw (388,222 lb dw). As of August 15, 2014, preliminary reported landings of non-blacknose SCS were at 38 percent (100.7 mt dw) of their 2014 quota levels in the Atlantic region. Reported landings have not exceeded the 2014 quota to date and the fishery was closed on July 28, 2014 (79 FR 43267). Given the overfished status of bonnethead sharks within the Atlantic non-blacknose SCS management group, any underharvests cannot be accounted for pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2015 quotas for non-blacknose SCS in the Atlantic region, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

8. Proposed 2015 Quotas for the Blacknose Sharks in the Gulf of Mexico Region

The 2015 proposed annual commercial quotas for blacknose sharks in the Gulf of Mexico region is 1.8 mt dw (4,076 lb dw). As of August 15, 2014, preliminary reported landings of blacknose sharks were at 42 percent (0.8 mt dw) of their 2014 quota levels in the Gulf of Mexico region. Reported landings have not exceeded the 2014 quota to date. Blacknose sharks have been declared to have an unknown status in the Gulf of Mexico region. Pursuant to § 635.27(b)(2)(i), any overharvests of blacknose sharks would be applied to the regional quotas over a maximum of 5 years. As described above, the 2012 blacknose quota was overharvested and NMFS decided to adjust the regional quotas over 5 years to mitigate the impacts of adjusting for the overharvest in 1 year. Therefore, consistent with § 635.27(b), the 2015 proposed adjusted base quota for blacknose sharks in the Gulf of Mexico region is 1.8 mt dw (4,076 lb dw) (2.0 mt dw annual base quota − 0.2 mt dw 2012 adjusted 5-year overharvest = 1.8 mt dw 2015 adjusted annual quota).

9. Proposed 2015 Quotas for the Blacknose Sharks in the Atlantic Region

The 2015 proposed annual commercial quotas for blacknose sharks in the Atlantic region is 17.5 mt dw (38,595 lb dw). As of August 15, 2014, preliminary reported landings of blacknose sharks were at 101 percent (17.5 mt dw) of their 2014 quota levels in the Atlantic region. Reported landings have exceeded the 2014 quota to date by less than 0.1 mt dw (43 lb dw), and the fishery was closed on July 28, 2014 (79 FR 43267). Blacknose sharks have been declared to be overfished with overfishing occurring in the Atlantic region. Pursuant to § 635.27(b)(2)(i), any overharvests of blacknose sharks would be applied to the regional quotas over a maximum of 5 years. As described above, the 2012 blacknose quota was overharvested and NMFS decided to adjust the regional quotas over 5 years to mitigate the impacts of adjusting for the overharvest in 1 year. Therefore, consistent with § 635.27(b), the 2015 proposed adjusted base quota for blacknose sharks in the Gulf of Mexico region is 17.5 mt dw (38,595 lb dw) (18.0 mt dw annual base quota − 0.5 mt dw 2012 adjusted 5-year overharvest − <0.1 mt dw 2014 overharvest = 17.5 mt dw 2015 adjusted annual quota).

10. Proposed 2015 Quotas for Pelagic Sharks

The 2015 proposed annual commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

As of August 15, 2014, preliminary reported landings of blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 3 percent (7.8 mt dw), 9 percent (0.1 mt dw), and 22 percent (109.3 mt dw) of their 2014 quota levels, respectively. These pelagic species are overfished, have overfishing occurring, or have an unknown status. Therefore, the 2015 proposed quotas would be the base annual quotas (without adjustment) for blue sharks, porbeagle sharks, and pelagic sharks (other than blue and porbeagle sharks), or 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

Proposed Fishing Season Notification for the 2015 Atlantic Commercial Shark Fishing Season

For each fishery, NMFS considered the seven ''Opening Fishing Season Criteria'' listed at § 635.27(b)(3). These include:

(i) The available annual quotas for the current fishing season for the different species/management groups based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; (ii) Estimated season length based on available quota(s) and average weekly catch rates of different species and/or management group from the previous years; (iii) Length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years; (iv) Variations in seasonal distribution, abundance, or migratory patterns of the different species/management groups based on scientific and fishery information; (v) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas; (vi) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or, (vii) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

Specifically, NMFS examined the 2014 and previous fishing years' over- and/or underharvests of the different management groups to determine the effects of the 2015 proposed quotas on fishermen across regional fishing area. NMFS also examined the potential season length and previous catch rates to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, NMFS examined the seasonal variation of the different species/management groups and the effects on fishing opportunities.

NMFS is proposing that the 2015 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, except the aggregated LCS and hammerhead shark management groups in the Atlantic region, open on or about January 1, 2015, after the publication of the final rule for this action. NMFS proposes to open the aggregated LCS and hammerhead shark management groups in the Atlantic region on June 1, 2015.

In the Gulf of Mexico region, opening the fishing season again on or about January 1 for aggregated LCS, blacktip sharks, and hammerhead sharks would provide, to the extent practicable, equitable opportunities across the fisheries management region as it did for the 2013 and 2014 fishing seasons. This opening date is consistent with all the criteria listed in § 635.27(b)(3), but particularly with the criterion that NMFS considered the length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on June 1, 2015. During the 2014 shark season proposed rule (78 FR 52487; August 23, 2013) comment period, NMFS received comments from the public to delay the opening date until later in the year. Public comments from the southern part of the region requested opening dates ranging from May 1 through July 1 for the aggregated LCS and hammerhead management

groups, including requests to change the opening date due to concerns about the status of lemon sharks in Florida waters. Public comments from the northern part of the Atlantic region expressed concern that the proposed opening date of January 1 for the aggregated LCS and hammerhead management groups would not allow equitable fishing opportunities in the northern area because sharks are not present in their area at that time. In February 2014, the Atlantic States Marine Fisheries Commission (ASMFC) Coastal Shark Board, which manages shark fisheries in state waters and follows NMFS' opening and closing dates, approved a motion to submit a letter to NMFS requesting a postponement of the aggregated LCS season until July 1 for the 2015 fishing season. The Board decided a July 1, 2015, date would provide states the greatest access to the resource. To date, NMFS has yet to receive this written request. Taking into consideration the opening date criteria, public comments from 2013 and 2014, and the February 2014 vote of the ASMFC Coastal Shark Board, NMFS believes that delaying the opening date would promote equitable fishing opportunities in the Atlantic region. However, at this time, because it took a full 9 months to harvest approximately 92 percent of the aggregated LCS quota in 2013 and just under 6 months to harvest approximately 80 percent of the non-sandbar LCS quota in 2012, NMFS is concerned that waiting until July 1, 2015, as suggested by the ASMFC Coastal Shark Board, may not provide fishermen the opportunity to fully harvest the 2015 quota. Based on the issues described above and the opening fishing season criteria listed in § 635.27(b)(3), NMFS is proposing opening the aggregated LCS and hammerhead management groups in the Atlantic region on June 1, 2015. However, at the time of writing this proposed rule, the aggregated LCS and hammerhead management groups in the Atlantic region have only been open for a few months (since June 1, 2014), and NMFS does not know the fishing rates or the potential amount of underharvested quota yet. Thus, NMFS in the final rule might consider an earlier opening date if the fishing rates are slow, and/or it appears there will be a large amount of underharvested quota in 2014. Similarly, NMFS might consider a later opening date in the final rule if the fishing rates are fast, and/or it appears there will be either a small amount of underharvested quota or a quota exceedance in 2014.

All of the shark management groups would remain open until December 31, 2015, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota. In the final rule for Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318, July 3, 2013), NMFS established non-linked and linked quotas and explained that the linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. At that time, consistent with § 635.28(b)(1) for non-linked quotas (e.g., Gulf of Mexico blacktip or pelagic sharks), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

For linked quotas consistent with § 635.28(b)(2), NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups is closed, even across fishing years. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; Gulf of Mexico hammerhead sharks and Gulf of Mexico aggregated LCS; Atlantic blacknose and Atlantic non-blacknose SCS; and Gulf of Mexico blacknose and Gulf of Mexico non-blacknose SCS. NMFS may close the fishery for the Gulf of Mexico blacktip shark before landings reach, or are expected to reach, 80 percent of the quota. Before taking any inseason action, NMFS would consider the criteria listed at § 635.28(b)(4).

In 2012 and 2013, NMFS determined that the proposed rule to implement Amendment 5 to the 2006 Consolidated HMS FMP (77 FR 70552; November 26, 2012) and final rule to implement Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish opening dates and adjust quotas for the 2015 fishing season for the Atlantic commercial shark fisheries does not change the framework previously consulted upon; therefore, no additional consultation is required.

Public Hearings

Public hearings on this proposed rule are not currently scheduled. If you would like to request a public hearing, please contact Guý DuBeck or Karyl Brewster-Geisz by phone at 301–427–8503.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The IRFA analysis follows.

Section 603(b)(1) of the RFA requires Agencies to explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, is being proposed to establish the 2015 commercial shark fishing quotas and fishing seasons. Without this rule, the commercial shark fisheries would close on December 31, 2014, and would not open until another action was taken. This proposed rule

would be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments, based on the quota adjustments.

Section 603(b)(2) of the RFA requires Agencies to explain the rule's objectives. The objectives of this rule are to: Adjust the baseline quotas for all Atlantic shark management groups based on any over- and/or underharvests from the previous fishing year(s) and to establish the opening dates of the various management groups in order to provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the species.

Section 603(b)(3) of the RFA requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467; June 12, 2014). The rule increased the size standard from $19.0 to $20.5 million for finfish fishing, from $5 to $5.5 million for shellfish fishing, and from $7.0 million to $7.5 million for other marine fishing, for-hire businesses, and marinas. Id. at 33656, 33660, 33666.

Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 12 interim final rule, an initial regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards. The new standards would result in no new entities being considered small.

Taking this change into consideration, at this time, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the proposed rule on small entities. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts of less than $4.0 million for fish-harvesting, average annual receipts of less than $7.0 million for Charter/headboat, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits and the related industries, including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The proposed rule would apply to the approximately 213 directed commercial shark permit holders, 262 incidental commercial shark permit holders, and 94 commercial shark dealers as of August 2014. NMFS solicits public comment on the IRFA in light of the new size standards.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements as domestically implemented, domestic laws, and FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act (ESA), the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act.

On July 3, 2014, NMFS published a final rule to list four Distinct Populations Segments (DPS) of scalloped hammerhead sharks (*Sphyrna lewini*): Two as threatened (Central and Southwest Atlantic DPS and Indo-West Pacific DPS) and two as endangered (Eastern Atlantic DPS and Eastern Pacific DPS) under the ESA (79 FR 38214). The Central and Southwest Atlantic DPS consists primarily of the population found in the Caribbean Sea and off the Atlantic coast of Central and South America (includes all waters of the Caribbean Sea, including the U.S. EEZ off Puerto Rico and the U.S. Virgin Islands). The Central and Southwest Atlantic DPS occurs within the boundary of Atlantic HMS commercial and recreational fisheries, which are managed by NMFS. NMFS has reviewed the data and found that the limited commercial catch data available indicate that scalloped hammerhead sharks are rarely targeted by commercial fishermen in the Central and Southwest Atlantic DPS, but rather are caught as bycatch. NMFS will be developing a more detailed analysis regarding effects to the Central and Southwest DPS of scalloped hammerhead sharks to be used in formal consultation on the Atlantic HMS fisheries. However, in the meantime, because this rulemaking would not make any changes to the current HMS regulations nor would have any regulatory changes, NMFS has preliminarily determined that the ongoing operations of the fisheries is consistent with existing biological opinions and is not likely to jeopardize the continued existence or result in an irreversible or irretrievable commitment of resources which would foreclose formulation or implementation of any reasonable and prudent alternative measures on the threatened Central and Southwest DPS of scalloped hammerhead sharks.

Section 603(c) of the RFA requires each IRFA to contain a description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities; therefore, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75

FR 76302; December 8, 2010). Thus, NMFS proposes to adjust quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest as allowable. Similarly, the proposed quotas and opening date are consistent with the requirements of the Magnuson-Stevens Act that were previously analyzed in the EA with the 2011 shark quota specifications rule. Thus, NMFS has limited flexibility to modify the quotas in this rule, the impacts of which were analyzed in previous regulatory flexibility analyses.

Based on the 2013 ex-vessel price, fully harvesting the unadjusted 2015 Atlantic shark commercial baseline quotas could result in total fleet revenues of $4,671,260 (see Table 2). For the Gulf of Mexico blacktip shark management group, NMFS is proposing to adjust the baseline quotas upward due to the underharvests in 2014. The upward adjustment for the Gulf of Mexico blacktip shark management group could result in a $96,493 gain in total revenues for the fleet.

NMFS is proposing to reduce the baseline for other species due to overharvests. For instance, NMFS is proposing to reduce the aggregated LCS management group in the Gulf of Mexico due to overharvests in 2013 and 2014. This would cause a potential loss in revenue of $2,030 for the entire fleet in the Gulf of Mexico. NMFS will reduce the blacknose shark management group for the next 5 years to account for overharvest in 2012. This would cause a potential loss in revenue of $431 for the fleet in the Gulf of Mexico region. In the Atlantic region, NMFS is proposing additional reductions of the blacknose shark management group due to overharvests in 2014. This total amount would cause a potential loss in revenue of $1,602 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities—resulting from rules such as this one that adjust the trip limits inseason through proposed and final rulemaking—are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, it is assumed that NMFS would be conducting annual rulemakings and considering the potential the economic impacts of adjusting the quotas for under- and overharvests at that time.

TABLE 2—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2013

Year	Species	Region	Price
2013	Aggregated LCS	Gulf of Mexico	$0.49
		Atlantic	0.81
	Blacktip Shark	Gulf of Mexico	0.42
	Hammerhead Shark	Gulf of Mexico	0.41
		Atlantic	0.64
	LCS Research	Both	0.72
	Sandbar Research	Both	0.78
	Non-Blacknose SCS	Gulf of Mexico	0.32
		Atlantic	0.70
	Blacknose Shark	Gulf of Mexico	0.81
		Atlantic	0.83
	Blue shark	Both	0.28
	Porbeagle shark	Both	*1.15
	Other Pelagic sharks	Both	1.69
	Shark Fins	Gulf of Mexico	3.53
		Atlantic	11.16
		Both	6.05

*Since the porbeagle shark management group was closed for 2013, there was no 2013 price data. Thus, NMFS used price data from 2012.

For this rule, NMFS also reviewed the criteria at § 635.27(b)(3) to determine when opening each fishery would provide equitable opportunities for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2015 fishing season, NMFS is proposing to open all of the shark management groups, except the aggregated LCS and hammerhead shark management groups in the Atlantic region on the effective date of the final rule for this action (expected to be on or about January 1). The direct and indirect economic impacts will be neutral on a short- and long-term basis, because NMFS did not change the opening dates of these fisheries from the status quo.

NMFS proposes to open the aggregated LCS and hammerhead shark management groups in the Atlantic region on June 1, 2015. This delay could result in short-term, direct, minor, adverse economic impacts as fishermen and dealers in the southern portion of the Atlantic region would not be able to fish for aggregated LCS and hammerhead sharks starting in January as was the case in 2013, but would still be able to fish earlier in the 2015 fishing season compared to the 2010 through 2012 fishing seasons, which did not start until July 15. This delay could result in neutral economic impacts when compared to the 2014 fishing season because the proposed opening date is the same as the 2014 fishing season. Based on public comment, Atlantic fishermen in the southern portion of the region prefer a delayed opening for the potential to be fishing for aggregated LCS and hammerhead sharks from October through December. Therefore, the delayed opening could have direct, minor, beneficial economic impacts for fishermen since there are limited opportunities for fishermen to fish for non-HMS in the southern portion of the Atlantic region later in the year. In the northern portion of the Atlantic region, a delayed opening for the aggregated LCS and hammerhead shark management groups would have direct, minor, beneficial economic impacts in the short-term for fishermen as they would have access to the aggregated LCS and hammerhead shark quotas in 2015. Overall, delaying the opening until June 1 could cause beneficial cumulative economic impacts

across the region, because it could allow for a more equitable distribution of the quotas among fishermen in this region. The economic impacts would be neutral on long-term basis, because this delayed opening could be for only the 2015 fishing season.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: September 8, 2014.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–21692 Filed 9–10–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 176

Thursday, September 11, 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

Nez Perce-Clearwater National Forest; Idaho; Forest Plan Revision for the Nez Perce-Clearwater National Forests

AGENCY: Forest Service, USDA.

ACTION: Extension of comment period.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement in the **Federal Register** on July 15, 2014, initiating a 60-day comment period on the Forest Plan Revision for the Nez Perce-Clearwater National Forests. The closing date for that 60-day comment period is September 15, 2014; the Agency is extending the comment period for an additional 60 days.

DATES: Comments must be received by Nov. 14, 2014.

ADDRESSES: Comments may be sent via email to *fpr_npclw@fs.fed.us,* or via facsimile to 208–935–4275. Send or deliver written comments to Nez Perce-Clearwater National Forest Supervisor's Office, Attn: Forest Plan Revision, 903 3rd Street, Kamiah, ID 83536.

FOR FURTHER INFORMATION CONTACT: : Joyce Thompson, Forest Planning and Public Affairs Staff Officer, Nez Perce-Clearwater National Forests, 903 3rd Street, Kamiah, ID 83536, 208–983–4273 or at *fpr_npclw@fs.fed.us.* Information regarding this revision is also available on the Forest's Web site at: *http://www.fs.usda.gov/detail/nezperceclearwater/landmanagement/planning/?cid=stelprdb5447338.* 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: As directed by the National Forest Management Act, the USDA Forest Service is preparing the Nez Perce-Clearwater National Forests' revised land management plan (forest plan), which requires preparation of an environmental impact statement (EIS). The revised forest plan will supersede the existing forest plans that were approved by the Regional Forester in 1987. The existing forest plan will remain in effect until the revised forest plan takes effect. The Forest Service is asking for comments on the proposed action and the list of potential species of conservation concern.

The Forest Service has extended the comment period for an additional 60 days, and is now asking the public to send their comments in by Nov. 14, 2014 for them to be the most useful in development of alternatives. The full text of the proposed action, large-scale color maps, information on public meetings, and the list of potential species of conservation concern can be found on the Forest's Web site at *http://www.fs.usda.gov/nezperceclearwater*; follow the links for Forest Plan Revision. Hard copies of the proposed action are available by contacting 208–935–2513 or via email at *fpr_npclw@fs.fed.us.* Information gathered during this scoping period, as well as other information, will be used to prepare the draft plan and the draft EIS.

Dated: September 3, 2014.

Rick Brazell,

Forest Supervisor Nez Perce-Clearwater National Forests.

[FR Doc. 2014–21620 Filed 9–10–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Florida National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Florida National Forests Resource Advisory Committee (RAC) will meet in Tallahassee, Florida. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. Additional information concerning the Committee, can be found by visiting the Committee's Web site at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Florida+National+Forests.*

DATES: The meeting will be held September 23, 2014 at 3:30 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office, First Floor Conference Room, 325 John Knox Road, Suite F–100, Tallahassee, Florida. The meeting will also be held via teleconference. For anyone who would like to attend by teleconference, please visit the Committee's Web site listed in the **SUMMARY** section or contact Denise Rains at *drains@fs.fed.us* for further details. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Denise Rains, Public Services Staff Officer, by phone at 850–523–8568 or via email at *drains@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

(1) Review potential projects; and

(2) Recommend which projects the committee members feel should be funded.

The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 20, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file

written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Denise Rains, USDA Forest Service, 325 John Knox Road, Suite F–100, Tallahassee, Florida 32303; or by email to *drains@fs.fed.us,* or via facsimile to 850–523–8505. Summary/minutes of the meeting will be posted on the Web site listed above within 45 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 2, 2014.

Julian G. Affuso,

Acting Forest Supervisor.

[FR Doc. 2014–21666 Filed 9–10–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Humboldt-Toiyabe National Forest, Forest Service, USDA.

ACTION: Notice of Proposed New Fee Site.

SUMMARY: The Humboldt-Toiyabe National Forest is proposing to charge fees at the Spring Mountains Visitor Gateway Complex new group picnic sites. These group picnic sites include a $70 fee per site, year around. During the summer months the sites can be reserved for $70 for a half day or $120 for all day. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. The fee is proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation, maintenance, and improvements of these picnic sites.

An analysis of the nearby federal and state group picnic sites with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: Comments will be accepted through September 1, 2014. New fees would begin spring of 2015.

ADDRESSES: Bill Dunkelberger, Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

FOR FURTHER INFORMATION CONTACT: Del Orme, Recreation Staff Officer, 702–515–5401. Information about proposed fee changes can also be found on the Humboldt-Toiyabe National Forest Web site: *http://www.fs.usda.gov/htnf/.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. People wanting reserve these cabins would need to do so through the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777 when it becomes available.

Date: September 3, 2014.

William A. Dunkelberger,

Forest Supervisor.

[FR Doc. 2014–21370 Filed 9–10–14; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Office of Procurement and Property Management (OPPM), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Office of Procurement and Property Management's intention to request a revision of a currently approved information collection for Guidelines for the Transfer of Excess Computers or Other Technical Equipment Pursuant to Section 14220 of the 2008 Farm Bill (7 CFR Part 3203).

DATES: Comments on this notice must be received by November 10, 2014 to be assured of consideration.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Sect14220.2008FarmBill@dm.usda.gov.* Include OMB Control No. 0505–0023 in the subject line of the message.
- *Fax:* (202) 720–8972.
- *Mail:* Office of Procurement and Property Management, Property Management Division, Attn: Michael R. Johnson, 300 7th Street SW., Suite 316, Washington, DC 20024.
- *Hand Delivery/Courier:* Reporter's Building, 300 7th Street SW., Suite 316, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Johnson, OPPM at (202) 720–9779 or by mail at USDA, OPPM, 300 7th Street SW., Suite 316, Washington, DC 20024. Please cite OMB Control No. 0505–0023.

SUPPLEMENTARY INFORMATION:

Title: Guidelines for the Transfer of Excess Computers or Other Technical Equipment Pursuant to Section 14220 of the 2008 Farm Bill.

OMB Number: 0505–0023.

Expiration Date of Approval: 08/31/2014.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: USDA requires information in order to verify eligibility of requestors, determine availability of excess property, have contact information for the requestor available and to ensure an organization is designated to receive property on behalf of an eligible recipient. Information will be used to coordinate the transfer of excess property to eligible recipients. Respondents will be authorized representatives of a city, town, or local government entity located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .167 hours per response.

Respondents: City, town, or local government entities located in a rural area.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information

including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 2, 2014.

Lisa M. Wilusz,

Director, Office of Procurement and Property Management.

[FR Doc. 2014–21669 Filed 9–10–14; 8:45 am]

BILLING CODE 3410–TX–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of business meeting.

DATE AND TIME: Friday, September 19, 2014; 9:30 a.m. EST.

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda

II. Management and Operations

- Staff Director's Report

III. State Advisory Committee (SAC) Appointments

- Alaska
- Montana
- New Mexico
- Wyoming

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: September 9, 2014.

Marlene Sallo,

Staff Director.

[FR Doc. 2014–21846 Filed 9–9–14; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On March 10, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea). For these final results, we continue to find that subject merchandise has been sold at less than normal value.

DATES: *Effective Date:* September 11, 2014.

FOR FURTHER INFORMATION CONTACT: 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) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 2014, the Department published the preliminary results of the administrative review of the antidumping duty order on CTL plate from Korea.[1] The period of review is February 1, 2012, through January 31, 2013.

We invited interested parties to comment on the *Preliminary Results* and received case and rebuttal briefs from interested parties.

The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain CTL plate. Imports of CTL plate are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7208.40.30.30, 7208.40.30.60, 7208.51.00.30, 7208.51.00.45, 7208.51.00.60, 7208.52.00.00, 7208.53.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.13.00.00, 7211.14.00.30, 7211.14.00.45, 7211.90.00.00, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00, 7225.40.30.50, 7225.40.70.00, 7225.50.60.00, 7225.99.00.90, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[2]

Analysis of Comments Received

The comments received in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. The Issues and 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). Access to IA ACCESS is available to registered users at *https://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.*

Final Results of Review

For the final results of this review, we determine that the following weighted-average dumping margins exist for the period February 1, 2012, through January 31, 2013.

Manufacturer/exporter	Weighted-average dumping margin (Percent)
Dongkuk Steel Mill Co., Ltd.	4.64
Edgen Murray Corporation	4.64
Kyoungil Co., Ltd.	4.64
Samsung C&T Corp.	4.64
Samwoo EMC Co., Ltd.	4.64
TCC Steel Corp.	4.64

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the

[1] *See Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 13275 (March 10, 2014) (*Preliminary Results*).

[2] *See* the memorandum from Associate Deputy Assistant Secretary Gary Taverman to Assistant Secretary Paul Piquado entitled ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea for the Period of Review February 1, 2012, through January 31, 2013'' dated concurrently with this notice (Issues and Decision Memorandum).

Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For Dongkuk Steel Mill Co., Ltd., which we selected for individual examination, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[3]

For entries of subject merchandise during the period of review produced by Dongkuk Steel Mill Co., Ltd., for which it did not know its merchandise was destined for the United States, 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. For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*May 2003 Clarification*).

Consistent with the *May 2003 Clarification,* for Daewoo International Corp., Dongbu Steel Co., Ltd., GS Global Corp., Hyosung Corporation, and Hyundai Steel Co., which had no reviewable entries of subject merchandise to the United States, we will instruct CBP to liquidate any applicable entries of subject merchandise at the all-others rate.

For the companies which were not selected for individual examination, Edgen Murray Corporation, Kyoungil Co., Ltd., Samsung C&T Corp., Samwoo EMC Co., Ltd., and TCC Steel Corp., we will instruct CBP to apply the rates listed above to all entries of subject merchandise produced and/or exported by those firms.

We intend to issue liquidation 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 CTL plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margins determined in the final results of this administrative review; (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 recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.98 percent,[4] the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

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 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 doubled antidumping duties.

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 notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 4, 2014.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

Appendix

A. Summary
B. Background
C. Company Abbreviations
D. Other Abbreviations
E. Scope of the Order
F. Final Determination of No Reviewable Entries
G. Changes Since the Preliminary Results
H. Discussion of the Issue
1. Differential Pricing
2. Request for Rescission of Review in Part
3. Major Input Adjustments
I. Recommendation

[FR Doc. 2014–21708 Filed 9–10–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 13, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyester staple fiber (PSF) from Taiwan.[1] For these final results, we continue to find that Far Eastern New Century Corporation (FENC) has not sold subject merchandise at less than normal value, and that Nan Ya Plastics Corporation (Nan Ya) had no shipments during the period of review (POR).

DATES: *Effective Date:* September 11, 2014

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Minoo Hatten, 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) 482–0180, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 2014, the Department published the *Preliminary Results.* The POR is May 1, 2012 through April 30,

[3] In these final 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 Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[4] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 77 FR 21527, 21529 (April 10, 2012).

[1] *See Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 33906 (June 13, 2014) (*Preliminary Results*).

2013. We invited interested parties to comment on the *Preliminary Results.* We received no comments.

The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.40, 5503.20.00.45, 5503.20.00.60, and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Determination of No Shipments

For the final results of this review, we determine that Nan Ya had no shipments during the POR.

Final Results of the Review

The Department made no changes to its calculations announced in the *Preliminary Results.* As a result of our review, we determine that a weighted-average dumping margin of 0.00 percent exists for FENC for the POR.

Assessment Rates

In accordance with the *Final Modification,*[2] the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate all appropriate entries for FENC without regard to antidumping duties.

For entries of subject merchandise during the POR produced by FENC for which it did not know its merchandise was destined for the United States, 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. For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Consistent with the *Assessment Policy Notice,* because we continue to find that Nan Ya had no shipments of subject merchandise to the United States, we will instruct CBP to liquidate any applicable entries of subject merchandise 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 PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for FENC will be 0.00 percent, the weighted average dumping margin established in the final results of this administrative review; (2) for Nan Ya and previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the manufacturer of the merchandise for the most recently completed segment of this proceeding; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.31 percent.[3] These cash 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 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.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction 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.

Notification to Interested Parties

The Department is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 5, 2014.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2014–21707 Filed 9–10–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification*).

[3] The all-others rate established in the *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

President's Advisory Council on Doing Business in Africa

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of establishment of and an opportunity to apply for membership on the President's Advisory Council on Doing Business in Africa.

SUMMARY: The Department of Commerce, as directed by the President in *Executive Order No. 13675 Establishing the President's Advisory Council on Doing Business in Africa* of August 5, 2014, has recently established the President's Advisory Council

(Advisory Council) on Doing Business in Africa and is seeking applications for membership. The purpose of the Advisory Council is to advise the President through Secretary of Commerce on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the *U.S. Strategy Toward Sub-Saharan Africa* of June 14, 2012.

DATES: All applications must be received by the Office of Advisory Committees and Industry Outreach by 5:00 p.m. Eastern Daylight Time (EDT) on Tuesday, September 30, 2014.

ADDRESSES: Please submit applications by email to *DBIA@trade.gov,* attention: Tricia Van Orden, Office of Advisory Committees and Industry Outreach, President's Advisory Council on Doing Business in Africa Executive Secretariat or by mail to Tricia Van Orden, Office of Advisory Committees and Industry Outreach, President's Advisory Council on Doing Business in Africa, 1401 Constitution Avenue NW., Suite 4043, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: President's Advisory Council on Doing Business in Africa Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, *telephone:* 202–482–4501, *email: DBIA@trade.gov.*

SUPPLEMENTARY INFORMATION: The President's Advisory Council on Doing Business in Africa (Advisory Council) is established pursuant to Executive Order No. 13675 dated August 5, 2014, for a two-year period ending August 5, 2016. This Advisory Council has been established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., to advise the President through the Secretary of Commerce (Secretary) on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the U.S. Strategy Toward Sub-Saharan Africa of June 14, 2012 (*http://www.whitehouse.gov/sites/default/files/docs/africa_strategy_2.pdf*). The Department of Commerce, International Trade Administration, Office of Advisory Committees and Industry Outreach, is accepting applications for Advisory Council members. The Advisory Council shall provide information, analysis, and recommendations to the President that address the following, in addition to other topics deemed relevant by the President, the Secretary, or the Advisory Council:

(i) Creating jobs in the United States and Africa through trade and investment;

(ii) developing strategies by which the U.S. private sector can identify and take advantage of trade and investment opportunities in Africa;

(iii) building lasting commercial partnerships between the U.S. and African private sectors;

(iv) facilitating U.S. business participation in Africa's infrastructure development;

(v) contributing to the growth and improvement of Africa's agricultural sector by encouraging partnerships between U.S. and African companies to bring innovative agricultural technologies to Africa;

(vi) making available to the U.S. private sector an accurate understanding of the opportunities presented for increasing trade with and investment in Africa;

(vii) developing and strengthening partnerships and other mechanisms to increase U.S. public and private sector financing of trade with and investment in Africa;

(viii) analyzing the effect of policies in the United States and Africa on U.S. trade and investment interests in Africa;

(ix) identifying other means to expand commercial ties between the United States and Africa; and

(x) building the capacity of Africa's young entrepreneurs to develop trade and investment ties with U.S. partners.

The Advisory Council shall consist of not more than 15 private-sector corporate members representing U.S. companies, including small businesses and representatives from infrastructure, agriculture, consumer goods, banking, services, and other industries. The Advisory Council shall be broadly representative of the key industries with business interests in the functions of the Advisory Council as set forth above.

Each Advisory Council member shall serve as the representative of a U.S. company engaged in activities involving trade, investment, development or finance with African markets. The Department particularly seeks applicants who are active executives (Chief Executive Officer, Executive Chairman, President or comparable level of responsibility); however, for very large companies, a person having substantial responsibility for the company's commercial activities in Africa may be considered.

For eligibility purposes, a ''U.S. company'' is a for-profit firm incorporated in the United States or with its principal place of business in the United States that is (a) majority controlled (more than 50 percent ownership interest and/or voting stock) by U.S. citizens or by another U.S. entity or (b) majority controlled (more than 50 percent ownership interest and/or voting stock) directly or indirectly by a foreign parent company. Members are not required to be a U.S. citizen; however, members may not be registered as a foreign agent under the Foreign Agents Registration Act. Additionally, no member shall represent a company that is majority owned or controlled by a foreign government entity or entities.

Members of the Advisory Council will be selected, in accordance with applicable Department of Commerce guidelines, based on their ability to carry out the objectives of the Advisory Council as set forth above. Members shall be selected in a manner that ensures that the Advisory Council is balanced in terms of points of view, industry subsector, activities in and with African markets, range of products and services, demographics, geography, and company size. Additional factors which will be considered in the selection of Advisory Council members include candidates' proven leadership and experience in the trade, investment, financing, development, or other commercial activities between the United States and Africa. Priority may be given to active executives (Chief Executive Officer, Executive Chairman, President or comparable level of responsibility). Appointments to the Advisory Council shall be made without regard to political affiliation.

The Secretary appoints the members of the Advisory Council in consultation with the Trade Promotion Coordinating Committee (TPCC), a Federal interagency group led by the Secretary of Commerce tasked with coordinating export promotion and export financing activities of the U.S. Government and development of a government-wide strategic plan to carry out such activities. Members shall serve a term of two years, at the pleasure of the Secretary.

Members shall serve in a representative capacity, representing the views and interests of their particular industry sector. Advisory Council members are not special government employees, and will receive no compensation for their participation in Advisory Council activities. Members participating in Advisory Council meetings and events will be responsible for their travel, living and other personal expenses. Meetings will be held regularly and, to the extent practical, not less than twice annually, in Washington, DC, or other locations as

feasible. Teleconference meetings may also be held as needed.

To be considered for membership, submit the following information by 5:00 p.m. EDT on September 30 to the email or mailing address listed in the **ADDRESSES** section:

1. Name and title of the individual requesting consideration.
2. A sponsor letter from the applicant on his or her company letterhead containing a brief statement of why the applicant should be considered for membership on the Advisory Council. This sponsor letter should also address the applicant's experience and leadership related to trade, investment, financing, development, or other commercial activities between the United States and Africa.
3. The applicant's personal resume and short bio (less than 300 words).
4. An affirmative statement that the applicant meets all eligibility criteria, including an affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.
5. Information regarding the ownership and control of the company, including the stock holdings as appropriate, signifying compliance with the criteria set forth above.
6. The company's size, product or service line, and major markets in which the company operates.
7. A profile of the company's trade, investment, development, finance, partnership, or other commercial activities in or with African markets.
8. Brief statement describing how the applicant will contribute to the work of the Advisory Council based on his or her unique experience and perspective (not to exceed 100 words).

Dated: September 8, 2014.

Jennifer Pilat,

Director, Office of Advisory Committees & Industry Outreach.

[FR Doc. 2014–21701 Filed 9–10–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD498

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Advisory Panel will meet to develop comments relative to the 2015 spiny dogfish fishing year. Comments will be reviewed by the Spiny Dogfish Monitoring Committee and the Council in their consideration of alternative management measures for the 2015 fishing year.

DATES: The meeting will be held on Tuesday, September 29, 2014, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held via webinar with a listening station also available at the Council address below. Webinar link: *http://mafmc.adobeconnect.com/dogfish/.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Spiny dogfish management measures for the 2015 fishing year were established via rulemaking effective August 8, 2014. Currently specified management measures for spiny dogfish are available via the Council's Web site (*www.mafmc.org*).

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 8, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–21691 Filed 9–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD497

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Monitoring Committee will meet to consider developing alternative management measures for the 2015 fishing year based on existing or revised acceptable biological catch (ABC) as determined by the Council's Scientific and Statistical Committee (SSC).

DATES: The meeting will be held on Tuesday, September 30, 2014, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held via webinar with a listening station also available at the Council address below. Webinar link: *http://mafmc.adobeconnect.com/dogfish/.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Spiny dogfish management measures for the 2015 fishing year were established via rulemaking effective August 8, 2014. The Monitoring Committee will review and recommend existing or new management measures for the 2015 fishing year that will ensure that ABC for 2015 will not be exceeded. Currently specified management measures for spiny dogfish are available via the Council's Web site (*www.mafmc.org*).

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 8, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–21690 Filed 9–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Military Family Readiness Council (MFRC); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce a

Federal advisory committee meeting of the Department of Defense Military Family Readiness Council. This meeting will be open to the public.

DATES: Tuesday, October 7, 2014, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: Pentagon Conference Center B6 (escorts will be provided from the Pentagon Metro entrance).

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Yuko Whitestone, Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Telephones (571) 372–0880; (571) 372–0876 and/or email: OSD Pentagon OUSD P–R Mailbox Family Readiness Council *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held 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, as amended), and 41 CFR 102–3.150. The purpose of the Council meeting is to review and make recommendations to the Secretary of Defense regarding policy and plans; monitor requirements for the support of military family readiness by the Department of Defense; evaluate and assess the effectiveness of the military family readiness programs and activities of the Department of Defense.

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. Persons desiring to attend may contact Ms. Melody McDonald at 571–372–0880 or email OSD Pentagon OUSD P–R Mailbox Family Readiness Council *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* no later than 5:00 p.m., on Tuesday, September 30, 2014 to arrange for escort inside the Pentagon to the Conference Room area.

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 Council. Persons desiring to submit a written statement to the Council must notify the point of contact listed in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., on Tuesday, September 30, 2014.

The purpose of this meeting is to continue discussion of Military Family Readiness Council focus items for 2014.

Tuesday, October 7, 2014 Meeting agenda

Welcome & Administrative Remarks.

Introduction and discussion of Fiscal Year 2015 Military Family Readiness Council focus items.

Presentation, deliberation and voting on final recommendations for Fiscal Year 2014.

Closing Remarks.

Note: Exact order may vary.

Dated: September 8, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–21668 Filed 9–10–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement for Short-Term Projects and Real Property Master Plan Update for Fort Belvoir, Virginia

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announces the availability of the Draft Environmental Impact Statement (DEIS) for the proposed update of the Real Property Master Plan (RPMP) for Fort Belvoir, Virginia, which includes proposed short-term projects and long-term development. In accordance with the National Environmental Policy Act (NEPA), the DEIS analyzes the environmental impacts associated with the proposed short-term projects, long-term development, and anticipated land use changes designated in an updated RPMP. The short-term projects are proposed for implementation by 2017. The long-term development projects are proposed for implementation by 2030. The DEIS assesses potential environmental impacts associated with future development and management of land, facilities, resources, and infrastructure. The updated RPMP incorporates adjustments to the land use plan in the RPMP that were made in the Final EIS for the Implementation of 2005 Base Realignment and Closure (BRAC) Recommendations and Related Army Actions at Fort Belvoir, Virginia (2007) and BRAC-related changes made since 2007.

DATES: The public comment period will end 60 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Please send written comments to: Fort Belvoir Directorate of Public Works, Environmental and Natural Resources Division, Re: Real Property Master Plan EIS, 9430 Jackson Loop, Suite 200, Fort Belvoir, VA 22060–5116; or by email to *imcom.fortbelvoir.dpw.environmental@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: *Please contact:* Fort Belvoir Directorate of Public Works, Environmental and Natural Resources Division, (703) 806–3193 or (703) 806–0020, during normal working business hours, Monday through Friday, 8 a.m. to 4:00 p.m.; or by email to *imcom.fortbelvoir.dpw.environmental@us.army.mil.*

SUPPLEMENTARY INFORMATION: The RPMP and the DEIS focus on Fort Belvoir's Main Post (7,700 acres) and the Fort Belvoir North Area (800 acres, formerly called the Engineer Proving Ground). The RPMP update does not cover Fort Belvoir property at Rivanna Station in Charlottesville, VA; the Mark Center in Alexandria, VA; or the Humphreys Engineer Center, adjacent to Main Post.

The DEIS analyzes the environmental impacts of the short-term projects currently programmed for construction in fiscal years 2013 to 2017. These projects include new office buildings, community and recreational facilities, a Fisher House, industrial and maintenance facilities, roads, a new gate, and the National Museum of the U.S. Army. Some projects have already begun or have been completed; the cumulative impacts of these projects are analyzed in the DEIS.

The Army is also updating its RPMP for Fort Belvoir by analyzing the off-post and on-post environmental impacts of reasonably foreseeable future development. The DEIS assesses the potential direct, indirect, and cumulative environmental impacts associated with updating the RPMP to meet the Army's current and future planning needs. Additional site-specific NEPA analyses will be prepared, as required, for the short-term and long-term projects identified in the RPMP.

Four alternatives are analyzed in this DEIS: No Action, Full Implementation, Modified Long-Term, and Modified Short-Term. The alternatives reflect various scenarios for short-term and long-term development. Other alternatives are considered in the DEIS, but they were determined not to be reasonable and therefore not subject to further analysis.

(1) The No Action Alternative proposes maintaining current conditions and the 1993 RPMP (as amended in the 2007 BRAC EIS) would remain in effect. The workforce would remain near the post-BRAC, September,

2011 workforce of approximately 39,000.

(2) The Full Implementation Alternative (the Preferred Alternative) would implement the revised RPMP and all short-term and long-term projects. If the proposed short-term projects were completed as proposed under this alternative, approximately 5,000 employees would be added to the post's workforce by 2017. If the long-term development projects were completed as proposed under this alternative, an additional 12,000 employees would be added, bringing the total 2030 workforce to approximately 56,000.

(3) The Modified Long-Term Alternative proposes implementing the revised RPMP, all but two short-term projects proposed under the Full Implementation Alternative, and all but one of the long-term projects proposed under the Full Implementation Alternative. A proposed secure administrative campus on the Fort Belvoir North Area would not be built. Two of the short-term projects would be delayed to 2018 or later. Under this alternative, the total 2030 workforce would be approximately 50,000.

(4) The Modified Short-Term Alternative proposes implementing the revised RPMP, most of the short-term projects, and all of the long-term projects but most short-term projects would be delayed until after 2017. Under this alternative, the total 2030 workforce would be approximately 55,000.

Following issuance of the EIS Notice of Intent in September 2012, ''Short-Range Projects'' in the EIS title changed to ''Short-Term Projects'' to align with Unified Facilities Criteria 2–100–01,Installation Master Planning.

The DEIS evaluates the impacts of the alternatives on land use; socioeconomics, community facilities, and environmental justice; cultural resources; transportation and traffic; air quality; noise; geology, topography, and soils; water resources; biological resources; hazardous materials; utilities; and energy use and sustainability. The only resource that would sustain significant adverse impacts is transportation and traffic; impacts would be significant under all three action alternatives. Mitigation is identified for traffic impacts on Fort Belvoir and roadways in the vicinity of Fort Belvoir. While no significant adverse impacts are expected to biological resources, mitigations are proposed for tree removal.

All government agencies, special interest groups, and individuals are invited to attend the public meeting and/or submit their comments in writing. Information on the date, time and location of the public meeting will be published locally.

Copies of the DEIS are available at the: Van Noy Library, Fort Belvoir; John Marshall Library, Alexandria, VA; Sherwood Regional Library, Alexandria, VA; Chinn Park Library, Woodbridge, VA; Kingstowne Library, Alexandria, VA; and Lorton Library, Lorton, VA. The DEIS can also be viewed at the following Web site: *https://www.belvoir.army.mil/environdocssection9.asp*.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–21663 Filed 9–10–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement in Cooperation With the North Carolina Department of Transportation for Improvements to the US 70 Corridor Between the Town of LaGrange, Lenoir County and the Town of Dover, Jones County, NC, the Proposed Project Would Ultimately Serve as a Bypass to the Town of Kinston, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Division is issuing this notice to advise the public that a State of North Carolina funded Draft Environmental Impact Statement (DEIS) will be prepared for improvements to the transportation system starting near the intersection of US 70 and NC 903 near the Town of LaGrange, Lenoir County, heading east near the intersection of US 70 and Old US 70 (NCSR–1005) near the Town of Dover, Jones County, NC.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Tom Steffens, Regulatory Project Manager, Washington Regulatory Field Office, 2407 West 5th Street, Washington, NC 27889; telephone: (910) 251–4615 or Mr. Bob Deaton, Project Development Engineer, North Carolina Department of Transportation, 1548 Mail Service Center, Raleigh, NC 27699–1548, Telephone: (919) 707–6017.

SUPPLEMENTARY INFORMATION: The COE in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to make transportation improvements to the US 70 corridor between the Town of LaGrange, Lenoir County and the Town of Dover, Jones County, NC. The North Carolina Department of Transportation Improvement Program (TIP R–2553 US 70 Kinston Bypass) project will serve as a Geographic Information System (GIS) pilot project to test and evaluate streamlining the project development process by utilizing GIS data for alternative development, alternative analysis, and selection of the Least Environmentally Damaging Practicable Alternative (LEDPA).

The purpose of the US 70 Kinston Bypass project is to improve regional mobility, connectivity and capacity deficiencies on US 70 between LaGrange and Dover. The project study area is roughly bounded on the west by NC–903 and US 70 near LaGrange, on the north by the Lenoir/Greene County line, to the east near Dover and to the south at the Duplin/Lenoir County line.

This project is being reviewed through the Merger 01 process designed to streamline the project development and permitting processes, agreed to by the COE, North Carolina Department of Environment and Natural Resources (Division of Water Resources, Division of Coastal Management), Federal Highway Administration (for this project not applicable), North Carolina Department of Transportation and supported by other stakeholder agencies and local units of government. The other partnering agencies include: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; N.C. Wildlife Resources Commission; N.C. Department of Cultural Resources; and the Eastern Carolina Rural Planning Organization. The Merger process provides a forum for appropriate agency representatives to discuss and reach consensus on ways to facilitate meeting the regulatory requirements of Section 404 of the Clean Water Act during the NEPA/SEPA decision-making phase of transportation projects.

In June 2010 the project was presented to Federal and State Resource and Regulatory Agencies to gain concurrence on the purpose and need for the project. The aforementioned purpose and need of the project was agreed upon by participating agencies in October of 2010. In November 2011, the project was again presented to participating agencies regarding the preliminary corridor screening process in an attempt to decide which alternatives would be carried forward for detailed analysis. Multiple meetings throughout 2012 and 2013 revised the initial number of alternatives carried

forward for detailed analysis down to a reasonable range. In January of 2014, the final alternatives to carry forward were decided. Since 2011, the Corps has been working closely with NCDOT and its representatives to identify jurisdictional resources within the alternatives carried forward. This effort should be complete sometime in summer of 2014.

Three citizen informational workshops were held in Kinston for the US 70 Kinston Bypass project between 2010 and 2012. The February 23 and 25, 2010 meeting presented the overall project, the project team and project decision process. A total of 291 participants signed in, with 67 written comments received via general question survey. The September 20 and 21, 2011 meeting presented the potential route options to the public. A total of 172 participants signed in and 48 comments were received via general question survey. The May 15 and 17, 2012 meeting presented the alternatives selected for detailed study to the public. A total of 185 participants signed in and 54 comments were received via general question survey. There was no clear support or opposition to the project noted as a result of the surveys.

Environmental consequences: CEQ regulations (40 CFR 1502.16) state the EIS will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The EIS will assess a reasonable number of alternatives and identify and disclose the direct impacts of the proposed project on the following: Topography, geology, soils, climate, biotic communities, wetlands, fish and wildlife resources, endangered and threatened species, hydrology, water resources and water quality, floodplains, hazardous materials, air quality, noise, aesthetics, recreational resources, historical and cultural resources, socioeconomics, land use, public health and safety, energy requirements and conservation, natural or non-renewable resources, drinking waters, and environmental justice.

Secondary and cumulative environmental impacts: Cumulative impacts result from the incremental impact of the proposed action when added to past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes the action. Geographic Information System (GIS) data and mapping will be used to evaluate and quantify secondary and cumulative impacts of the proposed Project with particular emphasis given to wetlands and surface/groundwater resources.

Mitigation: CEQ regulations (40 CFR 1502.14, 1502.16, and 1508.20) require the EIS to include appropriate mitigation measures. The USACE has adopted, through the CEQ, a mitigation policy which embraces the concepts of ''no net loss of wetlands'' and project sequencing. The purpose of this policy is to restore and maintain the chemical, biological, and physical integrity of ''Waters of the United States,'' specifically wetlands. Mitigation of wetland impacts has been defined by the CEQ to include: avoidance of impacts (to wetlands), minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts (40 CFR 1508.20). Each of these aspects (avoidance, minimization, and compensatory mitigation) must be considered in sequential order. As part of the EIS, the applicant will develop a compensatory mitigation plan detailing the methodology and approach to compensate for unavoidable impacts to waters of the U.S. including streams and wetlands.

NEPA/SEPA Preparation and Permitting: Because the proposed project requires approvals from federal and state agencies under both the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA), a joint Federal and State Environmental Impact Statement (EIS) will be prepared. The U.S. Army Corps of Engineers will serve as the lead agency for the process. The EIS will serve as the NEPA document for the Corps of Engineers (404 permit) and as the SEPA document for the State of North Carolina (401 permit).

Based on the size, complexity, and potential impacts of the proposed project, the Applicant has been advised by the U.S. Army Corps of Engineers to identify and disclose the environmental impacts of the proposed project in an Environmental Impact Statement (EIS). Within the EIS, the Applicant will conduct a thorough environmental review, including an evaluation of a reasonable number of alternatives. After distribution and review of the Draft EIS and Final EIS, the Applicant understands that the U.S. Army Corps of Engineers in coordination with the North Carolina Department of Transportation will issue a Record of Decision (ROD) for the project. The ROD will document the completion of the EIS process and will serve as a basis for permitting decisions by federal and state agencies.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the US Army Corps of Engineers at the address provided above. The Wilmington District will periodically issue Public Notices soliciting public and agency comment on the proposed action and alternatives to the proposed action as they are developed.

Henry M. Wicker, Jr.,

Deputy Chief, Regulatory Division.

[FR Doc. 2014–21664 Filed 9–10–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0073]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Case Studies of the Implementation of Kindergarten Entry Assessments

AGENCY: Evaluation and Policy Development (OPEPD), Office of Planning, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 14, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0073 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the

Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Lee, 202–260–1463.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Case Studies of the Implementation of Kindergarten Entry Assessments.

OMB Control Number: 1875—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 95.

Total Estimated Number of Annual Burden Hours: 89.

Abstract: In the past decade, interest has increased in implementing Kindergarten Entry Assessments (KEAs) to better understand individual children's strengths and needs, plan instruction, pinpoint areas for program improvement and staff development, and evaluate the effectiveness of prekindergarten (PreK) programs to inform program planning and improvement. The purpose of the Kindergarten Entry Assessments implementation case studies is to document the processes, accomplishments, challenges, and solutions of four states implementing KEAs, and to share what state, district, and school personnel have learned with federal and state policymakers, and practitioners in the field. These findings will support the technical assistance efforts of the U.S. Department of Education (the Department) regarding the implementation of KEAs across the nation. This information collection consists of interview and observation protocols for case studies of the implementation of Kindergarten Entry Assessments in 24 schools within 12 districts within 4 states.

Dated: September 5, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–21592 Filed 9–10–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0130

Agency Information Collection Activities; Comment Request; Third Party Servicer Data Collection

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 10, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0130 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Third Party Servicer Data Collection.

OMB Control Number: 1845–NEW

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households, Private Sector, State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 600

Total Estimated Number of Annual Burden Hours: 750

Abstract: The Department of Education (ED) is seeking approval of a Third Party Servicer Data Collection form to be used to validate the information reported to ED by higher education institutions regarding third party servicers that administer one or more aspects of the administration of the Title IV, Higher Education Act of 1965, as amended, programs on an

institution's behalf and to collect additional information required for effective oversight of these entities.

Dated: September 8, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–21671 Filed 9–10–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, September 29, 2014, 8:30 a.m. to 6:00 p.m. Tuesday, September 30, 2014, 8:30 a.m. to 4:00 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary, High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290. Telephone: (301) 903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of the High Energy Physics research.

Tentative Agenda Items:

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment.(10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the Web site below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at: *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the Department of Energy's Office of High Energy Physics Advisory Panel Web site: (*http://science.energy.gov/hep/hepap/meetings/*).

Issued at Washington, DC, on September 5, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–21693 Filed 9–10–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Request for Information on Photovoltaic Reliability and Durability Research and Development

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

ACTION: Request for Information (RFI).

SUMMARY: The Department of Energy (DOE) today gives notice of a request for information on photovoltaic reliability and durability research and development. Photovoltaic modules are exposed to severe operating conditions involving temperature, thermal cycling, UV radiation, humidity, environmental weathering and soiling, electrical and other stresses. It is necessary to address the risk and uncertainty in photovoltaic performance due to these conditions in order to enable greater investor confidence, which ultimately can lead to lower financing costs and greater volume of installations. The DOE SunShot Program therefore requests information to determine fruitful areas of research and development that could lead to improved reliability and durability of photovoltaic modules, with the purpose of creating increased appetite for photovoltaic projects for investors, developers, integrators, and utilities.

The RFI document is posted at: *https://eere-exchange.energy.gov.*

DATES: Comments regarding this RFI must be received by Monday, October 6, 2014.

ADDRESSES: U.S. Department of Energy, 1000 Independence Ave., Washington, DC 20585, Attn: Marie Mapes.

The RFI document is posted at: *https://eere-exchange.energy.gov.*

FOR FURTHER INFORMATION CONTACT: Questions may be directed to—Marie Mapes at 202–586–3765 or by email at *marie.mapes@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The DOE SunShot Program currently believes that research is needed to establish correlation between photovoltaic module degradation mechanisms and module lifetime. The goal would be to correlate degradation mechanisms to basic material and device properties to develop early indicators and advanced predictive testing with physics based acceleration factors. Furthermore, degradation models validated by laboratory experimental data and correlations to field data from installed modules need to be developed to provide confidence in accelerated test conditions. The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders on issues related to photovoltaic reliability and durability research and development. The SunShot Program has identified a list of Questions and a list of Potential Topic Areas of Interest for comment. Feedback from respondents in these two sections will inform future programmatic activity in the area of photovoltaic module reliability and durability research and development.

The RFI document is posted at: *https://eere-exchange.energy.gov.*

Issued in Washington, DC, on August 28th, 2014.

Marie Mapes,

Acting Program Manager.

[FR Doc. 2014–21696 Filed 9–10–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–78–001.

Applicants: NRG Energy, Inc., NRG Yield, Inc.

Description: Request for Limited Modification of Quarterly Reporting Requirement of NRG Energy, Inc., et. al.
Filed Date: 9/3/14.
Accession Number: 20140903–5046.
Comments Due: 5 p.m. ET 9/24/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2718–018*; ER10–2719–018.*
Applicants: Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C.
Description: Notice of Non-Material Change in Status of the Linden MBR Sellers.
Filed Date: 9/2/14.
Accession Number: 20140902–5285.
Comments Due: 5 p.m. ET 9/23/14.

Docket Numbers: ER10–2757–004; ER10–2756–004; ER10–3301–004.
Applicants: GWF Energy LLC, Arlington Valley, LLC, Griffith Energy LLC.
Description: Notice of Non-Material Change in Status of Arlington Valley, LLC, et. al.
Filed Date: 9/3/14.
Accession Number: 20140903–5018.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2017–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing per 35: 2014–09–02_. FullNetworkModelCompliance to be effective 10/1/2014.
Filed Date: 9/2/14.
Accession Number: 20140902–5261.
Comments Due: 5 p.m. ET 9/23/14.

Docket Numbers: ER14–2415–001.
Applicants: Alta Wind VIII, LLC.
Description: Tariff Amendment per 35.17(b): MBR Tariff to be effective 9/4/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5043.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2605–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing per 35: 2014–09–02_Ameren Edwards Part 2 Compliance Filing to be effective 7/22/2014.
Filed Date: 9/2/14.
Accession Number: 20140902–5186.
Comments Due: 5 p.m. ET 9/23/14.

Docket Numbers: ER14–2755–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Filing of a Notice of Cancellation to be effective 7/25/2014.
Filed Date: 9/2/14.
Accession Number: 20140902–5254.
Comments Due: 5 p.m. ET 9/23/14.

Docket Numbers: ER14–2757–000.
Applicants: Westar Energy, Inc.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of certain designated Rate Schedules to be effective 1/1/2012.
Filed Date: 9/2/14.
Accession Number: 20140902–5264.
Comments Due: 5 p.m. ET 9/23/14.

Docket Numbers: ER14–2758–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): SGIA with Gettysburg Solar, LLC to be effective 9/4/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5000.
Comments Due: 5 p.m. ET 9/24/14.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH14–13–000.
Applicants: BBIP AIV, L.P., Upper Peninsula Power Holding Company, Balfour Beatty Infrastructure Partners, L.P.
Description: BBIP AIV, L.P., et. al. submits FERC 65–B Waiver Notification.
Filed Date: 9/2/14.
Accession Number: 20140902–5278.
Comments Due: 5 p.m. ET 9/23/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 3, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–21597 Filed 9–10–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1901–008.
Applicants: Upper Peninsula Power Company.
Description: Notice of No-Material Change in Status of Upper Peninsula Power Company.
Filed Date: 9/3/14.
Accession Number: 20140903–5097.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER10–2895–008*; ER11–2292–007; ER11–3942–006; ER11–2293–007; ER10–2917–008; ER11–2294–007; ER13–1613–001; ER10–2918–009; ER10–2920–008; ER11–3941–006; ER10–2921–008; ER10–2922–008; ER10–2966–008.*
Applicants: Bear Swamp Power Company LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Rumford Falls Hydro LLC.
Description: Second Supplement to December 30, 2013 Updated Market Power Analysis for the Northeast Region of the Brookfield Companies under ER10–2895, et. al.
Filed Date: 9/2/14.
Accession Number: 20140902–5295.
Comments Due: 5 p.m. ET 9/23/14.

Docket Numbers: ER14–2759–000.
Applicants: R.R. Donnelley & Sons Company.
Description: Initial rate filing per 35.12 R.R. Donnelley MBRA Application to be effective 11/2/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5061.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2760–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–9–3_SPS–NPEC–GSEC-Chaparral–675 0.0.0–Filing to be effective 9/4/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5086.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2761–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–09–03_SA 2693 NSP-Black Oak Wind Farm GIA (G858/H071) to be effective 9/4/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5089.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2762–000.
Applicants: Pine Bluff Energy, LLC.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule FERC No. 1 for Reactive Service to be effective 11/1/2014.

Filed Date: 9/3/14.

Accession Number: 20140903–5099.

Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2763–000.

Applicants: Westar Energy, Inc.

Description: Tariff Withdrawal per 35.15: Request for Cancellation of Schedule 3A & Balancing Area Services Agreement to be effective 12/1/2014.

Filed Date: 9/3/14.

Accession Number: 20140903–5109.

Comments Due: 5 p.m. ET 9/24/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 3, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–21598 Filed 9–10–14; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

[Public Notice 2014–6010]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 11–03, Used Equipment Questionnaire

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection will provide information needed to determine compliance and creditworthiness for transaction requests involving previously-owned equipment submitted to Ex-Im Bank under its insurance, guarantee, and direct loan programs. Information presented in this form will be considered in the overall evaluation of the transaction, including Export-Import Bank's determination of the appropriate term for the transaction.

The form can be viewed at: *http://www.exim.gov/pub/pending/eib11-03.pdf.*

DATES: Comments should be received on or before November 10, 2014, 2014 to be assured of consideration.

ADDRESSESES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Ms. Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 11–03, Used Equipment Questionnaire.

OMB Number: 3048–0039.

Type of Review: Regular.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests involving previously-owned equipment submitted to the Export Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public:

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 1,000.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 250 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 250 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $10,625 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $12,750.

Bonita Jones-McNeil,

Records Management Division, Office of the Chief Information Officer.

[FR Doc. 2014–21665 Filed 9–10–14; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2014–0041]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088514XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction. Comments received will be made available to the public.

DATES: Comments must be received on or before October 6, 2014, to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter *EIB–2014–0041* under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and *EIB–2014–0041* on any attached document.

Reference: AP088514XX.

Purpose and Use

Brief Description of the Purpose of the Transaction

To support the export of U.S.-manufactured commercial aircraft to Canada.

Brief Non-Proprietary Description of the Anticipated Use of the Items Being Exported

To be used for long-haul passenger air service between Canada and other countries. To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company.

Obligor: Air Canada.
Guarantor(s): Air Canada Rouge.

Description of Items Being Exported

Boeing 787 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Lloyd Ellis,

Program Specialist, Office of the General Counsel.

[FR Doc. 2014–21234 Filed 9–10–14; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2014–0042]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088514XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction. Comments received will be made available to the public.

DATES: Comments must be received on or before October 6, 2014 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter *[EIB–2014–0042] [OGC to insert Regulations.gov docket number]* under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and *[EIB–2014–0042]* on any attached document.

Reference: AP088514XX.

Purpose and Use

Brief Description of the Purpose of the Transaction

To support the export of U.S.-manufactured commercial aircraft to Canada.

Brief Non-proprietary Description of the Anticipated Use of the Items Being Exported

To be used for long-haul passenger air service between Canada and other countries. To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company.
Obligor: Air Canada.
Guarantor(s): N/A.

Description of Items Being Exported

Boeing 787 aircraft

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Lloyd Ellis,

Program Specialist, Office of the General Counsel.

[FR Doc. 2014–21235 Filed 9–10–14; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in the Commission's Business Opportunity Rule (''Rule''). That clearance expires on February 28, 2015.

DATES: Comments must be submitted by November 10, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Business Opportunity Rule Paperwork Comment, FTC File No. P114408'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/BusinessOptionRulePRA* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8528, Washington, DC 20580, (202) 326–3711.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Business Opportunity Rule, 16 CFR Part 437 (OMB Control Number 3084–0142).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The Business Opportunity Rule requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information relating to the seller, the seller's business, the nature of the proposed business opportunity, as well as additional information regarding any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims. These disclosure and recordkeeping requirements are subject to the PRA.

The Rule is designed to ensure that prospective purchasers of a business opportunity receive information that will help them evaluate the opportunity that is presented to them. Sellers must disclose five key items of information in a simple, one-page document:

- The seller's identifying information;
- whether the seller makes a claim about the purchaser's likely earnings (and, if the seller checks the ''yes'' box, the seller must provide information supporting any such claims);
- whether the seller, its affiliates or key personnel have been involved in certain legal actions (and, if yes, a separate list of those actions);
- whether the seller has a cancellation or refund policy (and, if yes, a separate document stating the material terms of such policies); and
- a list of persons who bought the business opportunity within the previous three years.

Misrepresentations and omissions are prohibited under the Rule, and for sales conducted in languages other than English, all disclosures must be provided in the language in which the sale is conducted.

PRA Burden Analysis

Subject to public comment to shed further light, the FTC retains its respondent population estimates from the PRA analysis tied to its 2011 final amendments to the Rule.[1] Thus, FTC staff estimates there are approximately 3,050 business opportunity sellers covered by the Rule, including vending machine, rack display, work-at-home, and other opportunity sellers. Staff also estimates that approximately 10% of the 3,050 business opportunity sellers covered by the Rule reflects an equal amount of new and departing business entrants (thus, for simplicity, staff assumes that, for a given year, there are 2,745 existing business opportunity sellers plus 305 new entrants to the field). Additionally, staff estimates that approximately 168 of business opportunity sellers market business opportunities in Spanish (in addition to English) and approximately 92 sellers market in languages other than English or Spanish [2] (in addition to English).

A. Estimated Hours Burden

The burden estimates for compliance will vary depending on the particular business opportunity seller's prior experience with the Rule. Commission staff estimates that the projected 2,745 existing business opportunity sellers will require no more than approximately two hours to update the disclosure document [5,490 total hours]. Staff further projects that the estimated 305 new business opportunity sellers will require no more than approximately five hours to develop the disclosure document [1,525 total hours]. Both existing and new business opportunity sellers will require approximately one hour to file and store records [3,050 total hours], for a cumulative total of 10,065 hours [5,490 hours + 1,525 hours + 3,050 hours] per year to meet the Rule's disclosure and recordkeeping requirements.

B. Estimated Labor Cost

Labor costs are determined by applying applicable wage rates to associated burden hours. Commission staff assumes that an attorney likely would prepare or update the disclosure document at an estimated hourly rate of $250. Accordingly, staff estimates that cumulative labor costs are $2,516,250 [10,065 hours × $250 per hour].

C. Estimated Non-Labor Costs:

1. Printing and Mailing of the Disclosure Document

Business opportunity sellers must also incur costs to print and distribute the single-page disclosure document, plus any attachments. These costs vary based upon the length of the attachments and the number of copies produced to meet the expected demand. Commission staff estimates that 3,050 business opportunity sellers will print and mail approximately 1,000 disclosure documents per year at a cost of $1.00 per document, for a total cost of $3,050,000. Conceivably, many business opportunity sellers will elect to furnish disclosures electronically; thus, the total cost could be much less.

2. Translating the Required Disclosures Into a Language Other Than English

The Rule requires that sellers update their disclosures. The costs associated with translating the disclosures will vary depending upon a business opportunity seller's prior experience with the Rule and the language the seller uses to market the opportunity. For example, existing and new business opportunity sellers marketing in Spanish will not incur costs to translate the disclosure document as Appendices A and B to the Rule provide, respectively, illustrations of the requisite disclosure documents in English and Spanish. Existing sellers, regardless of the non-English language used to present disclosures, may incur translation costs to update the document. New entrants that market business opportunities in languages other than English or Spanish (in addition to an assumed use of disclosure documents in English) will incur translation costs to translate Appendix A from English and to enter equivalent responses in these other languages.

As stated above, using assumptions informed by Census data (see footnote 2), FTC staff estimates that 168 sellers market business opportunities in Spanish and an additional 92 sellers market in languages other than English or Spanish. This includes an estimated 9 new entrants in the latter sub-category (based on the assumption that 10% yearly of a given group consists of new entrants with an equal offset for departing business entities). Those new entrants will incur initial translation

[1] 76 FR 76816, 76856 (Dec. 8, 2011).

[2] To estimate how many of the 3,050 sellers market business opportunities in languages other than English, FTC staff relies upon 2012 United States Census Bureau (''Census'') data. Calculations based upon this data reveal that approximately 5.5% of the United States population speaks Spanish or Spanish Creole at home and speaks English less than ''very well.'' Calculations based upon that same survey reveal that approximately 3.0% of the United States population speaks a language other than Spanish, Spanish Creole, or English at home and speak English less than ''very well.'' Staff thus projected that 5.5% of all entities selling business opportunities market in Spanish or Spanish Creole and 3.0% of all entities selling business opportunities market in languages other than English, Spanish and Spanish Creole. *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S1601&prodType=table.*

costs to draft a disclosure document consistent with Appendix A to the Rule.

There are 485 words in Appendix A to the Rule. Therefore, the total cost burden to translate the disclosure document for the 9 new business opportunity sellers marketing in a language other than English or Spanish will be approximately $764 [9 sellers × (17.5 cents [3] per word × 485 words)].

For purposes of this PRA analysis, staff assumes that both new and existing business opportunity sellers marketing business opportunities in languages other than English [260 sellers]: (1) are marketing in both English and another language; (2) are not incorporating any existing materials into their disclosure document; (3) have been the subject of civil or criminal legal actions; (4) are making earnings claims; (5) have a refund or cancellation policy; and (6) because of all of the above assumptions, require approximately 250 words (approximately one standard, double-spaced page) to translate their updates, in the case of existing business opportunity sellers, or supply and translate their initial disclosures, in the case of new business opportunity sellers. Therefore, the total cost to translate the updates or to translate from English the initial disclosures is approximately $11,375 [260 sellers × (17.5 cents per word × 250 words)].

Thus, cumulative estimated non-labor costs are $3,062,139 ($3,050,000 + $764 + $11,375).

Request for Comment:

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before November 10, 2014. Write ''Business Opportunity Rule Paperwork Comment, FTC File No. P114408'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . . '' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[4] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/BusinessOptionRulePRA* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Business Opportunity Rule Paperwork Comment, FTC File No. P114408'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 10, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–21685 Filed 9–10–14; 8:45 am]

BILLING CODE 6750–01–P

[3] Staff estimates that it will cost approximately 17.5 cents to translate each word into the language the sellers use to market the opportunities.

[4] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

FEDERAL TRADE COMMISSION

[File No. 122 3237]

Google Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 6, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/googleplayconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Google Inc.—Consent Agreement; File No. 122 3237'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/googleplayconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Duane Pozza, Bureau of Consumer Protection, (202–326–2042), 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade

Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 4, 2014), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 6, 2014. Write ''Google Inc.—Consent Agreement; File No. 122 3237'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/googleplayconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Google Inc.—Consent Agreement; File No. 122 3237'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 6, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Google Inc. (''Google'').

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Google bills consumers for charges related to activity within software applications (''apps'') that consumers download to their mobile devices from Google's Google Play store. This matter concerns Google's billing for charges incurred by children in apps that are likely to be used by children without having obtained the account holders' express informed consent.

The Commission's proposed complaint alleges that Google offers thousands of apps, including games that children are likely to play, and that in many instances, children can obtain virtual items within a game app that cost money. Google bills parents and other adult account holders for items that cost money within an app—''in-app charges.'' In connection with billing for children's in-app charges, Google in many instances did not request a password or other method to obtain account holder authorization. Currently, in connection with billing for children's in-app charges, Google only sometimes requests a parent's Google password. In many instances, once the password is entered, Google begins a thirty-minute window during which purchases can be made by children without further action by the account holder. During this process, Google in many instances has not informed account holders that password entry will approve a charge or initiate a thirty-minute window during which children using the app can incur charges without further action by the account holder. The Commission's proposed complaint alleges that, through these practices, Google often has failed to obtain parents' informed consent to charges incurred by children, which constitutes an unfair practice under Section 5 of the FTC Act.

The proposed order contains provisions designed to prevent Google from engaging in the same or similar acts or practices in the future. Part I of the proposed order requires Google to obtain express, informed consent to in-app charges before billing for such charges, and to allow consumers to revoke consent to prospective in-app charges at any time. As defined in the proposed order, express, informed consent requires an affirmative act communicating authorization of an in-app charge (such as entering a password), made proximate to both an in-app activity for which Google is

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

billing a charge and a clear and conspicuous disclosure of material information about the charge. Under the definition, the act and disclosure must be reasonably calculated to ensure that the person providing consent is the account holder (as opposed to the child). The proposed order would require the disclosure to appear at least once per mobile device.

Part II of the proposed order requires Google to provide full refunds to Google account holders who have been billed by Google for unauthorized in-app charges incurred by minors, for a year following entry of the order. If Google's refunds total less than $19 million, Google will remit any remaining balance to the Commission to be used for informational remedies, further redress, or payment to the U.S. Treasury as equitable disgorgement. To effectuate refunds, Google must send an electronic notice to its consumers that clearly and conspicuously discloses the availability of refunds and instructions on how to obtain such refunds. Within 30 days of the end of the one-year redress period, Google must provide the Commission with records of refund requests, refunds paid, and any refunds denied.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III of the proposed order requires Google to maintain and upon request make available certain compliance-related records, including certain consumer complaints and refund requests, for a period of five years. Part IV is an order distribution provision that requires Google to provide the order to current and future principals, officers, and corporate directors, as well as current and future managers, employees, agents, and representatives who participate in certain duties related to the subject matter of the proposed complaint and order.

Part V requires Google to notify the Commission of corporate changes that may affect compliance obligations within 14 days of such a change. Part VI requires Google to submit a compliance report 90 days after entry of the order. It also requires Google to submit additional compliance reports within 10 business days of a written request by the Commission. Part VII is a provision ''sunsetting'' the order after 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission, Commissioner Wright recused.

Donald S. Clark,

Secretary.

[FR Doc. 2014–21621 Filed 9–10–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct; Correction

AGENCY: Office of the Secretary, HHS

ACTION: Correction of notice.

SUMMARY: This document corrects errors that appeared in the notice published in the July 30, 2014, **Federal Register** entitled ''Findings of Research Misconduct.''

DATES: *Effective Date:* September 11, 2014.

Applicability Date: The correction notice is applicable for the Findings of Research Misconduct notice published on July 30, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Gorirossi at 240–453–8800.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2014–17889 of July 30, 2014 (79 FR 44171–44172), there is an error in the grant information. The error is identified and corrected in the Correction of Errors section below.

II. Correction of Errors

In FR Doc. 2014–17889 of July 30, 2014 (79 FR 44171–44172), make the following corrections:

1. On page 44171, third column, second paragraph, change ''National Institute of Dental and Craniofacial Research (NIDCR), National Institutes of Health (NIH), grants R01 DC001622 and R01 DC004842'' in the last five lines of the paragraph to read ''National Institute on Deafness and Other Communication Disorders (NIDCD), National Institutes of Health (NIH), grants R01 DC001662 and R01 DC004842.''

Dated: August 26, 2014.

Donald Wright,

Acting Director, Office of Research Integrity.

[FR Doc. 2014–21284 Filed 9–10–14; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Oncology Models Forum.

Date: October 21, 2014.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W530, Bethesda, MD 20892–9750, 240–276–6442 *ss537t@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda 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: September 5, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21594 Filed 9–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2011–0008]

Aviation Security Advisory Committee (ASAC) Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee Management; Notice of Partially Closed Federal Advisory Committee Meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Aviation Security Advisory Committee (ASAC) on Friday, October 3, 2014, to discuss issues listed in the ''Meeting Agenda'' section below. This meeting will be partially closed to the public to protect transportation and national security.

DATES: The Committee will meet on Friday, October 3, 2014, from 9:00 a.m. to 12:00 p.m. The open portion of the meeting will start at 10:30 a.m. This meeting may end early if all business is completed.

ADDRESSES: The meeting will be held at the Transportation Security Administration Headquarters, 601 12th Street South, Arlington, VA 20598–6028.

We invite your comments on the items listed in the ''Meeting Agenda'' section below. You may submit comments on these items, identified by the TSA docket number to this action (Docket No. TSA–2011–0008), to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written 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 20590–0001; fax (202) 493–2251. The Department of Transportation (DOT), which maintains and processes the TSA's official regulatory dockets, will scan the submission and post it to FDMS.

For other applicable information on the meeting, comment submissions, facilities, or services, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Dean Walter, Aviation Security Advisory Committee Designated Federal Officer, Transportation Security Administration (TSA–28), 601 South 12th Street, Arlington, VA 20598–6028, *Dean.Walter@dhs.gov,* 571–227–2645.

SUPPLEMENTARY INFORMATION:

Comments Invited

The Transportation Security Administration invites interested persons to participate in this action by submitting written comments, data, or views on the issues to be considered by the committee as listed in the ''Meeting Summary'' section below. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from the agenda items to be discussed at the meeting. See **ADDRESSES** above for information on where to submit comments.

Please identify the docket number at the beginning of your comments. The Transportation Security Administration encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

The Transportation Security Administration will file all comments to our docket address, as well as items sent to the address or email under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and Sensitive Security Information (SSI),[1] as that term is defined under 49 U.S.C. 114(r) and 49 CFR part 1520. Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. All comments, however, will become part of the committee record. The docket is available for public inspection before and after the comment closing date. Submit comments by September 26, 2014, on issues listed in the ''Meeting Agenda'' section below.

Handling of Confidential or Proprietary Information and Sensitive Security Information Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

The Transportation Security Administration will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552) and DHS's Freedom of Information Act regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://DocketInfo.dot.gov.*

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE., Washington, DC 20590.

Availability of Committee Documents

You can get an electronic copy using the Internet by—

(1) Searching for the key words ''Aviation Security Advisory Committee'' on the electronic Federal Docket Management System Web page at *http://www.regulations.gov;* or

(2) Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

Summary

Notice of this meeting is given under section 10(a)(2) of the Federal Advisory Committee Act, (FACA), 5 U.S.C. App. (Pub. L. 92–463). The Aviation Security Advisory Committee operates under the authority of 6 U.S.C. 451 and provides advice and recommendations for improving aviation security measures to the Administrator of TSA.

For the closed portion of the meeting, the ASAC will receive SSI briefings on aviation threat intelligence and changes to passenger screening procedures. The second portion of the meeting will be open to the public and will focus on items listed in the ''Meeting Agenda'' section below. Members of the public and all non-ASAC members and staff must register in advance with their full name to attend. Due to space constraints the meeting is limited to 75 people, including ASAC members and staff, on a first to register basis. Attendees are required to present government-issued photo identification to verify identity.

In addition, members of the public must make advance arrangements, as stated below, to present oral or written statements specifically addressing issues pertaining to the items listed in the ''Meeting Agenda'' section below. The public comment period will begin at 11:30 a.m., depending on the meeting progress. Speakers are requested to limit their comments to three minutes. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than September 26, 2014, to register to attend the meeting and/or to present oral or written statements addressing issues pertaining to the items listed in the ''Meeting Agenda'' section below. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Basis for Closure

In accordance with sec. 10(d) of the Federal Advisory Committee Act (FACA), TSA has determined that this meeting requires partial closure. The meeting will be closed to the public in accordance with the provisions set forth under 5 U.S.C. 552b(c)(3), (c)(7)(E)–(F) and (c)(9)(B), as amended.

The briefing will include SSI, as that term is defined under 49 U.S.C. 114(r) and 49 CFR part 1520.[2] SSI includes information that if released would be detrimental to the security of transportation, and therefore may not be disclosed to the general public. Accordingly, this portion of the meeting is closed under 5 U.S.C. 552b(c)(3). During the course of the partially closed meeting the ASAC will be providing SSI briefings on aviation threat intelligence and recent passenger screening procedure changes. There will be material presented regarding the latest viable threats against U.S. aviation security and how the TSA plans to address those threats using a risk-based security framework. Further, providing this information to the public could provide terrorists with a road map regarding TSA's and DHS's plans to counter their actions, and thus allow them to take different actions to avoid counterterrorism measures.

Under 5 U.S.C. 552b(c)(7)(E)–(F), disclosure of this information could reveal investigative techniques and procedures not generally available to the public, allowing those with interests against the United States to circumvent the law, thereby endangering the life or physical safety of law enforcement personnel. Additionally, premature disclosure of this information would be likely to significantly frustrate the successful implementation of measures designed to counter terrorist acts. See 5 U.S.C. 552b(c)(9)(B). Accordingly, partial closure of the October 3, 2014, ASAC meeting is warranted under 5 U.S.C. 552b(c)(3), (c)(7)(E)–(F) and (c)(9)(B), as amended.

Meeting Agenda

The Committee will meet to discuss items listed in the agenda below (documents are available in the Supporting Documents section at *http://www.regulations.gov/?sms_ss=facebook&at_xt=4d7d8d1ac93bd073,0#!docketDetail;D=TSA-2011-0008*):

- Aviation threat briefing (closed)
- Security procedure changes (closed)
- Subcommittee briefing on key issues and areas of focus for committee term (2014–2015) (open):
  - Commercial airports
  - International aviation
  - Air cargo
  - General aviation
- Future committee meetings (open)

Dated: September 5, 2014.

Eddie D. Mayenschein,

Assistant Administrator, Office of Security Policy and Industry Engagement.

[FR Doc. 2014–21611 Filed 9–10–14; 8:45 am]

BILLING CODE 9110–05–P

[2] *Id.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–74]

30-Day Notice of Proposed Information Collection: Continuation of Interest Reduction Payments After Refinancing Section 236 Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 14, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street

SW., Washington, DC 20410; email at *Colette Pollard* @hud.gov or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 16, 2014.

A. Overview of Information Collection

Title of Information Collection: Continuation of Interest Reduction Payments After Refinancing Section 236 Projects.

OMB Approval Number: 2502–0572.

Type of Request: Revision of currently approved collection.

Form Numbers:

HUD–93173 Agreement for Interest Reduction Payments (§ 236(e)(2).
HUD–93175 Agreement for Interest Reduction Payments (§ 236(b).
HUD–93174 Use Agreement (§ 236(e)(2).
HUD–93176 Use Agreement (§ 236(b).

Description of the need for the information and proposed use: The purpose of this information collection is to preserve low-income housing units. HUD uses the information to ensure that owners, mortgagees and or public entities enter into binding agreements for the continuation of Interest Reduction Payments (IRP) after refinancing eligible Section 236 projects. HUD has created an electronic application for eligible projects to retain the IRP benefits after refinancing.

Respondents (i.e. affected public): Profit motivated or non-profit owners of Section 236 projects.

Estimated Number of Respondents: 875.

Estimated Number of Responses: 1750.

Frequency of Response: 1.

Average Hours per Response: 1 hour.

Total Estimated Burdens: 1750.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 5, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–21635 Filed 9–10–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5753–N–06]

60-Day Notice of Proposed Information Collection: Continuum of Care Homeless Assistance Grant Application—Continuum of Care Registration

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Diane Schmutzler, Special Needs Assistance Programs (SNAPS). Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Diane Schmutzler at and *diane.m.schmutzler@hud.gov* or telephone 202–402–4385. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Schmutzler.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Continuum of Care Homeless Assistance Grant Application—Continuum of Care Registration.

OMB Approval Number: 2506–0182.

Type of Request: Revision of a currently approved collection.

Form Number: Not Applicable.

Description of the need for the information and proposed use: The regulatory authority to collect this information is contained in 24 CFR part 579, and the HEARTH Act. The CoC Homeless Assistance Application Registration (OMB 2506–0182) is the first part of the information collection process to be used in HUD's annual competitive homeless assistance program, the CoC Program, authorized by the HEARTH Act. It is separate from the annual CoC Homeless Assistance Consolidated Application, which contains the CoC Application and the Project Applications that are covered under the approved PRA package 2506–0112. This separation is necessary due in to the fact that the CoC Registration occurs several months before collection of the CoC Homeless Assistance Consolidated Application and that the information collected during CoC Registration does not frequently change.

The annual CoC Registration comprises the first phase of the combined CoC Homeless Assistance information collection form. During this phase, HUD collects the contact information of the collaborative applicant for the CoC, and the HMIS Lead Agency as well as the geographic areas served by the CoC applicant.

Additionally, CoCs approve their preliminary pro-rata need and affirm their annual renewal demand, and HUD collects information regarding the CoC's board structure and the capacity of the CoC to carry out the various activities outlined in the program regulations. The registration information is necessary to assist in the selection of project proposals submitted to HUD (by State and local governments, public housing authorities, and nonprofit organizations) for the awarded funds during the annual CoC competition because it provides vital information about the CoC applicants.

All collaborative applicants are required to register their CoCs in the e-snaps electronic grants management system prior to the opening of the CoC Homeless Assistance competition. The registration requirements include a basic description of the CoC's lead organization, contact information, and geographic area. The information to be collected by HUD will be used to determine eligibility for CoC Homeless Assistance and establish grant amounts. To determine the total amount a CoC may request for renewal funding, collaborative applicants will list their Continuum's programs on a Grant Inventory Worksheet (GIW) that will allow HUD to accurately assess individual project applications during the CoC Application process. The information from the GIW is essential for operation of the CoC competition. For the CoC, the GIW allows each CoC to see all the project grants side-by-side that will be eligible for competition in the annual competition. This then allows them to determine, in communication with HUD, the total amount of funding (the annual renewal demand or ARD) that their CoC has available in a given competition year, which then allows them to make informed planning decisions about which project grants they want to prioritize, reduce or eliminate in the actual CoC Homeless Assistance Program Application. In turn, the program details in the GIW allow HUD to conduct an accurate assessment of renewal project applications and to determine in the aggregate what the total renewal demand for all CoCs will likely be. HUD can then determine how much of the annual appropriation will be available for new projects (once all the funding for renewals is covered), or in years of budget shortages, how much CoCs will be advised to cut from their total funding to meet the amount of funds available.

The optional board requirement questions in the registration forms are an important part of the registration process. To meet the performance goals established by statute, CoCs will need to significantly increase their capacity for strategy, planning, monitoring, and evaluation. In addition, the HEARTH Act and the 24 CFR part 578 allow for the development of United Funding Agencies (UFAs), a significant change to the structure of the CoC and the relationship between HUD and grantees. For the CoCs that seek UFA status, they must demonstrate that they have the operational capacity and a high functioning CoC Board that can serve as the sole manager of their projects, in order to qualify. With UFA established by statute and regulation, HUD needs as much information as possible regarding the baseline operational readiness of CoCs, and the few CoCs that may apply as a UFA will need to provide more information during the Registration process. As recently as the FY2013 competition, only 16 CoCs applied for UFA status, three were conditionally approved, and ultimately only two met the high standards of management and organizational capacity needed to serve this function. Providing all CoCs with the option of reporting their Board status will allow HUD to prepare for UFA applications and estimate how our program resources will need to be allocated over the next few years of program implementation.

Respondents (i.e. affected public): States, local governments, private nonprofit organizations, public housing authorities, and community mental health associations that are public nonprofit organizations.

Estimated Number of Respondents: 410 Respondents.

Estimated Number of Responses: 410 responses per year.

Frequency of Response: Once a year.

Average Hours per Response: Two to three hours per response (two for most applicants and three for UFA applicants).

Total Estimated Burdens: 840 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 3, 2014.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2014–21634 Filed 9–10–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–N172; FXES11130200000F5–145–FF02ENEH00]

Emergency Exemption; Issuance of Emergency Permits to Survey for New Mexico Meadow Jumping Mouse Within Arizona, Colorado, and New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of endangered species emergency permits.

SUMMARY: The final rule to list the New Mexico meadow jumping mouse as endangered throughout its range in New Mexico published in the **Federal Register** on June 10, 2014. Without authorized personnel to survey for this species, valuable information on population numbers for this elusive species would be lost for the 2014 field season. Under an Endangered Species Act permit, we, the U.S. Fish and Wildlife Service have authorized qualified researchers to survey for New Mexico meadow jumping mouse during its survey season of July and August 2014.

ADDRESSES: Documents and other information concerning the permit are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 6034, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION: The final rule to list the New Mexico meadow jumping mouse (*Zapus hudsonicus luteus*) as endangered throughout its range in New Mexico published in the **Federal Register** on June 10, 2014 (79 FR 33119). Without authorized personnel to survey for this species, valuable information on population numbers for this elusive species would be lost for the 2014 field season. Under permits pursuant to the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), we have authorized qualified researchers to survey for New Mexico meadow jumping mouse during its survey season of July and August 2014.

Since 2005, there have been 29 documented remaining populations (2 in Colorado, 15 in New Mexico, and 12 in Arizona) spread across eight geographic management areas. Nearly all of these populations are isolated and widely separated, and all have patches of suitable habitat that are too small to support resilient populations of the mouse. Since 2005, four of the eight geographic management areas have two or more locations known to be occupied by the jumping mouse, but all are too small to support resilient populations. The remaining four areas have only one location known to be occupied since 2005, and each population is too small to be resilient. Due to the small population size estimates, surveys are needed to determine actual numbers.

The New Mexico meadow jumping mouse is a small mammal that hibernates about 8 or 9 months out of the year—longer than most mammals—and is only active 3 or 4 months during the summer. Within this short time frame, it must breed, birth, raise young, and store up sufficient fat reserves to survive the next year's hibernation period. In addition, the species only lives up to 1 years and has one litter annually, with seven or fewer young. As a result, if resources are not available in a single season, populations are greatly stressed.

The species' historical distribution likely included riparian wetlands along streams in the Sangre de Cristo and San Juan Mountains, from southern Colorado to central New Mexico, including the Jemez and Sacramento Mountains and the Rio Grande Valley from Espanola to Bosque del Apache National Wildlife Refuge, and into parts of the White Mountains in eastern Arizona.

Permit TE–40088B

Applicant: Jennifer Frey, Radium Springs, New Mexico.

We approved the applicant's request for a new permit for research and recovery purposes to conduct presence/absence surveys of New Mexico meadow jumping mouse within New Mexico, Arizona, and Colorado.

Permit TE–40886B

Applicant: Jennifer Zahratka, Durango, Colorado.

We approved the applicant's request for a new permit for research and recovery purposes to conduct presence/absence surveys of New Mexico meadow jumping mouse within Colorado and New Mexico.

Permit TE–676811

Applicant: U.S. Fish and Wildlife Service, Southwest Region, Albuquerque, New Mexico.

We approved the applicant's request for an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of New Mexico meadow jumping mouse within Arizona, Colorado, and New Mexico.

These emergency permits are issued for the sole purpose of facilitating presence/absence surveys for the 2014 survey season. Any further authorization for surveys or research of the New Mexico meadow jumping mouse will be processed separately.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 21, 2014.

Joy E. Nicholopoulos,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 2014–21659 Filed 9–10–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–N181; FXES11130200000–145–FF02ENEH00]

Receipt of an Incidental Take Permit Application for Participation in the Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act, as amended (Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit application for take of the federally listed American burying beetle resulting from activities associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities in Oklahoma. If approved, the permit would be issued under the approved *Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP).

DATES: To ensure consideration, written comments must be received on or before October 14, 2014.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the permit number when requesting documents or submitting comments.

○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

○ *Electronically: fw2_hcp_permits@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at Environmental Review, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505–248–6651.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.;* Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit (ITP) application for take of the federally listed American burying beetle (*Nicrophorus americanus*) resulting from activities associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities in Oklahoma. If approved, the permit would be issued to the applicant under the *Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). The ICP was made available for comment on April 16, 2014 (79 FR 21480), and approved on May 21, 2014 (publication of the FONSI notice was on July 25, 2014, 79 FR 43504). The ICP and the associated environmental assessment/finding of no significant impact are available on the Web site at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these documents.

Applications Available for Review and Comment

We, the U.S. Fish and Wildlife Service, invite local, State, Tribal, and Federal agencies, and the public to comment on the following application under the ICP, for incidental take of the federally listed American burying beetle (*Nicrophorus americanus;* ABB). Please refer to the appropriate permit number (Permit No. TE–43609B) when requesting application documents and when submitting comments. Documents and other information the applicants have submitted with this application are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–43609B

Applicant: Enbridge Energy, Limited Partnership, Duluth, MN.

Applicant requests a new permit for oil and gas pipeline maintenance, operation, and repair within Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: September 4, 2014.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2014–21660 Filed 9–10–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO3200000.L13300000.PO0000; OMB Control Number 1004–0103]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from those who seek to obtain mineral materials from public lands. OMB has assigned control number 1004–0103 to this collection.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration written comments should be received on or before October 14, 2014.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0103), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov.* Please provide a copy of your comments to the BLM via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management,1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: To Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0103'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: George Brown, Division of Solid Minerals, at 202–912–7118. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to leave a message for Mr. Brown. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obligated to respond. OMB regulations at 5 CFR 1320.8(d) and 1320.12(a) require Federal agencies to seek public comment on information collection and recordkeeping activities.

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on April 14, 2014 (79 FR 18309) and the comment period closed on June 2, 2014. The BLM received one public comment. The comment was a general invective about the Federal government, the Department of the Interior, the BLM, and Federal employees. It did not address, and was not germane to, this information collection. Therefore, we have not changed the collection in response to the comment.

The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES**. Please refer to OMB Control Number 1004–0103 in your correspondence. 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 following information is provided for the information collection:

Title: Mineral Materials Disposal (43 CFR part 3600).

OMB Control Number: 1004–0103.

Type of Review: Extension of a currently approved information collection.

Abstract: The Mineral Materials Act, 30 U.S. C. 601 and 602, authorizes disposals of mineral materials (such as sand, gravel, and petrified wood) from public lands. This information

collection request pertains to mineral sales contracts in accordance with regulations at 43 CFR part 3600. Form 3600–9 (Contract for the Sale of Mineral Materials) is the only form currently approved by OMB under control number 1004-0103.

Frequency of Collection: On occasion. Responses are required in order to obtain or retain a benefit.

Form:

• Form 3600–9, Contract for the Exclusive Sale of Mineral Materials.

Estimated Annual Burden Hours: 19,714.

Estimated Annual Responses: 3,105.

Estimated Annual Non-hour Burden Cost: $104,345.

The estimated burdens are itemized in the following table:

Type of response	Number of responses	Time per response	Total hours (column B × column C)
A.	B.	C.	D.
Pre-Application Sampling and Testing 43 CFR 3601.30	30	30 minutes	15
Request for Sale Not Within a Community Pit or Common Use Area 43 CFR 3602.11	205	30 minutes	103
Request for Sale Within a Community Pit or Common Use Area 43 CFR 3602.11	360	30 minutes	180
Mining and Reclamation Plans (Simple) 43 CFR 3601.40	200	2 hours	400
Mining and Reclamation Plans (Complex) 43 CFR 3601.40	50	30 hours	1,500
Contract for the Sale of Mineral Materials 43 CFR subpart 3602 Form 3600–9	565	30 minutes	283
Performance Bond 43 CFR 3602.14	565	30 minutes	283
Payments 43 CFR 3602.21 and 3602.29	565	15 hours	8,475
Records Maintenance 43 CFR 3602.28	565	15 hours	8,475
Totals	3,105		19,714

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2014–21684 Filed 9–10–14; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTM00000.L111100000.XP0000 14XL1109AF MO#4500070265]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Central Montana Resource Advisory Council Meeting will be held October 7–8, 2014 in Fort Benton, Montana. The October 7 meeting will begin at 10:00 a.m. with a 30-minute public comment period and will adjourn at 5:00 p.m. The October 8 meeting will begin at 8:00 a.m. with a 30-minute public comment period beginning at 10:00 a.m. and will adjourn at 12:00 p.m.

ADDRESSES: Grand Union Hotel, 1 Grand Union Square, Fort Benton, Montana 59442, (406) 622–1882.

FOR FURTHER INFORMATION CONTACT: Mark Albers, HiLine District Manager, Great Falls Field Office, 1101 15th Street North, Great Falls, MT 59401, (406) 791–7789, *malbers@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior, through the BLM, on a variety of management issues associated with public land management in Montana. During these meetings the council is scheduled to participate in/discuss/act upon these topics/activities: a roundtable discussion among council members and the BLM; orientation of new members; report on Chairpersons meeting; update on litigations; Greater Sage-grouse and Lewistown RMP updates; DOI Yellowstone Bison Report; Bullwhacker Access Proposal and District Managers' updates. All RAC meetings are open to the public.

Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Authority: 43 CFR 1784.4–2.

Mark K. Albers,

HiLine District Manager.

[FR Doc. 2014–21658 Filed 9–10–14; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC00000.14XL1109AF.L10100000. MU0000.241A0;4500066014]

Third Call for Nominations for the Coeur d'Alene Resource Advisory Committee, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for the Bureau of Land Management (BLM) Coeur d'Alene Resource Advisory Committee (RAC) that has member terms expiring this year. The RAC provides advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within the respective geographic area. For 30 days after the publication of this notice, the BLM will accept public nominations for positions in Category One—holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation.

DATES: All nominations must be received no later than October 14, 2014.

ADDRESSES: 3815 Schreiber Way, Coeur d'Alene, ID 83815

FOR FURTHER INFORMATION CONTACT: Suzanne Endsley, U.S. Department of the Interior, Bureau of Land

Management, Coeur d'Alene District Public Affairs Officer, 3815 Schreiber Way, Coeur d'Alene, ID 83815, 208–769–5004.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office, employees of a State agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Idaho. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations for the RAC:

—Letters of reference from represented interests or organizations;
—A completed Resource Advisory Council application; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM Idaho state office will issue a press release providing additional information for submitting nominations, with specifics about the number and categories of member positions available for the RAC. If you have already submitted your RAC nomination materials for 2014 you will not need to resubmit. Nominations for the Coeur d'Alene RAC should be sent to the appropriate BLM office as noted below:

Idaho

Coeur d'Alene RAC, Suzanne Endsley, BLM Coeur d'Alene District Office, 3815 Schreiber Way, Coeur d'Alene, ID 83835, 208–769–5004.

Authority: 43 CFR 1784.4–1.

Timothy M. Murphy,
Acting Idaho State Director.

[FR Doc. 2014–21641 Filed 9–10–14; 8:45 am]
BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Consumer Electronics and Display Devices with Graphics Processing and Graphics Processing Units Therein, DN 3030;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [1], and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC* [2]. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [3]. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of NVIDIA Corporation on September 4, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain consumer electronics and display devices with graphics processing and graphics processing units therein. The complaint names as respondents Samsung Electronics Co., Ltd. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; Samsung Telecommunications America, LLC of Richardson, TX; Samsung Semiconductor, Inc. of San Jose, CA and Qualcomm, Inc. of San Diego, CA. The complainant requests that the Commission issue an exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3030'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS* [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: September 5, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21579 Filed 9–10–14; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–917]

Certain Silicon Tuners and Products Containing Same, Including Television Tuners; Commission Determination Not To Review an Initial Determination Terminating the Investigation as to the Remaining Respondents; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 6) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to the remaining respondents Hauppauge Digital, Inc. and Hauppauge Computer Works, Inc., both of Hauppauge, New York; PCTV Systems S.a.r.l. of Braunschweig, Germany; and PCTV Systems S.a.r.l., Luxembourg of Thyes, Luxembourg (collectively, ''Hauppauge Computer''), based on a settlement agreement. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 11, 2014, based on a complaint filed on behalf of Silicon Laboratories Inc. (''Silicon Labs'') of Austin, Texas. 79 FR 33595–96. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon tuners and products containing same, including television tuners, by reason of infringement of certain claims of U.S. Patent Nos. 6,137,372 and 6,233,441. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents Hauppauge Computer and Cresta Technology Corporation (''CrestaTech'') of Santa Clara, California. *See* 79 FR 33596. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *Id.*

On July 24, 2014, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 3) terminating the investigation as to CrestaTech based on a consent order stipulation, and issued the consent order. On August 6, 2014, complainant and Hauppauge Computer jointly moved for termination of the investigation as to the remaining respondents based on a settlement agreement. OUII supported the motion.

The ALJ issued the subject ID on August 8, 2014, granting the joint motion for termination of the investigation. He found that the motion for termination satisfies Commission rules 210.21(a)(2), (b)(1). The ALJ also found that there is no indication that termination of the investigation in view of the settlement agreement would have an adverse impact on the public interest. No party petitioned for review of the ID. The Commission has determined not to review the ID and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: September 5, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21581 Filed 9–10–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States, et al.* v. *Trans Energy, Inc.,* Civil Action No. 5:14–cv–00117–FPS, was lodged with the United States District Court for the Northern District of West Virginia on September 2, 2014.

This proposed Consent Decree concerns a complaint filed by the United States and the State of West Virginia against Trans Energy, Inc. pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), the West Virginia Water Pollution Control Act, W. Va. Code § 22–11–22, and the West Virginia Dam Control and Safety Act, W. Va. Code Chapter 22, Article 14, to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas, perform mitigation, implement a compliance program, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to: Amanda Berman, Trial Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044, and refer to *United States, et al.* v. *Trans Energy, Inc.,* Civil Action No. 5:14–cv–00117–FPS, DJ # 90–5–1–1–19980.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of West Virginia, 500 West Pike Street, Room 301, Clarksburg, WV 26302. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2014–21672 Filed 9–10–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Chattem Chemicals, Inc.

Correction

In notice document 2014–21062 appearing on page 52764 in the issue of Thursday, September 4, 2014, make the following correction:

In the second column, in the table, below the fourth row, insert the following row:

Methamphetamine (1105)	II

[FR Doc. C1–2014–21062 Filed 9–10–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance–Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Mid River Terminal, LLC Osceola, Arkansas.

Principal Product/Purpose: The loan, guarantee, or grant application will be used for a new business venture to purchase equipment, provide working capital, fund USDA Guaranty Fees, bank origination fees, professional fees and closing costs for an embedded material handling business at the Big River Steel Plant in Osceola, Arkansas. The business will independently handle all off and on loading of steel at the plant. The NAICS industry code for this enterprise is: 488999. This U.S. industry comprises establishments primarily engaged in providing support activities to transportation (except for air transportation; rail transportation; water transportation; road transportation; freight transportation arrangement; and packing and crating) Pipeline terminal facilities, independently operated.

DATES: All interested parties may submit comments in writing no later than September 25, 2014. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210; or email *Dais.Anthony@dol.gov;* or transmit via fax (202)693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202)693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Portia Wu,

Assistant Secretary for Employment and Training, Administration, Labor.

[FR Doc. 2014–21458 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance–Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Thomasville Regional Medical Center, LLC, Thomasville, Alabama.

Principal Product/Purpose: The loan, guarantee, or grant application will be used to: cover loan origination and building construction costs for a new hospital in Thomasville, Alabama. The NAICS industry code for this enterprise is: 622110. This industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services.

DATES: All interested parties may submit comments in writing no later than September 25, 2014. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210; or email *Dais.Anthony@dol.gov;* or transmit via fax (202)693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202)693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Portia Wu,

Assistant Secretary for Employment and Training Administration, Labor.

[FR Doc. 2014–21459 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 22, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 22, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of August 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX—13 TAA PETITIONS INSTITUTED BETWEEN 8/11/14 AND 8/15/14

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
83367	Pixel Corporation, (State/One-Stop)	Woodland Hills, CA	04/23/14	04/23/14
85475	Carl Zeiss Vision, Inc. (Company)	San Diego, CA	08/12/14	08/08/14
85476	BBB Industries LLC (State/One-Stop)	Stockton, CA	08/12/14	08/07/14
85477	AT&T Mobility Services (Workers)	Atwater, CA	08/12/14	08/11/14
85478	American Technical Ceramics Corp (Company)	Huntington Station, NY	08/13/14	08/12/14
85479	GDF Suez Mt. Tom Power Plant (Union)	Holyoke, MA	08/13/14	08/12/14
85480	OEM Controls (State/One-Stop)	Shelton, CT	08/13/14	08/08/14
85481	Daimler Buses North America (Company)	Oriskany, NY	08/14/14	08/11/14
85482	Interfor Beaver Planer & Kilns (State/One-Stop)	Beaver, WA	08/14/14	08/12/14
85483	SMC Electrical Products, Inc. (Union)	Barboursville, WV	08/14/14	08/13/14

APPENDIX—13 TAA PETITIONS INSTITUTED BETWEEN 8/11/14 AND 8/15/14—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85484	Medical Management Professionals, LLC (Workers)	Ocala, FL	08/14/14	08/13/14
85485	Stratus Technologies (State/One-Stop)	Maynard, MA	08/15/14	08/14/14
85486	Remy USA Industries, L.L.C. (Company)	Bay Shore, NY	08/15/14	08/15/14
85487	LexisNexis (Workers)	Colorado Springs, CO	08/15/14	08/11/14

[FR Doc. 2014–21626 Filed 9–10–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 22, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 22, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 4th day of September 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

13 TAA PETITIONS INSTITUTED BETWEEN 8/25/14 AND 8/29/14

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85500	Jr Simplot (Workers)	Othello, WA	08/25/14	08/23/14
85501	Hostess Brands, Inc. (State/One-Stop)	Schiller Park, IL	08/25/14	08/22/14
85502	The ESAB Group, Inc. (Company)	Florence, SC	08/25/14	08/22/14
85503	Bayne Premium Lift Systems (Company)	Greenville, SC	08/25/14	08/23/14
85504	National Instruments Corporation (Company)	Austin, TX	08/26/14	08/25/14
85505	Red Shield Acquisition/Old Town Fuel and Fiber (Union)	Old Town, ME	08/26/14	08/25/14
85506	Diebold, Incorporated (Company)	North Canton, OH	08/26/14	08/25/14
85507	Arvato Digital Services (Company)	Reno, NV	08/26/14	08/25/14
85508	L3 Communications Electrodynamics (Union)	Rolling Meadows, IL	08/27/14	08/26/14
85509	Lighting Science (Workers)	Satellite Beach, FL	08/27/14	08/26/14
85510	General Motors, Marion Metal Center (Workers)	Marion, IN	08/27/14	08/18/14
85511	LexisNexis/Matthew Bender (State/One-Stop)	Albany, NY	08/28/14	08/27/14
85512	FutureMark (State/One-Stop)	Alsip, IL	08/29/14	08/28/14

[FR Doc. 2014–21631 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,244; TA–W–83,244A]

Inalfa Roof Systems Grand Blanc, A Subsidiary of Inalfa Roof Systems, Inc., Including On-Site Leased Workers From Aerotek and Sentech Holly, Michigan; Inalfa Roof Systems—Silverbell A Subsidiary of Inalfa Roof Systems, Inc., Including On-Site Leased Workers From Aerotek and Adecco Lake Orion, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 12, 2013, applicable to workers of Inalfa Roof Systems Grand Blanc, a subsidiary of Inalfa Roof Systems, Inc., including on-site leased workers from Aerotek and Sentech, Holly, Michigan. The Department's Notice of Determination was published in the **Federal Register** on January 10, 2014 (79 FR 1893).

In response to a petition (TA–W–85,336) filed by the state workforce office on behalf of workers at Inalfa Roof Systems—Silverbell, a subsidiary of Inalfa Roof System, Inc., Lake Orion, Michigan, the Department reviewed the certification for workers of the subject firm. The firm is engaged in production of sunroofs and glass roof modules. The worker group includes on-site leased workers from Aerotek and Adecco.

The investigation confirmed that worker separations at the Lake Orion, Michigan facility are attributable to the shift in production by Inalafa Roof Systems from Holly, Michigan to a foreign country.

The amended notice applicable to TA–W–83,199 is hereby issued as follows:

''All workers Inalfa Roof Systems Grand Blanc, a subsidiary of Inalfa Roof Systems, Inc., including on-site leased workers from Aerotek and Senetech, Holly, Michigan (TA–W–83,244) and Inalfa Roof Systems—Silverbell, a subsidiary of Inalfa Roof System, Inc., including on-site leased workers from Aerotek and Adecco, Lake Orion, Michigan (TA–W–83,244A), who became totally or partially separated from employment on or after November 25, 2012 through December 12, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 14th day of August, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21625 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,680C; TA–W–82,680D]

Supermedia LLC, Publishing Operations Division, a Subsidiary of Dex Media Inc., Westerville, Ohio; Supermedia LLC, Publishing Operations Division, A Subsidiary of Dex Media Inc., Lexington, Kentucky; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, on August 30, 2013, the Department of Labor (Department) issued a Notice of Revised Determination on Reconsideration regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers of SuperMedia LLC, Publishing Operations Division, Account Management Group (TA–W–82,680), Internet Publishing Operations Group (TA–W–82,680A) and Listing Management Group (TA–W–82,680B), a subsidiary of Dex Media Inc., St. Petersburg, Florida. The afore-mentioned worker groups are engaged in activities related to the supply of publishing, advertising and media services, and include on-site leased workers from TAC Worldwide Companies.

Following the issuance of the revised determination on reconsideration, the Department received a request from a separated worker to amend the certification to include workers at two affiliated facilities which operated in conjunction with the St. Petersburg, Florida facility: Westerville, Ohio (TA–W–82,680C) and Lexington, Kentucky (TA–W–82,680D).

During the amendment investigation, the Department received information that the afore-mentioned facilities operated in conjunction with the St. Petersburg, Florida facility, that the worker separations at the afore-mentioned facilities are related to a shift in the supply of services by the workers' firm to a foreign country, and that the worker groups covered by TA–W–82,680C and TA–W–82,680D do not include on-site leased workers. The amended notice applicable to TA–W–82,680 is hereby issued as follows:

All workers of SuperMedia LLC, Publishing Operations Division, a subsidiary of Dex Media Inc., Westerville, Ohio (TA–W–82,680C) and Lexington, Kentucky (TA–W–82,680D) who became totally or partially separated from employment on or after April 17, 2012 through August 30, 2015, and all workers in the group threatened with total or partial separation from employment on August 30, 2013 through August 30, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 14th day of August, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21622 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,129]

International Paper Company Courtland Alabama Paper Mill Printing & Communications Papers Division a Subsidiary of International Paper Company Including On-Site Leased Worker From Manpower, Western Express, Liberty Healthcare Corporation, and K2 Mansfield Courtland, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 6, 2014, applicable to workers International Paper Company, Alabama Paper Mill, Printing & Communication Papers Division, a subsidiary of International Paper Company, including on-site leased workers from Manpower, Western Express, and Liberty Healthcare Corporation, Courtland, Alabama. The Department's Notice of Determination was published in the **Federal Register** on February 24, 2014 (79 FR 3840).

In response to a petition (TA–W–85,452) filed on behalf of workers at K2 Mansfield, Courtland, Alabama, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of uncoated and coated freesheet paper products.

The investigation confirmed that on-site leased workers from K2 Mansfield worked on-site at the Courtland, Alabama location.

Based on these findings, the Department is amending this certification to include on-site leased workers from K2 Mansfield.

The amended notice applicable to TA–W–83,129 is hereby issued as follows:

''All workers International Paper Company, Alabama Paper Mill, Printing & Communication Papers Division, a subsidiary of International Paper Company, including on-site leased workers from Manpower, Western Express, Liberty Healthcare Corporation, and K2 Mansfield, Courtland, Alabama, who became totally or partially separated from employment on or after October 10, 2012, through February 6, 2016, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC, this 14th day of August, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21623 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,900; TA–W–82,900A; TA–W–82,900B]

Honeywell International, Inc., Aerospace Order Management Division, Process Solutions, In Circuit Test Engineers, And Customer Service Division, Including On-Site Leased Workers From Tapfin-Manpower Group Solutions, Three Locations in Phoenix, Arizona; Honeywell International, Inc., Aerospace Order Management Division and Customer Service Division, Including On-Site Leased Workers From Tapfin-Manpower Group Solutions, Tempe, Arizona; Honeywell International, Inc., Aerospace Order Management Division and Customer Service Division, Including On-Site Leased Workers From Tapfin-Manpower Group Solutions, Tulsa, Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 1,2013, applicable to workers of Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from, Tapfin-Manpower Group Solutions, three locations in Phoenix, Arizona, (TA–W–82,900), Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tempe, Arizona, (TA–W–82,900A), and Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tulsa, Oklahoma, (TA–W–82,900B). The Department's notice of determination was published in the **Federal Register** on November 21, 2013 (Volume 78, No. 225 FR 69881).

At the request of workers and a State Workforce Official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of order management services, in circuit testing services, and customer services. The investigation confirmed that worker separations in the Customer Service Division are attributable to an acquisition of services from a foreign country, as were the separations in the other divisions. The worker group includes off-site workers reporting to the certified locations.

The amended notice applicable to TA–W–82,900, TA–W–82,900A, TA–W–82,900B, is hereby issued as follows:

All workers of Honeywell International, Inc., Aerospace Order Management Division, Process Solutions, In Circuit Test Engineers, Customer Service Division, including on-site leased workers from, Tapfin-Manpower Group Solutions, three locations in Phoenix, Arizona, (TA–W–82,900), Honeywell International, Inc., Aerospace Order Management Division, Customer Service Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tempe, Arizona, (TA–W–82,900A), and Honeywell International, Inc., Aerospace Order Management Division, Customer Service Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tulsa, Oklahoma, (TA–W–82,900B), who became totally or partially separated from employment on or after July 11, 2012 through November 1, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through November 1, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 22nd day of August, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21630 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,242D]

AT&T Services, Inc. Information Technology Operations Division San Ramon, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 21, 2014, applicable to workers of AT&T Services, Inc., Information Technology Operations Division, including on-site leased workers from Accenture LLP, OnX USA LLC (Formerly Agilysys), and IBM Corporation, Atlanta, Georgia (TA–W–83,242), AT&T Services, Inc., Information Technology Operations Division, including on-site leased workers from Accenture LLP, OnX USA LLC (Formerly Agilysys), IBM Corporation, Paragon Computer Professional, Inc., Cisco Systems, Inc., Paragon Solutions and Wavecreste, Inc., (Formerly Genesis Networks Inc.,), Middletown, New Jersey (TA–W–83,242A), AT&T Services, Inc., Information Technology Operations Division, Columbus, Ohio (TA–W–83,242B), and AT&T Services, Inc., Information Technology Operations Division, including on-site leased workers from IBM Corporation, Dallas, Texas (TA–W–83,242C). The Department's Notice of Determination was published in the **Federal Register** on March 14, 2014 (79 FR 05545).

In response to a petition (TA–W–85,434) filed on behalf of workers at AT&T, San Ramon, California, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the supply of telecommunications services.

The investigation confirmed that worker separations at AT&T Services, Information Technology Operations Division, San Ramon, California are attributable to the same acquisition of services that contributed importantly to separations at the four certified

locations. Based on these findings, the Department is amending this certification to include workers located at AT&T Services, Inc., Information Technology Operations Division, San Ramon, California.

The amended notice applicable to TA–W–83,242 is hereby issued as follows:

''All workers of AT&T Services, Inc., Information Technology Operations Division, including on-site leased workers from Accenture LLP, OnX USA LLC (Formerly Agilysys), and IBM Corporation, Atlanta, Georgia (TA–W–83,242), AT&T Services, Inc., Information Technology Operations Division, including on-site leased workers from Accenture LLP, OnX USA LLC (Formerly Agilysys), IBM Corporation, Paragon Computer Professional, Inc., Cisco Systems, Inc., Paragon Solutions and Wavecreste, Inc., (Formerly Genesis Networks Inc.,), Middletown, New Jersey (TA–W–83,242A), AT&T Services, Inc., Information Technology Operations Division, Columbus, Ohio (TA–W–83,242B), and AT&T Services, Inc., Information Technology Operations Division, including on-site leased workers from IBM Corporation, Dallas, Texas (TA–W–83,242C) and AT&T Services, Inc., Information Technology Operations Division, San Ramon, California (TA–W–83,242D), who became totally or partially separated from employment on or after November 22, 2012, through February 21, 2016, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 15th day of August, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21624 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,357]

Flextronics International Inc. Including On-Site Leased Workers from Aerotek, Onin, Protech, CoWorx Staffing Services Also Known as Axcess, VSSI LLC Automation Personnel Services Inc., and Cornerstone Staffing Fort Worth, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 5, 2014, applicable to workers of Flextronics International Inc., including on-site leased workers from Aerotek, Onin, Protech, and CoWorx Staffing Services also known as Axcess, Fort Worth, Texas (TA–W–85,357) and Motorola Mobility LLC, Mobile Devices, a subsidiary Of Google, Inc., including on-site leased workers from Kelly OCG, TEKsystems, and TATA Consultancy Services, working on-site at Flextronics International Inc., Fort Worth, Texas (TA–W–85,357A). The Department's Notice of Determination was published in the **Federal Register** on August 22, 2014 (79 FR 49818).

In response to a request by the Texas Workforce Commission, the Department reviewed the certification for workers of the subject firm. The firm is engaged in production of cell phones.

The investigation confirmed that workers from Automation Personnel Services Inc., Cornerstone Staffing, and VSSI LLC worked on-site at the Fort Worth facility and were sufficiently under the operational control of the firm to be considered leased workers. The intent of the Department is to include all workers whose separation or threat of separation is attributable to the shift in production to a foreign country.

The amended notice applicable to TA–W–85,357 is hereby issued as follows:

All workers of Flextronics International Inc., including on-site leased workers from Aerotek, Onin, Protech, CoWorx Staffing Services also known as Axcess, Automation Personnel Services Inc., Cornerstone Staffing, and VSSI LLC, Fort Worth, Texas (TA–W–85,357) and Motorola Mobility LLC, Mobile Devices, a subsidiary Of Google, Inc., including on-site leased workers from Kelly OCG, TEKsystems, and TATA Consultancy Services, working on-site at Flextronics International Inc., Fort Worth, Texas (TA–W–85,357A), who became totally or partially separated from employment on or after June 3, 2013, through August 5, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC this 22nd day of August, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21629 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of August 11, 2014 through August 15, 2014.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,194	Merck Sharp & Dohme Corporation, Merck & Co. Inc., Research and Development Group, Agile-1, Lancaster.	West Point, PA	November 1, 2012.

I hereby certify that the aforementioned determinations were issued during the period of August 11, 2014 through August 15, 2014. These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 21st day of August 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21628 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for

workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *August 11, 2014 through August 15, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;
2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondaril affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.
2. Whether the workers in the workers' firm possess skills that are not easily transferable.
3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,379, Autoliv ASP, Inc., Lowell, Massachusetts. June 5, 2013.

85,444, Napa Valley Register, Napa, California. July 25, 2013.

85,447, Borg Warner Torque Transfer System, Inc., Longview, Texas. July 28, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

Done.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,295, Bimbo Bakeries USA, Inc., Sioux City, Iowa.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,377, Chemtrade Chemicals US LLC., Parsippany, New Jersey.

85,388, JPMorgan Chase & Co. Florence, South Carolina.

85,398, Dell USA LP, Round Rock, Texas.

85,413, Shine Electronics Company, Inc., Long Island City, New York.

85,439, Qualfon Data Services Group, LLC., Deposit, New York.

85,446, JPMorgan Chase & Co., Florence, South Carolina.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

85,336, Inalfa Roof Systems-Silverbell, Lake Orion, Michigan.
85,434, AT&T, San Ramon, California.
85,452, K2 Mansfield, Courtland, Alabama.

I hereby certify that the aforementioned determinations were issued during the period of *August 11, 2014 through August 15, 2014.* These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 21st day of August 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21627 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *August 25, 2014 through August 29, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:
- A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;
- B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and
- C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:
- A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;
- B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and
- C. One of the following must be satisfied:
  1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;
  2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
  3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either-

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.
2. Whether the workers in the workers' firm possess skills that are not easily transferable.
3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,356, U.S. Steel Tubular Products, Inc., Bellville, Texas. June 3, 2013.
85,374, Grass Valley USA, LLC., Grass Valley, California. June 12, 2013.
85,374A, Grass Valley USA, LLC., Nevada City, California. June 12, 2013.
85,385, Microsemi Corporation, Lawrence, Massachusetts. August 31, 2014.
85,385A, Leased Workers from Superior Staffing, Lawrence, Massachusetts., June 18, 2013.
85,392, Cardinal Health 200, LLC., El Paso, Texas. June 23, 2013.

85,402, Georgia-Pacific Consumer Products, LP, Clatskanie, Oregon. June 23, 2013.
85,406, Techalloy, Inc., Dundalk, Maryland. June 30, 2013.
85,465, ProCo Sound Company, Kalamazoo, Michigan. August 5, 2013.
85,475, Carl Zeiss Vision, Inc., Forest Park, Georgia. August 8, 2013.
85,475A, Carl Zeiss Vision, Inc., Hebron, Kentucky. August 8, 2013.
85,475B, Carl Zeiss Vision, Inc., Nashville, Tennessee. August 8, 2013.
85,475C, Carl Zeiss Vision, Inc., Roanoke, Virginia. August 8, 2013.
85,475D, Carl Zeiss Vision, Inc., Sheldon, Iowa. August 8, 2013.
85,475E, Carl Zeiss Vision, Inc., Chester, Virginia. August 8, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

85,278, Swan Dyeing and Printing Corporation, Fall River, Massachusetts.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,371, Contacts Metals and Welding, Inc., Indianapolis, Indiana.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,442, Harman International Industries, Inc., Novi, Michigan.
85,448, UnitedHealth One, Lawrenceville, Illinois.
85,448A, UnitedHealth One, Indianapolis, Indiana.
85,448B, UnitedHealth One, Green Bay, Wisconsin.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,358, Being Advanced Memory Corp., Williston, Vermont.
85,484, Medical Management professionals, LLC., Ocala, Florida.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

85,490, Advanced Energy Industries, Inc., Fort Collins, Collins.
85,501, Hostess Brands, Inc., Schiller Park, Illinois.

I hereby certify that the aforementioned determinations were issued during the period of *August 25, 2014 through August 29, 2014.* These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 4th day of September 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21632 Filed 9–10–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Wage and Hour Division

Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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 (PRA), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in a desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can properly be assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: 29 CFR Part 825, The Family and Medical Leave Act of 1993. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section below on or before November 10, 2014.

ADDRESSES: You may submit comments identified by Control Number 1235–0003, by either one of the following methods: Email: *WHDPRAComments@dol.gov;* Mail, Hand Delivery, Courier: Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601, requires private sector employers who employ 50 or more employees, all public and private elementary schools, and all public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons for birth of a son or daughter and to care for the newborn child; for placement with the employee of a son or daughter for adoption or foster care; to care for the employee's spouse, son, daughter, or parent with a serious health condition; because of a serious health condition that makes the employee unable to perform the functions of the employee's job; and to address qualifying exigencies arising out of the deployment of the employee's spouse, son, daughter, or parent to covered active duty in the military), and up to 26 weeks of unpaid, job protected leave during a single 12-month period to care for a covered servicemember with a serious injury or illness who is the spouse, son, daughter, parent, or next of kin to the employee.

The Wage Hour Division (WHD) created optional use forms: WHD Publication 1420, WH–380–E. WH–380–F, WH–381, WH–382, WH–384, WH–385, and WH–385–V to assist employers and employees in meeting their FMLA third-party notification obligations. WHD Publication 1420 allows employers to satisfy the general notice requirement. *See* § 825.300(a). Form WH–380–E allows an employee requesting FMLA leave for his or her own serious health condition to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification (including a second or third opinion and recertification) to support the need for leave for the employee's own serious health condition. *See* § 825.305(a). Form WH–380–F allows an employee requesting FMLA-leave for a family member's serious health condition to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification (including a second or third opinion and recertification) to support the need for leave for the family member's serious health condition. *See* § 825.305(a). Form WH–381 allows an employer to satisfy the regulatory requirement to provide employees taking FMLA leave with written notice detailing specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. *See* § 825.300(b) and (c). Form WH–382 allows an employer to meet its obligation to designate leave as FMLA-qualifying. *See* § 825.301(a). Form WH–384 allows an employee requesting FMLA leave based on a qualifying exigency to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification to support leave for a qualifying exigency. *See* § 825.309. Form WH–385 allows an employee requesting FMLA leave based on an active duty covered servicemember's serious injury or illness to satisfy the statutory requirement to furnish, upon the employer's request, a medical certification from an authorized health care provider. *See* § 825.310. Form WH 385 V allows an employee requesting leave based on a veteran's serious injury or illness to satisfy the statutory requirement to furnish, upon the employer's request, a medical certification from an authorized health care provider. *See* § 825.310.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- 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;
- Enhance the quality, utility and clarity of the information to be collected;
- 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;
- 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.

III. *Current Actions:* The DOL seeks an approval for the extension of this information collection requirement that requires private sector employers of 50 or more employees and public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to ''eligible'' employees for certain family and medical reasons (*i.e.,* for birth of a son or daughter, and to care for the newborn child; for placement with the employee of a son or daughter for adoption or foster care; to care for the employee's spouse, son, daughter, or parent with a serious health condition; and because of a serious health condition that makes the employee unable to perform the functions of the employee's job) and up to 26 workweeks of unpaid, job protected leave during a single 12-month period to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember for the employee to provide care for the covered servicemember with a serious injury or illness. 29 U.S.C. 2601, *et seq.*

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: 29 CFR part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1235–0003.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Total Respondents: 91.1 million Total Annual Responses: 89,305,469

Estimated Total Burden Hours: 19,027,093

Estimated Time per Response: Various.

Frequency: Various.

Total Burden Cost (capital/startup): $0.

Total Burden Costs (operation/maintenance): $163,467,915.

Dated: September 4, 2014.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2014–21699 Filed 9–10–14; 8:45 am]

BILLING CODE P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Communications Sub-Committee will meet telephonically on September 19, 2014. The meeting will commence at 4:30 p.m., ET, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid

disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Consider and act on agenda
2. Welcome
3. Presentation on 40th anniversary conference media and communication materials for use throughout the anniversary year
   - Carl Rauscher, Director of Media Relations
4. Annual Calendar Plan
5. New Business
6. Public Comment
7. Adjournment

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: September 9, 2014.

Katherine Ward,

Executive Assistant to the Vice President & General Counsel.

[FR Doc. 2014–21818 Filed 9–9–14; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–086)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 11, 2014.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–4871; (281) 483–6936 [Facsimile].

NASA Case No.: MSC–24314–2: High-Density Spot Seeding for Tissue Model Formation.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–21608 Filed 9–10–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–083)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 11, 2014.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No.: ARC–17110–1: Detection of Gases and Vapors Present at Low Concentrations;

NASA Case No.: ARC–16938–1: A Method for Accurate Load/Position Control of Rigidly-Coupled Electromechanical Actuators;

NASA Case No.: ARC–17354–1: Metal Oxide Vertical Graphene Hybrid Supercapacitors;

NASA Case No.: ARC–17130–1: Nanostructure-Based Vacuum Channel Transistor;

NASA Case No.: ARC–16933–1: Reconfigurable Image Generator.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–21605 Filed 9–10–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–088)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 11, 2014.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544-0013; fax (256) 544–0258.

NASA Case No.: MFS–32842–1: Reconfigurable Drive Current System;

NASA Case No.: MFS–32518–1–DIV: Method for Determining Optimum Injector Inlet Geometry;

NASA Case No.: MFS–33051–1: Variable-Aperture Reciprocating Reed Valve.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–21610 Filed 9–10–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–087)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 11, 2014.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Counsel, Langley Research Center, Mail Stop 30, Hampton, VA 23681–2199; telephone (757) 864–3230; fax (757) 864–9190.

NASA Case No.: LAR–18411–1: Impact Tester Device;

NASA Case No.: LAR–17997–1: Sequential/Simultaneous Multi-Metalized Nanocomposites (S2M2N);

NASA Case No.: LAR–18133–1: Integrated Multi-Color Light Emitting Device Made with Hybrid Crystal Structure;
NASA Case No.: LAR–18319–1: Acoustic Panel Liner for an Engine Nacelle;
NASA Case No.: LAR–17558–2: Highly Thermal Conductive Nanocomposites;
NASA Case No.: LAR–18082–1: 3D Biomimetic Platform;
NASA Case No.: LAR–18352–1: Fluorinated Alkyl Ether Epoxy Resin Compositions and Applications Thereof;
NASA Case No.: LAR–18202–2: Method for Ground-to-Satellite Laser Calibration System;
NASA Case No.: LAR–17689–2: Negative Dielectric Constant Material Based on Ion Conducting Materials.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–21609 Filed 9–10–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–085)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 11, 2014.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NPO–47157–2: Carbon Nanofibers Synthesized on Selective Substrates for Nonvolatile Memory and 3D Electronics Applications;
DRC–012–027: Improved Aircraft Design;
DRC–013–018: Turbo-Electric Compressor/Generator Using Halbach Arrays.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–21607 Filed 9–10–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–084)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 11, 2014.

FOR FURTHER INFORMATION CONTACT: Robert H. Earp, III, Patent Attorney, Glenn Research Center at Lewis Field, Code 21–14, Cleveland, OH 44135; telephone (216) 433–3663; fax (216) 433–6790.

NASA Case No.: LEW–18986–1: Generation of High Pressure Oxygen via Electrochemcial Pumping in a Multi-State Electrolysis Stack;
NASA Case No.: LEW–19080–1: Crosslinked Polyethylene Aerogels from Low Density Polyethylene, Linear Low Density Polyethylene, and Repurposed Polyethylene
NASA Case No.: LEW–18900–1: Heat Pipe Radiator
NASA Case No.: LEW–19067–1: Advanced Multilayer Environmental Barrier Coatings;
NASA Case No.: LEW–19072–1: Optical Tunable-Based Transmitter for Multiple Radio Frequency Bands;
NASA Case No.: LEW–19077–1: Improved Composite Damage Tolerance and Through Thickness Conductivity by Interleaving Carbon Fiber Veil Nanocomposites;
NASA Case No.: LEW–18952–1: A Novel Real Time Adaptive Filter for the Reduction of Artifacts in Functional Near Infrared Spectroscopy Signals.

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–21606 Filed 9–10–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Committee on Science and Engineering Indicators (SEI), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Friday, September 19, 2014, 4:30–5:30 p.m., EDT.

SUBJECT MATTER: SEI chair's remarks, and discussion of the *Science and Engineering Indicators* ''Digital Indicators'' Project.

STATUS: Open.

This meeting will be held by teleconference. A public listening line will be available. Members of the public must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public listening number. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is Matt Wilson at *mbwilson@nsf.gov*.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–21822 Filed 9–9–14; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Membership of the National Science Board's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Performance Review Board for the Office of Inspector General and the National Science Board Office Senior Executive Service positions.

SUMMARY: This announcement of the membership of the National Science Foundation's Office of Inspector General and National Science Board Office Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Division Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Judith S. Sunley at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science

Board's Senior Executive Service Performance Review Board is as follows:

Ruth David, Chair, Audit and Oversight Committee, National Science Board.

Clifford J. Gabriel, Acting as Office Head, Office of Information and Resource Management, and Chief Human Capital Officer.

Plus two members to be selected from the IG community.

Dated: August 27, 2014.

Judith S. Sunley,

Division Director, Division of Human Resource Management.

[FR Doc. 2014–21657 Filed 9–10–14; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Division Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Judith S. Sunley at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Richard Buckius, Acting Chief Operating Officer, Chairperson.

Clifford J. Gabriel, Acting as Office Head, Office of Information and Resource Management, and Chief Human Capital Officer.

Deborah F. Lockhart, Deputy Division Director, Division of Information and Intelligent Systems.

Celeste M. Rohlfing, Deputy Assistant Director, Directorate for Mathematical and Physical Sciences.

Martha A. Rubenstein, Office Head, Office of Budget, Finance and Award Management, and Chief Financial Officer.

Brian W. Stone, Section Head, Antarctic Infrastructure and Logistics Division.

Mark L. Weiss, Division Director, Division of Behavioral and Cognitive Sciences.

Judith S. Sunley, Division Director, Division of Human Resource Management and PRB Executive Secretary.

Dated: August 27, 2014.

Judith S. Sunley,

Division Director, Division of Human Resource Management.

[FR Doc. 2014–21661 Filed 9–10–14; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–016; NRC–2008–0250]

UniStar Nuclear Energy; Combined License Application for Calvert Cliffs Power Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in a response to a November 19, 2013, request from UniStar Nuclear Energy (UNE), on behalf of Calvert Cliffs Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC which requested an exemption from Final Safety Analysis Report (FSAR) updates included in their Combined License (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to, or coincident with, the resumption of the COL application review or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to NRC–2008–0250 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0250. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection 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.*
- 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: Surinder Arora, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1421 or email: *Surinder.Arora@nrc.gov.*

1.0 Background

UniStar Nuclear Energy (UNE), on behalf of Calvert Cliffs Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, submitted to the NRC a COL application for a single unit of AREVA NP's U.S. EPR in accordance with the requirements of Subpart C of Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor is to be identified as Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP Unit 3), and is to be located in Calvert County, Maryland. The NRC docketed Part 2, ''Final Safety Analysis Report (FSAR)'' of the CCNPP Unit 3 COL application on June 3, 2008. The CCNPP Unit 3 COL application incorporates by reference AREVA NP's application for a standard design certification for the U.S. EPR. The NRC is currently performing concurrent reviews of the CCNPP Unit 3 COL application, as well as AREVA NP's application for design certification of the U.S. EPR. UNE previously requested an exemption on November 2, 2012, pursuant to 10 CFR 50.71(e)(iii) to submit the scheduled 2012 FSAR update, and proposed, for approval, a new submittal deadline of March 29, 2013. The NRC granted the exemption as described in **Federal Register** notice published on January 8, 2013 (79 FR 4467).

2.0 Request/Action

The regulations specified in 10 CFR 50.71(e)(3)(iii) require that an applicant for a COL under 10 CFR Part 52 shall, during the period from docketing of a COL application until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's FSAR, which is a Part 2 of the COL application.

On April 9, 2013, UNE submitted Revision 9 to the COL application, including updates to the FSAR. Revision 9 was provided to satisfy the applicant's requested exemption of November 2, 2012, pursuant to 10 CFR 50.71(e)(3)(iii), and the next annual update was due by the end of December 2013.

On November 19, 2013, UNE requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2013 update, and proposed for approval a new submittal deadline in calendar year 2014 (within 90 days of the submittal date of the U.S. EPR FSAR, Revision 6, but not later than December 31, 2014) for the next FSAR update. The U.S. EPR FSAR Revision 6 has been submitted. However, the request is being reviewed for acceptance of the later date (i.e., the end of 2014).

The requested exemption is a one-time schedule change from the requirements of 10CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next FSAR update at a later date. The current FSAR update schedule could not be changed, absent the exemption. UNE requested the exemption by letter dated November 19, 2013 (ADAMS Accession No. ML13324B041). UNE submitted a supplement to its November 19, 2013, letter that revised the schedule for submission of the next updated CCNPP Unit 3 FSAR by letter dated March 21, 2014 (ADAMS Accession No. ML14086A326). Documents related to this action, including the application for amendment and supporting documentation, are available online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access ADAMS, which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are ML14141A472 and ML14142A349.

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)); or (2) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The requested one-time schedule exemption to defer submittal of the next update to the CCNPP Unit 3 COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii).

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next CCNPP Unit 3 COL application FSAR update in calendar year 2014 (within 90 days of the submittal date of the U.S. EPR FSAR, Revision 6, but in no case later than December 31, 2014). Per 10 CFR 50.12, the NRC staff has determined that granting UNE the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability, nor the consequences, of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow UNE to submit the next FSAR update in calendar year 2014 (within 90 days of the submittal date of the U.S. EPR FSAR, Revision 6, but, in no case later than December 31, 2014). This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. The requested one-time exemption will permit UNE time to carefully review the most recent revisions of the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the CCNPP Unit 3 COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application when resumed, as well as issuance of the safety evaluation report. For this reason, application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii). In addition, special circumstances are also present under 10 CFR 50.12(a)(2)(v) because granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief, and UNE has made good faith efforts to comply with the regulation by submitting Revision 9 to the COL application on April 9, 2013. This COL application revision incorporated changes resulting from Revision 4 of the U.S. EPR FSAR and COLA changes resulting from UNE's responses to the NRC requests for additional information submitted through December 2012. For the above reasons, the special circumstances required by 10 CFR 50.12(a)(2) for the

granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of 10 CFR Chapter 1 [which includes 10 CFR 50.71(e)(3)(iii)] is an action that is a categorical exclusion, provided that:

(i) There is no significant hazards consideration;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

(iv) There is no significant construction impact;

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

(vi) The requirements from which an exemption is sought involve:

(A) Recordkeeping requirements;

(B) Reporting requirements;

(C) Inspection or surveillance requirements;

(D) Equipment servicing or maintenance scheduling requirements;

(E) Education, training, experience, qualification, requalification or other employment suitability requirements;

(F) Safeguard plans, and materials control and accounting inventory scheduling requirements;

(G) Scheduling requirements;

(H) Surety, insurance or indemnity requirements; or

(I) Other requirements of an administrative, managerial, or organizational nature.

The requirements from which this exemption is sought involve only (B) Reporting requirements; or (G) Scheduling requirements of those required by 10 CFR 51.22(c)(25)(vi).

The NRC staff's determination that each of the applicable criteria for this categorical exclusion is met as follows:

I. 10 CFR 51.22(c)(25)(i) There is no significant hazards consideration.

Staff Analysis: The criteria for determining if an exemption involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review is currently underway. Therefore, there are no significant hazard considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

II. 10 CFR 51.22(c)(25)(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv) There is no significant construction impact.

Staff Analysis: The proposed action involves only a schedule change which is administrative in nature. The application review is underway and no license will be issued prior to receipt of the aforementioned application's December 31, 2014, submittal of the revised FSAR; therefore, the proposed action does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v) There is no significant increase in the potential for or consequences from radiological accidents.

Staff Analysis: The proposed action involves only a schedule change which is administrative in nature and does not impact the probability or consequences of accidents.

VI. 10 CFR 51.22(c)(25)(vi) The requirements from which this exemption is sought involve only (B) Reporting requirements, or (G) Scheduling requirements.

Staff Analysis: The exemption request involves requirements in both of these categories because it involves submitting an updated COL FSAR by December 31, 2014 and also relates to the schedule for submitting COL FSAR updates to the NRC.

4.0 Conclusion

The NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances exist under 10 CFR 50.12(a)(2)(ii). The requested one-time exemption will permit UNE time to carefully review the most recent revisions of the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the CCNPP Unit 3 COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application when resumed, as well as issuance of the safety evaluation report. Therefore, the NRC hereby grants UNE a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the CCNPP Unit 3 COL application to allow submittal of the next FSAR update in calendar year 2014 (within 90 days of the submittal date of the U.S. EPR FSAR, Revision 6, but in no case later than December 31, 2014).

Pursuant to 10 CFR 51.22, the NRC has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant impact on the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of August, 2014.

For the Nuclear Regulatory Commission.

Anna Bradford,

Acting Chief, Licensing Branch1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2014–21700 Filed 9–10–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–43 and CP2014–76; Order No. 2177]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express, Priority Mail, & First-Class Package Service Contract 4 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 12, 2014.

ADDRESSES: Submit comments electronically via the Commission's

Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Request for Supplemental Information
IV. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 4 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2014–43 and CP2014–76 to consider the Request pertaining to the proposed Priority Mail Express, Priority Mail, & First-Class Package Service Contract 4 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than September 12, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Request for Supplemental Information

The contract states the effective date of this contract shall be one business day following the day on which the Commission issues all necessary regulatory approvals. It also states this contract shall expire three years form the effective date. *Id.* Attachment B at 3–4.

1. Please confirm that the Postal Service would like the start date to be the next business day if the Commission provides approval on a day preceding a Saturday, Sunday, or federal holiday. If this is not confirmed, please provide the preferred method for determining the start date.

2. If the termination date is calculated as three years from the start date, the termination date might fall on a Saturday, Sunday, or federal holiday. If this occurs, please advise the Commission whether the Postal Service intends the termination date to be the actual Saturday, Sunday, or federal holiday or the Postal Service intends the termination date to be extended to the next business day.

3. The Postal Service asks for Commission approval of several different forms of negotiated service agreements. Please explain any differences in the determination of start and termination dates that the Commission should consider among the different forms of agreements.

The Postal Service response is due no later than September 12, 2014.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014–43 and CP2014–76 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. The Postal Service's response to the request for supplemental information is due no later than September 12, 2014.

4. Comments are due no later than September 12, 2014.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2014–21588 Filed 9–10–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 4 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 4, 2014 (Request).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 13h–1 and Form 13H, SEC File No. 270–614, OMB Control No. 3235–0682.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for Rule 13h–1 (17 CFR 240.13h–1) and Form 13H—registration of large traders [1] submitted pursuant to Section 13(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13h–1 and Form 13H under Section 13(h) of the Exchange Act established a large trader reporting framework.[2] The framework assists the Commission in identifying and obtaining certain baseline information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets.

The identification, recordkeeping, and reporting framework provides the Commission with a mechanism to identify large traders and their affiliates, accounts, and transactions. Specifically, the system requires large traders to identify themselves to the Commission and make certain disclosures to the Commission on Form 13H. Upon receipt of Form 13H, the Commission issues a unique identification number to the large trader, which the large trader then provides to its registered broker-dealers. Certain registered broker-dealers are required to maintain transaction records for each large trader, and are required to

[1] Rule 13h–1(a)(1) defines ''large trader'' as any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level or voluntarily registers as a large trader by filing electronically with the Commission Form 13H.

[2] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46959 (August 3, 2011).

report that information to the Commission upon request.[3] In addition, certain registered broker-dealers are required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the rule.

The respondents to the collection of information are large traders. Each new large trader respondent files one response, which takes approximately 20 hours to complete. The average internal cost of compliance per response is $5,177, calculated as follows: (3 hours of compliance manager time at $283 per hour) + (7 hours of legal time at $334 per hour) + (10 hours of paralegal time at $199 per hour) = $5,177. Additionally, on average, each large trader respondent (including new respondents) files 2 responses per year, which take approximately 6 hours to complete. The average internal cost of compliance per response is $1,632, calculated as follows: (2 hours of compliance manager time at $283 per hour) + (2 hours of legal time at $334 per hour) + (2 hours of paralegal time at $199 per hour) = $1,632.

Each registered broker-dealer's monitoring requirement takes approximately 15 hours per year. The average internal cost of compliance is $5,010, calculated as follows: 15 hours of legal time at $334 per hour = $5010. The Commission estimates that it may send 100 requests specifically seeking large trader data per year to each registered broker-dealer subject to the rule, and it would take each registered broker-dealer 2 hours to comply with each request Accordingly, the annual reporting hour burden for a broker-dealer is estimated to be 200 burden hours (100 requests x 2 burden hours/request = 200 burden hours). The average internal cost of compliance per response is $398, calculated as follows: 2 hours of paralegal time at $199 per hour = $398.

Compliance with Rule 13h–1 is mandatory. The information collection under proposed Rule 13h–1 is considered confidential subject to the limited exceptions provided by the Freedom of Information Act.[4]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 5, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21652 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

[3] The Commission, pursuant to Rule 17a–25 (17 CFR 240.17a–25), currently collects transaction data from registered broker-dealers through the Electronic Blue Sheets (''EBS'') system to support its regulatory and enforcement activities. The large trader framework added two new fields, the time of the trade and the identity of the trader, to the EBS system.

[4] *See* 5 U.S.C. 552 and 15 U.S.C. 78m(h)(7).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73003; File No. SR–BATS–2014–026]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of Certain Funds of the Alpha Architect ETF Trust

September 5, 2014.

On July 3, 2014, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of certain funds of the Alpha Architect ETF Trust. The proposed rule change was published for comment in the **Federal Register** on July 23, 2014.[3] On August 15, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposal in its entirety. On August 26, 2014, the Exchange filed Amendment No. 2 to the proposed rule change, which again amended and replaced the proposal in its entirety. No comments on the proposal have been received.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates October 21, 2014, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–BATS–2014–026).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21642 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72636 (July 17, 2014), 79 FR 42852.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73010; File No. SR–NYSEARCA–2014–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fees for Non-Display Use of NYSE Arca Options Market Data

September 5, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on August 25, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b-4.

Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees for non-display use of NYSE Arca Options market data, operative on September 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees for non-display use of NYSE Arca Options market data, operative on September 1, 2014.[3]

The Exchange established the current non-display fees for ArcaBook for Arca Options—Trades, ArcaBook for Arca Options—Top of Book, ArcaBook for Arca Options—Depth of Book, ArcaBook for Arca Options—Complex, ArcaBook for Arca Options—Series Status, and ArcaBook for Arca Options—Order Imbalance (collectively, ''Arca Options Products'') in May 2013.[4] Fees cover all six products.[5]

Under the proposal, non-display use would continue to mean accessing, processing, or consuming an Exchange data product delivered via direct and/or Redistributor[6] data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). As is the case today, non-display fees would apply to the Non-Display Use of the data product as part of automated calculations or algorithms to support trading decision-making processes or the operation of trading platforms.

The Exchange is proposing to expand the types of uses considered Non-Display Use to also include non-trading uses. In addition, the proposal would specify that Non-Display Use would include any trading use, rather than only certain types of trading, such as high frequency or algorithmic trading, as under the current fee structure. Under the proposal, examples of Non-Display Use would include any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management. The Exchange believes that non-trading uses benefit data recipients by allowing users to automate functions, achieving greater speed and accuracy, and in turn, for example, reducing costs of labor to perform the functions manually. This approach would address the difficulties of monitoring and auditing different types of trading versus non-trading uses of the data and the burden of counting devices used for non-trading purposes under the current fees.

Proposed Changes to Non-Display Fees

The Exchange proposes to amend the fee structure applicable to Non-Display Use of Arca Options Products. Specifically, the Exchange proposes certain changes to the three categories of, and fees applicable to, data recipients. The Exchange also proposes corresponding changes to the Fee Schedule text to remove references to the current category descriptions.

Under the proposal, Category 1 Fees would apply when a data recipient's Non-Display Use of real-time market data is on its own behalf as opposed to on behalf of its clients. This proposal represents an expansion of the application of Category 1 Fees, which currently apply solely to the Non-Display Use of real time market data for the purpose of principal trading, to usage of such data for non-trading purposes.

Under the proposal, Category 2 Fees would apply to a data recipient's Non-Display Use of real-time market data on behalf of its clients as opposed to on its own behalf. This proposal also represents an expansion of the application of Category 2 Fees, which currently apply solely to trading activities to facilitate a customer business, to usage of such data for non-trading purposes. In contrast to the current fee structure, data recipients will not be liable for Category 2 Non-Display fees for which they are also paying Category 1 Non-Display fees.[7]

The Exchange believes its proposal to apply Category 1 Fees and Category 2 Fees to Non-Display Use of market data for non-trading purposes would address the difficulties of monitoring and auditing trading versus non-trading uses of the data and the burden of counting devices used for purposes of applying the per-device fees. As discussed in more detail in the 2013 Release,[8] the ability to accurately count devices and audit such counts creates administrative challenges for vendors, data recipients, and the Exchange.

Under the proposal, Category 3 Fees would apply to data recipients' Non-Display Use of real-time market data for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platform(s), such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. Currently, Category 3 Fees apply where a data recipient's non-display use of market data is, in whole or in part, for the purpose of providing reference prices in the operation of one or more trading platforms. The Exchange believes its proposed revision to its description of the data recipients to whom Category 3 Fees apply is more precise because it focuses on the functions of internally matching orders.

In addition, the Exchange is proposing to change the application of

[3] The Exchange's affiliates have submitted or will be submitting similar proposals. *See, e.g.,* SR–NYSE–2014–43.

[4] *See* Securities Exchange Act Release No. 69554 (May 10, 2013), 78 FR 28917 (May 16, 2013) (SR–NYSEArca–2013–47) (''2013 Release'').

[5] The Exchange began offering ArcaBook for Arca Options—Complex separately at no charge on May 1, 2014. *See* Securities Exchange Act Release No. 72074 (May 1, 2014), 79 FR 26277 (May 7, 2014) (SR–NYSEArca–2014–51).

[6] ''Redistributor'' means a vendor or any person that provides a real-time NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[7] *See* 2013 Release, *supra* note 4, at 28919.

[8] *See id.* at 28920.

Category 3 Fees to data recipients that also use data for purposes that give rise to Category 1 and/or Category 2 Fees. Currently, a data recipient is not liable for Category 3 Fees for those Arca Options Products for which it is also paying Category 1 and/or Category 2 Fees.[9] Under the proposal, a data recipient's Non-Display Use of real-time market data for Category 3 purposes would require such data recipient to pay Category 3 Fees in addition to any Category 1 Fees or Category 2 Fees it is required to pay for Non-Display Use of market data.

There will continue to be no monthly or other reporting requirements for data recipients' Non-Display Use. However, the Exchange continues to reserve the right to audit data recipients' Non-Display Use of Exchange market data products in accordance with the Exchange's vendor and subscriber agreements.

A data recipient that receives real-time Exchange market data for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before September 1, 2014. The Non-Display Use Declaration would replace the current declaration on the NYSE Euronext Non-Display Usage Declaration.[10] A firm subject to Category 3 Fees would be required to identify each platform that uses data on a Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration. Beginning in 2016, data recipients would be required to submit, by January 31 of each year, a Non-Display Use Declaration. In addition, if a data recipient's use of real-time Exchange market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient would be required to update it at the time of the change to reflect the change of use.

Comparison of Current Fees to Proposed Fees

The chart below compares the proposed changes to current monthly fees:

Data feed	Current fee	Proposed fee
Arca Options Products Non-Display Category 1	$1,000	$5,000.*
Arca Options Products Non-Display Category 2	$1,000	$5,000.*
Arca Options Products Non-Display Category 3	$1,000, or $0 if Category 1 or 2 fees paid.	$5,000, capped at $15,000.

* Data recipients will not be liable for Category 2 Non-Display fees for which they are also paying Category 1 Non-Display fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually. The Exchange also notes that The NASDAQ Stock Market (''NASDAQ'') and NASDAQ OMX PHLX (''Phlx'') do not make any distinction in their non-display use fees between trading or non-trading uses, and as such, the proposed change will harmonize the Exchange's approach with those exchanges. Finally, the Exchange notes that eliminating the trading versus non-trading distinction would substantially simplify fee calculations and ease administrative burdens for the Exchange.

After further experience, the Exchange also believes that it is more equitable and not unfairly discriminatory to eliminate the distinction for non-trading versus trading uses in light of the significant value of both types of uses. The Exchange notes that because non-display fees are flat fees, the expansion to cover non-trading uses could only result in a fee increase for a data recipient that is using the data solely for non-trading purposes and is only subject to per-device fees; at this time, the Exchange has not identified such a data recipient. Based on data available to the Exchange, all data recipients use the data for at least one trading purpose, and therefore the changes to the fees that they will pay under the proposal would not be due to the elimination of the distinction between trading and non-trading uses. The Exchange further notes that based on Non-Display Use Declarations submitted to date, some users have declared no Non-Display Use, and as such the proposed changes would have no impact on them.

The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of its market data products and can correctly assess fees for the uses of those products. The annual submission requirement is equitable and not unfairly discriminatory because it will apply to all users.

The Exchange believes that the proposed fee increases of $4,000 per month for each of Categories 1, 2, and 3 is reasonable. In establishing the non-display fees in May 2013, the Exchange set its fees below comparable fees charged by certain of its competitors.[13] After gaining further experience with its new display/non-display fee structure, the Exchange believes that the proposed fees better reflect the significant value of the non-display data to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using non-

[9] *See id.*

[10] As described in more detail in the Statutory Basis section, in order to modulate the overall fee increase that could apply, if a firm subject to Category 3 Fees has more than three platforms, it would only be required to declare three platforms.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4), (5).

[13] *See* 2013 Release, *supra* note 4, at 28920.

display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[14]

The fee increases are also reasonable in that they support the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves. For example, the Exchange will begin to make its proprietary data products available over an upgraded distribution channel and protocol ''XDP'' early next year.

Charging a separate fee for Category 3 data recipients that already pay a fee under Category 1 or 2 is reasonable because it eliminates what is effectively a discount for such data recipients under the current Fee Schedule and results in a more equitable allocation of fees to users that derive a benefit from a Category 3 use, and as such is not unfairly discriminatory. The current fee can be viewed as having an effective non-display fee cap of $2,000 while the proposed fee would have an effective non-display fee cap of $20,000. The Exchange believes that the proposed fees (and their associated caps) more closely correspond to the value that Category 3 recipients derive from the various uses of the data, some of which are operating various types of alternative trading venues that directly compete for order flow with the Exchange. Limiting the fees in Category 3 to no more than three trading platforms and charging only one fee for users that fall under both Category 1 and 2 is reasonable because it modulates the size of the fee increase for certain recipients as compared to what they pay under the current fee structure, in much the same manner as the current fee does by limiting the non-display fees to a maximum of two categories. The Exchange does not believe that it will be burdensome for Category 3 recipients to determine, or the Exchange to audit, whether a recipient has one, two, three or more separate platforms.

The fees are also competitive with offerings by other exchanges, which structure and set their fees in a variety of ways. For example, NASDAQ Options Market (''NOM'') offers a $2,500 per month ''Non-Display Enterprise License'' fee that permits distribution of Best of NASDAQ Options (''BONO'') or NASDAQ ITCH-to-Trade Options (''ITTO'') to an unlimited number of non-display devices within a firm without any per user charge.[15] In addition, Phlx offers an alternative $10,000 per month ''Non-Display Enterprise License'' fee that permits distribution to an unlimited number of internal non-display subscribers without incurring additional fees for each internal subscriber.[16] The Non-Display Enterprise License covers non-display subscriber fees for all Phlx proprietary direct data feed products (Top of Phlx Options (''TOPO''), TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds) and is in addition to any other associated distributor fees for Phlx proprietary direct data feed products.[17] The Exchange further notes that its proposed fees are less than the non-display fees charged by the Options Price Reporting Authority (''OPRA'').[18]

The Exchange also notes that all of the products described herein are entirely optional. The Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase any of the products. Firms that do purchase non-display products do so with the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange for order flow; those firms are able to determine for themselves whether any specific product such as these are attractively priced or not.

Firms that do not wish to purchase the data at the new prices have a wide variety of alternative market data products from which to choose,[19] or if the non-display data products do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of them, such firms may simply choose to conduct their business operations in ways that do not require those data products. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[20] Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.''

635 F.3d at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [21]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory,

[14] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

[15] *See* NASDAQ Options Rules Chapter XV, Section 4. Alternatively, NOM charges each professional subscriber $5 per month for BONO and $10 per month for ITTO.

[16] *See* Section IX of the NASDAQ OMX PHLX LLC Pricing Schedule and Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145). Alternatively, Phlx charges each professional subscriber $40 per month.

[17] *See id.*

[18] *See* Securities Exchange Act Release No. 67648 (August 14, 2012), 77 FR (August 17, 2012) (SR–OPRA–2012–04) (establishing effective October 1, 2012 a non-display application fee of $500/installation/month, with an enterprise fee alternative of $7,500/month that would permit a professional subscriber to receive access to OPRA data for use in an unlimited number of non-display application installations).

[19] *See supra* notes 15–18. Because ArcaBook for Arca Options—Trades and ArcaBook for Arca Options—Top of Book are subsets of the consolidated core data offered by OPRA, customers may choose to purchase those consolidated data products instead.

[20] *See* In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014).

[21] *NetCoalition,* 615 F.3d at 535.

when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically or offer any significant benefits.[22]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition. The market for proprietary options data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for options trades and sales of options market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own options market data. Proprietary options data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [23] Similarly, the options markets vigorously compete with respect to options data products.[24]

Moreover, competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary options data products and therefore constrain markets from overpricing proprietary options market data. Broker-dealers send their order flow to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. Options markets, similar to the equities markets, are highly fragmented.[25]

If an exchange succeeds in its competition for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary options market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its options market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are distributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available Arca Options Products described herein unless their customers request them, and customers will not elect to pay the proposed increased fees for non-display uses unless the non-display uses of these data products can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of their data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the

[22] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[23] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[24] *See, e.g.,* Securities Exchange Act Release No. 67466 (July 19, 2012), 77 FR 43629 (July 25, 2012) (SR–Phlx–2012–93), which describes a variety of options market data products and their pricing.

[25] *See, e.g.,* Press Release, TABB Says US Equity Options Market Makers Need Scalable Technology to Compete in Today's Complex Market Structure (February 25, 2013), available at *http://www.tabbgroup.com/PageDetail.aspx?PageID=16&ItemID=1231;* Fragmentation Vexes Options Markets (April 21, 2014), available at *http://marketsmedia.com/fragmentation-vexes-options-market/.*

costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in July 2014 more than 80% of the options transaction volume on each of NYSE Arca and NYSE MKT was executed by market participants that purchased one or more proprietary market data products. A super-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[26] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[27]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 self-regulatory organization (''SRO'') options markets. Two of the 12 have launched operations since December 2012.[28] The Exchange believes that these new entrants demonstrate that competition is robust.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS Exchange, Inc. (''BATS''), which previously operated as an ATS and obtained exchange status in 2008, has provided certain market data at no charge on its Web site in order to attract more order flow, and uses revenue rebates from resulting additional executions to maintain low execution charges for its users.[29] The Exchange currently offers ArcaBook for Arca Options—Complex for free. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.[30]

Existence of Alternatives. The large number of SROs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce and sell proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE MKT LLC; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; International Securities Exchange, LLC; ISE Gemini; NASDAQ; Phlx; BX; BATS; and Miami Exchange.

The fact that proprietary data from vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges, Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. For example, with respect to ArcaBook for Arca Options—Trades and ArcaBook for Arca Options—Top of Book, the data appears in the real-time core data

[26] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314, 57317 (September 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (September 14, 2010), 75 FR 57321, 57324 (September 20, 2010) (SR–NASDAQ–2010–111).

[27] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[28] *See* Securities Exchange Act Release Nos. 70050 (July 26, 2013), 78 FR (August 1, 2013) (approving exchange registration for Topaz Exchange, LLC) (known as ISE Gemini); and 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (approving exchange registration for Miami International Securities Exchange LLC (''Miami Exchange'')).

[29] *See* description of free market data from BATS Options, available at *http://www.batsoptions.com/market_data/products/.* This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[30] The Exchange notes that a small number of Category 3 non-display data recipients could be using the market data strictly for competitive purposes (e.g., other exchanges) or for business purposes unrelated to trading or investment (e.g., Internet portals that wish to attract ''eyeballs'' to their pages primarily generate advertising revenue for themselves). The Exchange does not believe that the proposed fees will impose any unnecessary burden on these competitors or other businesses.

offered by OPRA for a fee. Close substitute products also are offered by several competitors.[31] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute one or more other sources of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed non-display fees are generally lower than the maximum non-display fees charged by other exchanges such as NASDAQ and Phlx, for comparable products.[32]

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, and BATS. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008. Two new options exchanges have launched operations since December 2012.[33]

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary options market data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors, and has not considered irrelevant factors, in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

[31] *See supra* notes 15–18.

[32] *Id.*

[33] *See supra* note 28.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[34] of the Act and subparagraph (f)(2) of Rule 19b–4[35] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[36] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–94 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–2014–94. 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–2014–94 and should be submitted on or before October 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21649 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(2).

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73009; File No. SR–CFE–2014–004]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Position Limits for Individual Stock Based and Exchange-Traded Fund Based Volatility Index Security Futures

September 5, 2014.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 26, 2014 CBOE Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change

[1] 15 U.S.C. 78s(b)(7).

from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'')[2] on August 26, 2014.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CFE proposes to amend the position limits for Individual Stock Based and Exchange-Traded Fund Based Volatility Index Security Futures (''Volatility Index security futures'') set forth in CFE Rule 1602(d).

The scope of this filing is limited solely to the application of the rule changes to security futures traded on CFE. The only security futures currently traded on CFE are traded under Chapter 16 of CFE's Rulebook which is applicable to Volatility Index security futures.

The text of the proposed rule change is attached as Exhibit 4 to the filing submitted by the Exchange but is not attached to the published notice of the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CFE is amending the three tiered position limit levels for Volatility Index security futures. CFE Rule 1602(d) currently provides that a person may not own or control:

(1) More than 50,000 contracts net long or net short in all Volatility Index security futures contracts on the same Volatility Index combined;

(2) more than 30,000 contracts net long or net short in the expiring security futures contract month for a Volatility Index security future; and

(3) more than 13,500 security contracts net long or net short in the expiring contract for a Volatility Index security future held during the last 5 trading days for the expiring Volatility Index security futures contract month.[3]

CFE periodically reviews position limit levels and has determined to make the following changes to the position limit levels for Volatility Index security futures as follows:

(1) Reduce the all months position limit from 50,000 contracts to 30,000 contracts;

(2) reduce the spot month position limit from 30,000 contracts to 10,000 contracts; and

(3) replace the 5 days-to-expiration spot position limit of 13,500 contracts with a 1 day-to-expiration spot position limit of 1,000 contracts.[4]

The Exchange will continue to periodically review position limit levels for Volatility Index security futures in order to determine whether the existing position limit levels should remain or be adjusted. Accordingly, the Exchange may determine to increase the position limit levels that are the subject of this filing in the future. Among other things, CFE will review trading volume data and liquidity in the applicable Volatility Index security futures contract, and may propose alternate position limit levels. Any such change would be accomplished by way of a rule filing with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Specifically, the Exchange believes that the position limit level changes being made by this filing will diminish the opportunity to manipulate Volatility Index security futures and will protect against disruption in the underlying market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will not burden competition because the new position limit levels will apply to all persons and the revised rule provisions do not discriminate between market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become operative on September 11, 2014.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[2] 7 U.S.C. 7a–2(c).

[3] For the purposes of CFE Rule 1602(d), the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated.

The first and second tier position limit levels for Volatility Index security futures are equivalent to the first and second tier position limit levels for security options on these same Volatility Indexes. *See* Chicago Board Options Exchange, Incorporated Rule 24.4C. (Position Limits for Individual Stock or ETF Based Volatility Index Options). CFE adopted the third tier position limit level for Volatility Index security futures because it was required by CFTC Regulation § 41.25(a)(3)(i). In relevant part, CFTC Regulation § 41.25(a)(3)(i) requires a designated contract market to ''adopt a net position limit no greater than 13,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month [ ]'' for security futures contracts.

[4] The Exchange is replacing the 5-days-to-expiration limit with a 1-day-to-expiration limit because any potential pressures on liquidity are most acute on the day before expiration. In addition, this change is consistent with CFTC Regulation § 41.25(a)(3)(i) described in footnote 3 because the newly reduced spot month position limit of 10,000 contracts is applicable sooner than the ''last five trading days of an expiring contract month'' and is less than the statutory maximum of 13,500 contracts during that five-day period.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(1).

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–CFE–2014–004 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–CFE–2014–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CFE–2014–004, and should be submitted on or before October 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21648 Filed 9–10–14; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73011; File No. SR–NYSEARCA–2014–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fees for Non-Display Use of NYSE Arca Integrated Fee, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO, and To Establish a Fee for Managed Non-Services for NYSE Arca BBO

September 5, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on August 25, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees for non-display use of NYSE Arca Integrated Fee, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO, and to establish a fee for managed non-services for NYSE Arca BBO, operative on September 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its non-display fees for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO, and to establish a fee for managed non-display services for NYSE Arca BBO, operative on September 1, 2014.[3] The Exchange also proposes corresponding changes to the Fee Schedule text to remove references to the current category descriptions.

The Exchange established the current non-display and managed non-display services fees for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO in April 2013.[4] The Exchange now proposes to change those fees and establish a fee for managed non-display services for NYSE Arca BBO.

Under the proposal, non-display use would continue to mean accessing, processing, or consuming an Exchange data product delivered via direct and/or Redistributor[5] data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). As is the case today, non-display and managed non-display services fees would apply to the Non-Display Use of the data product as part of automated calculations or algorithms to support trading decision-making processes or the operation of trading platforms.

The Exchange is proposing to expand the types of uses considered Non-Display Use to also include non-trading uses. In addition, the proposal would specify that Non-Display Use would include any trading use, rather than only certain types of trading, such as high frequency or algorithmic trading, as under the current fee structure. Under the proposal, examples of Non-Display Use would include any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management,

[3] The Exchange's affiliates have submitted or will be submitting similar proposals. *See, e.g.,* SR–NYSE–2014–43.

[4] *See* Securities Exchange Act Release No. 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) (''2013 Release'').

[5] ''Redistributor'' means a vendor or any person that provides a real-time NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

compliance, and portfolio management. The Exchange believes that non-trading uses benefit data recipients by allowing users to automate functions, achieving greater speed and accuracy, and in turn, for example, reducing costs of labor to perform the functions manually. This approach would address the difficulties of monitoring and auditing different types of trading versus non-trading uses of the data and the burden of counting devices used for non-trading purposes under the current fees.

Proposed Changes to Non-Display Fees

The Exchange proposes to amend the fee structure applicable to Non-Display Use of NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca BBO, and NYSE Arca Trades and to establish a fee for managed non-display services for NYSE Arca BBO. Specifically, the Exchange proposes certain changes to the three categories of, and fees applicable to, data recipients.

Under the proposal, Category 1 Fees would apply when a data recipient's Non-Display Use of real-time market data is on its own behalf as opposed to use on behalf of its clients. This proposal represents an expansion of the application of Category 1 Fees, which currently apply solely to the Non-Display Use of real time market data for the purpose of principal trading, to usage of such data for non-trading purposes.

Under the proposal, Category 2 Fees would apply to a data recipient's Non-Display Use of real-time market data on behalf of its clients as opposed to on its own behalf. This proposal also represents an expansion of the application of Category 2 Fees, which currently apply solely to trading activities to facilitate a customer business, to usage of such data for non-trading purposes. As under the current fee, if a data recipient's use of Exchange market data is covered by Category 1 and Category 2, then the data recipient must pay both categories of fees.[6]

The Exchange believes its proposal to apply Category 1 Fees and Category 2 Fees to Non-Display Use of market data for non-trading purposes would address the difficulties of monitoring and auditing trading versus non-trading uses of the data and the burden of counting devices used for purposes of applying the per-device fees. As discussed in more detail in the 2013 Release,[7] the ability to accurately count devices and audit such counts creates administrative challenges for vendors, data recipients, and the Exchange.

Under the proposal, Category 3 Fees would apply to data recipients' Non-Display Use of real-time market data for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platform(s), such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. Currently, Category 3 Fees apply where a data recipient's non-display use of market data is, in whole or in part, for the purpose of providing reference prices in the operation of one or more trading platforms. The Exchange believes its proposed revision to its description of the data recipients to whom Category 3 Fees apply is more precise because it focuses on the functions of internally matching orders.

In addition, the Exchange is proposing to change the application of Category 3 Fees to data recipients that also use data for purposes that give rise to Category 1 and/or Category 2 Fees. Currently, a data recipient is not liable for Category 3 Fees for those market data products for which it is also paying Category 1 and/or Category 2 Fees.[8] Under the proposal, a data recipient's Non-Display Use of real-time market data for Category 3 purposes would require such data recipient to pay Category 3 Fees in addition to any Category 1 Fees or Category 2 Fees it is required to pay for Non-Display Use of market data.

There will continue to be no monthly or other reporting requirements for data recipients' Non-Display Use. However, the Exchange continues to reserve the right to audit data recipients' Non-Display Use of Exchange market data products in accordance with the Exchange's vendor and subscriber agreements.

Data recipients that receive real-time Exchange market data for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before September 1, 2014. The Non-Display Use Declaration would replace the current declaration on the NYSE Euronext Non-Display Usage Declaration.[9] A firm subject to Category 3 Fees would be required to identify each platform that uses data on a Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration. Beginning in 2016, data recipients would be required to submit, by January 31 of each year, a Non-Display Use Declaration. In addition, if a data recipient's use of real-time Exchange market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient would be required to update it at the time of the change to reflect the change of use.

Proposed Changes to Fees for Managed Non-Display Services

The Exchange also proposes to change the existing fees for managed non-display services and establish a new managed non-display service fee for NYSE Arca BBO. Managed non-display services fees would apply, as they do currently, where data recipients' non-display applications are hosted by an approved third party.[10] To be an approved third party, the third party must manage and control the access to real-time Exchange market data for the data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information.

The managed non-display services fee would only apply if a data recipient is receiving real-time Exchange market data for Non-Display Use from a third party Redistributor[11] that is approved by the Exchange. As for the current managed non-display services fees, this Redistributor must manage and control the access to NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO for these applications and may not allow their further internal distribution or external redistribution. The Redistributor of the managed non-display services and the data recipient must be approved under the Exchange's Global Data Products Unit-of-Count Policy.[12] If a data recipient receives NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO from a Redistributor that is not approved by the Exchange, then the non-display fees would apply, and data recipients would

[6] *See* 2013 Release, *supra* note 4, at 21671.

[7] *See* 2013 Release, *supra* note 4, at 21670.

[8] *See* 2013 Release, *supra* note 4, at 21671.

[9] As described in more detail in the Statutory Basis section, in order to modulate the overall fee increase that could apply, if a firm subject to Category 3 Fees has more than three platforms, it would only be required to declare three platforms. If a data recipient only subscribes to products for which there are no non-display usage fees, e.g., NYSE Realtime Reference Prices, then no declaration is required.

[10] *See* 2013 Release, *supra* note 4, at 21671.

[11] *See id.*

[12] The Unit-of-Count Policy is described in the 2013 Release, *supra* note 4, at note 12 and accompanying text.

not be liable for managed non-display fees for those market data products for which they pay non-display fees.

A data recipient of real-time Exchange market data through an approved Redistributor would continue to have no reporting requirements. However, a Redistributor would be required to report to the Exchange on a monthly basis the data recipients that are receiving real-time Exchange market data through the Redistributor's managed non-display service and the real-time Exchange market data that such data recipients are receiving through such service. This monthly reporting requirement would be new, though the Exchange currently has the right to audit data recipients' non-display use of Exchange market data products in accordance with the Exchange's vendor and subscriber agreements.

Comparison of Current Fees to Proposed Fees

The chart below compares the proposed changes to current monthly fees:

Data feed	Current fee	Proposed fee
NYSE Arca Integrated Feed Non-Display Category 1	$5,000	$7,000.
NYSE Arca Integrated Feed Non-Display Category 2	5,000	7,000.
NYSE Arca Integrated Feed Non-Display Category 3	5,000	7,000.
NYSE Arca Integrated Feed Managed Non-Display	1,750	2,500.
NYSE ArcaBook Non-Display Category 1	4,000	5,000.
NYSE ArcaBook Non-Display Category 2	4,000	5,000.
NYSE ArcaBook Non-Display Category 3	4,000	5,000.
NYSE ArcaBook Managed Non-Display	1,500	1,800.
NYSE Arca BBO Non-Display Category 3	1,000	$1,000, capped at $3,000.
NYSE Arca BBO Managed Non-Display	n/a	200.
NYSE Arca Trades Non-Display Category 1	1,000	2,000.
NYSE Arca Trades Non-Display Category 2	1,000	2,000.
NYSE Arca Trades Non-Display Category 3	1,000	2,000.
NYSE Arca Trades Managed Non-Display	400	800.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually. The Exchange also notes that The NASDAQ Stock Market (''NASDAQ'') and NASDAQ OMX PHLX (''Phlx'') do not make any distinction in their non-display use fees between trading or non-trading uses, and as such, the proposed change will harmonize the Exchange's approach with those exchanges. Finally, the Exchange notes that eliminating the trading versus non-trading distinction would substantially simplify fee calculations and ease administrative burdens for the Exchange.

After further experience, the Exchange also believes that it is more equitable and not unfairly discriminatory to eliminate the distinction for non-trading versus trading uses in light of the significant value of both types of uses. The Exchange notes that because non-display fees are flat fees, the expansion to cover non-trading uses could only result in a fee increase for a data recipient that is using the data solely for non-trading purposes and is only subject to per-device fees; at this time, the Exchange has not identified such a data recipient. Based on data available to the Exchange, all data recipients use the data for at least one trading purpose, and therefore the changes to the fees that they will pay under the proposal would not be due to the elimination of the distinction between trading and non-trading uses. The Exchange further notes that based on the Non-Display Use Declarations submitted to date, some users have declared no Non-Display Use, and as such the proposed changes would have no impact on them.

The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of its market data products and can correctly assess fees for the uses of those products. The annual submission requirement is equitable and not unfairly discriminatory because it will apply to all users.

The Exchange believes that requiring Redistributors to provide monthly reports of data recipients that are receiving the managed non-display service is reasonable because as a matter of practice, the Exchange already has been requiring such reporting pursuant to its right under the vendor and subscriber agreements to request such information, and there is no indication that this has been burdensome for Redistributors. The reporting requirement is equitable and not unfairly discriminatory because it will apply to all Redistributors and help to ensure that ultimate data recipients are receiving data in accordance with the Exchange's rules.

The Exchange believes that the proposed fee increases for each of Categories 1, 2, and 3 for NYSE Arca Integrated Feed, NYSE ArcaBook and NYSE Arca Trades and the Category 3 cap for NYSE Arca BBO are reasonable. In establishing the non-display fees in April 2013, the Exchange set its fees substantially below comparable fees charged by certain of its competitors.[15] After gaining further experience with its new display/non-display fee structure, the Exchange believes that the proposed fees better reflect the significant value of the non-display data to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4), (5).

[15] *See* 2013 Release, *supra* note 4, at 21672.

a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[16]

The fee increases are also reasonable in that they support the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves. For example, the Exchange has begun to make its proprietary data products available over both its existing distribution channel as well as the XDP protocol.

Charging a separate fee for Category 3 data recipients that already pay a fee under Category 1 or 2 is reasonable because it eliminates what is effectively a discount for such data recipients under the current Fee Schedule and results in a more equitable allocation of fees to users that derive a benefit from a Category 3 use, and as such is not unfairly discriminatory. The current fee can be viewed as having an effective non-display fee cap of $10,000 for NYSE Arca Integrated Feed, $8,000 for NYSE ArcaBook, $2,000 for each of NYSE Arca Trades and NYSE Arca BBO. The proposed fee would have an effective non-display fee cap of $35,000 for NYSE Arca Integrated Feed, $25,000 for NYSE ArcaBook, $10,000 for NYSE Arca Trades, and $5,000 for NYSE Arca BBO. The Exchange believes that the proposed fees (and their associated caps) more closely correspond to the value that Category 3 recipients derive from the various uses of the data, some of which are operating various types of alternative trading venues that directly compete for order flow with the Exchange. Limiting the fees in Category 3 to no more than three trading platforms is reasonable because it modulates the size of the fee increase for certain recipients as compared to what they pay under the current fee structure, in much the same manner as the current fee does by limiting the non-display fees to a maximum of two categories. The Exchange does not believe that it will be burdensome for Category 3 recipients to determine, or the Exchange to audit, whether a recipient has one, two, three or more separate platforms.

The proposed monthly fee of $200 for NYSE Arca BBO managed non-display data is reasonable because they are less than other managed non-display fees charged by the Exchange for other managed non-display products as well as by other exchanges for comparable products.[17] The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to the feeds.

The proposed increases in the managed non-display fee for NYSE Arca Integrated Feed, NYSE ArcaBook, and NYSE Arca Trades are reasonable because they remain less than the comparable fee for other exchanges' similar products.[18] The fees also are equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to the feeds.

The fees are also competitive with offerings by other exchanges, which structure and set their fees in a variety of ways. For example, NASDAQ professional subscribers pay monthly fees for non-display usage based upon direct access to NASDAQ Level 2, NASDAQ TotalView, or NASDAQ OpenView, which range from $300 per month for customers with one to 10 subscribers to $75,000 for customers with 250 or more subscribers.[19] NASDAQ also offers an enterprise license for its last sale data at $50,000 per month.[20] In addition, Phlx offers an alternative $10,000 per month ''Non-Display Enterprise License'' fee that permits distribution to an unlimited number of internal non-display subscribers without incurring additional fees for each internal subscriber.[21] The Non-Display Enterprise License covers non-display subscriber fees for all Phlx proprietary direct data feed products and is in addition to any other associated distributor fees for Phlx proprietary direct data feed products. NASDAQ OMX BX, Inc. (''BX'') also offers an alternative non-display usage fee of $16,000 per month for its BX TotalView data feed.[22] NASDAQ and Phlx also both offer managed non-display data solutions at higher overall fees than the Exchange proposes to charge.[23]

The Exchange also notes that all of the products described herein are entirely optional. The Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase any of the products. Firms that do purchase non-display products do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange for order flow; those firms are able to determine for themselves whether any specific product such as these are attractively priced or not.

Firms that do not wish to purchase the data at the new prices have a wide variety of alternative market data products from which to choose,[24] or if the non-display data products do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of them, such firms may simply choose to conduct their business operations in ways that do not require those data products. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[25] Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and

[16] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

[17] NASDAQ offers a Managed Data Solution that assesses a monthly Managed Data Solution Administration fee of $1,500 and monthly Subscriber fees of $60 for non-professionals to $300 for professionals. *See* NASDAQ Rule 7026(b). Phlx charges a monthly Managed Data Solution Administration fee of $2,000 and a monthly Subscriber fee of $500. The monthly License fee is in addition to the monthly Distributor fee of $3,500 (for external usage), and the $500 monthly Subscriber fee is assessed for each Subscriber of a Managed Data Solution. *See* Securities Exchange Act Release No. 70748 (October 23, 2013), 78 FR 64569 (October 29, 2013) (SR–Phlx–2013–105).

[18] *Id.*

[19] *See* NASDAQ Rule 7023(b)(4).

[20] *See* NASDAQ Rule 7039(b).

[21] Alternatively, Phlx charges each professional subscriber $40 per month. *See* Section IX of the Phlx Pricing Schedule.

[22] *See* NASDAQ OMX BX Rule 7023(a)(2). Alternatively, BX charges each professional subscriber $40 per month.

[23] *See supra* note 17.

[24] *See supra* notes 17–22. Because NYSE Arca BBO and NYSE Arca Trades are subsets of the consolidated core data offered by the CTA and CQS, customers may choose to purchase those consolidated data products or free delayed data instead.

[25] *See* In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014).

some broker-dealers and ATSs have chosen not to do so.[26]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.''' [27]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically or offer any significant benefits.[28]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [29]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [30] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[31]

If an exchange succeeds in its competition for quotations, order flow, and trade executions, then it earns

[26] For example, Goldman Sachs Execution and Clearing, L.P. has disclosed that it does not use proprietary market data in connection with Sigma X, its ATS. *See* response to Question E3, available at *http://www.goldmansachs.com/media-relations/in-the-news/current/pdf-media/gsec-order-handling-practices-ats-specific.pdf.* By way of comparison, IEX has disclosed that it uses proprietary market data feeds from all registered stock exchanges and LavaFlow ECN. *See http://www.iextrading.com/about/.*

[27] *NetCoalition,* 615 F.3d at 535.

[28] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[29] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[30] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[31] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are distributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available the Exchange products described herein unless their customers request them, and customers will not elect to pay the proposed increased fees for non-display uses unless the non-display uses of these data products can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of their data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in May 2014 more than 80% of the transaction volume on each of NYSE, NYSE Arca, and NYSE MKT was executed by market participants that purchased one or more proprietary market data products. A super-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[32] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[33]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as various forms of ATSs, including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.[34]

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as

[32] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314, 57317 (September 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (September 14, 2010), 75 FR 57321, 57324 (September 20, 2010) (SR–NASDAQ–2010–111).

[33] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[34] FINRA's Alternative Display Facility also receives over-the-counter trade reports that it sends to CTA.

the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, have provided certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.[35] Similarly, LavaFlow ECN provides market data to its subscribers at no charge.[36] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.[37]

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. For example, with respect to NYSE Arca Trades and NYSE Arca BBO, the data appears in both the real-time core data offered by the SIPs for a fee and free SIP data that is offered on a 15-minute time delay. With respect to NYSE Arca Integrated Feed, NYSE Arca Trades, NYSE Arca BBO, and NYSE ArcaBook, close substitute products are offered by several competitors.[38] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed non-display fees are generally lower than the maximum non-display fees charged by other exchanges such as NASDAQ, Phlx, and BX for comparable products.[39]

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010. As noted above, LavaFlow ECN provides market data to its subscribers at no charge.[40]

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[41] of the Act and subparagraph (f)(2) of Rule 19b–4[42] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[43] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–93 on the subject line.

[35] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[36] See ''LavaFlow—ADF Migration,'' available at *https://www.lavatrading.com/news/pdf/LavaFlow_ADF_Migration.pdf.*

[37] The Exchange notes that a small number of Category 3 non-display data recipients could be using the market data strictly for competitive purposes (e.g., other exchanges and ATSs) or for business purposes unrelated to trading or investment (e.g., Internet portals that wish to attract ''eyeballs'' to their pages primarily generate advertising revenue for themselves). The Exchange does not believe that the proposed fees will impose any unnecessary burden on these competitors or other businesses.

[38] *See supra* notes 17–22.

[39] *Id.*

[40] *See supra* note 36.

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f)(2).

[43] 15 U.S.C. 78s(b)(2)(B).

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–2014–93. 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–2014–93 and should be submitted on or before October 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21650 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73013; File No. SR–NYSEARCA–2014–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To (i) Change the Pricing for the Retail Liquidity Program and the Qualification Requirement for the Existing Retail Order Tier, and To Add a New Retail Order Credit Under Basic Rates, and (ii) Eliminate Obsolete Pricing Tiers

September 5, 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 August 26, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to (i) change the pricing for the Retail Liquidity Program and the qualification requirement for the existing Retail Order Tier, and to add a new Retail Order credit under Basic Rates, and (ii) eliminate obsolete pricing tiers. The Exchange proposes to implement the fee changes effective September 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) change the pricing for the Retail Liquidity Program and the qualification requirement for the existing Retail Order Tier, and to add a new Retail Order credit under Basic Rates, and (ii) eliminate obsolete pricing tiers. The Exchange proposes to implement the fee changes effective September 1, 2014.

Retail Liquidity Program

The Retail Liquidity Program is a pilot program that is designed to attract additional retail order flow to the Exchange for NYSE Arca–listed securities and securities traded pursuant to unlisted trading privileges (''UTP Securities'') while also providing the potential for price improvement to such order flow.[4] Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a ''Retail Order,'' which is defined in Rule 7.44(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (''RMO''), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[5] In addition to RMOs, Retail Liquidity Providers (''RLPs'') were created as an additional class of market participant under the Retail Liquidity Program. RLPs are required to provide potential price improvement for Retail Orders in the form of ''Retail Price Improvement Orders'' (''RPIs''), which are non-displayed interest that is better than the best protected bid (''PBB'') or best protected offer (''PBO''), as such terms are defined in Regulation NMS Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 7.44. *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

[5] RMO is defined in Rule 7.44(a)(2) as an ETP Holder that is approved by the Exchange under Rule 7.44 to submit Retail Orders.

600(b)(57) (together, ''PBBO'').[6] ETP Holders other than RLPs are also permitted, but not required, to submit RPIs.

RLP executions of RPIs against Retail Orders in Tape B and Tape C securities are not currently charged or provided with a credit (i.e., they are free). The Exchange proposes to instead provide a credit of $0.0003 per share. RMOs currently receive a credit of $0.0005 per share for executions of Retail Orders in Tape B and Tape C securities if executed against RPIs and other price-improving interest. The Exchange proposes to eliminate this credit so that such Retail Order executions would be free (i.e., no credit or charge).

Retail Order Tier and New Retail Order Basic Rate Credit

The Exchange currently provides a credit of $0.0033 per share under the Retail Order Tier for Retail Orders that provide liquidity on the Exchange in Tape A, Tape B and Tape C securities if the ETP Holder executes an average daily volume (''ADV'') of Retail Orders during the month that is 0.20% or more of U.S. consolidated ADV (''CADV'').[7] The Retail Order Tier credit is available only to Retail Orders that provide liquidity on the Exchange, but an ETP Holder currently may qualify for the Retail Order Tier based on its ADV of Retail Orders that both provide and remove liquidity from the Exchange. The Exchange proposes that only Retail Orders that provide liquidity would count toward qualifying for the Retail Order Tier; Retail Orders that remove liquidity would no longer count. The Exchange also proposes to decrease the CADV threshold for qualification from 0.20% to 0.15%.

Currently, an ETP Holder that submits Retail Orders that provide liquidity, but that does not qualify for the Retail Order Tier or a separate Tiered rate in the Fee Schedule, is subject to the Basic Rate credit of $0.0020 per share for such executions. The Exchange proposes to add a new Basic Rate credit of $0.0030 per share for Retail Orders that provide liquidity.

Elimination of Obsolete Pricing

The Fee Schedule currently includes several pricing tiers that have not encouraged ETP Holders to increase their activity to qualify for the tiers as significantly as the Exchange anticipated they would. These tiers are as follows: (i) Investor Tiers 1–4, (ii) Retail Order Cross Asset Tier, and (iii) Routable Order Cross Asset Tier. The Exchange proposes to remove these pricing tiers from the Fee Schedule as well as any related cross references.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Retail Liquidity Program

The Exchange believes that the proposed changes to the rates under the Retail Liquidity Program are reasonable. The Exchange originally introduced the existing rates approximately five months ago.[10] At that time, the Exchange stated that, because the Retail Liquidity Program was a pilot program, the Exchange anticipated that it would periodically review applicable pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities while also providing the potential for price improvement to such order flow. The proposed new rates are a result of this review.

The Exchange believes that providing a credit of $0.0003 per share for RLP and Non-RLP executions of RPIs against Retail Orders is reasonable because it would further incentivize submission of RPIs for interaction with Retail Orders and therefore could result in greater price improvement for Retail Orders. The Retail Order credit was designed to create a financial incentive for RMOs to bring additional retail order flow to a public market during the initial implementation of the Retail Liquidity Program. The proposed change also is reasonable because, despite the elimination of the credit, RMOs, and indirectly their customers, would continue to receive significant benefits in the form of price improvement by interacting with RPIs.

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[11] While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The proposed new rates would be set at levels that would continue to reasonably incentivize RMOs to direct Retail Orders to the Exchange and would contribute to robust amounts of RPI liquidity submitted by RLPs and non-RLPs being available for interaction with the Retail Orders. Together, this would increase

[6] *See* 17 CFR 242.600(b)(57). RLP is defined in Rule 7.44(a)(1) as an ETP Holder that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 7.44. RPI is defined in Rule 7.44(a)(4) and consists of non-displayed interest in NYSE Arca-Alisted securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that is priced better than the PBBO by at least $0.001 and that is identified as such.

[7] An ETP Holder is able to designate an order as a Retail Order for purposes of the non-Retail Liquidity Program pricing (i.e., the Retail Order Tier and, as described herein, the proposed Retail Order Basic Rate credit) without designating the order as a Retail Order for purposes of the Retail Liquidity Program pricing. An order designated only for non-Retail Liquidity Program pricing would not be eligible to execute in the Retail Liquidity Program or be subject to Retail Liquidity Program pricing. However, an ETP Holder could choose to designate an order for purposes of both the Retail Liquidity Program and otherwise, in which case the Exchange would consider the order to be a Retail Order for purposes of executions within the Retail Liquidity Program, and apply Retail Liquidity Program pricing for any such executions, and also then as a Retail Order for purposes of the Retail Order Tier and the proposed Retail Order Basic Rate credit for any executions outside of the Retail Liquidity Program. The same requirements of Rule 7.44(a)(3) applies with respect to Retail Orders, whether within or outside of the Retail Liquidity Program. The Exchange described these details in a prior rule change that introduced the Retail Liquidity Program pricing, including that the manner in which an order was designated (i.e., either within or outside of the Retail Liquidity Program, or both) would determine the applicable pricing. *See* Securities Exchange Act Release No. 71722 (March 13, 2014), 79 FR 15376 (March 19, 2014) (SR–NYSEArca–2014–22).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities Exchange Act Release No. 71722 (March 13, 2014), 79 FR 15376 (March 19, 2014) (SR–NYSEArca–2014–22).

[11] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (''Concept Release'') (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission's Web site) (''White Speech''); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site) (''Schapiro Speech''). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in ''dark'' venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange has the potential to benefit all market participants. For this reason, the Exchange believes that the proposed pricing is equitable and not unfairly discriminatory and would continue to encourage greater retail participation on the Exchange.

The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Retail Order Tier and New Retail Order Basic Rate Credit

The Exchange believes that it is reasonable that only Retail Orders that provide liquidity would count toward qualifying for the Retail Order Tier. This would result in the type of volume to which the corresponding credit applies being the same as the volume that counts toward qualification—i.e., only Retail Orders that provide liquidity for both. The Exchange also believes that the proposed change is reasonable because, while Retail Orders that remove liquidity would no longer count toward qualifying for the Retail Order Tier, the qualifying threshold would be decreased from 0.20% to 0.15%. The Exchange believes that the decreased threshold may balance the effect of the more narrow activity that would count toward qualifying. The Exchange believes that the proposed threshold of 0.15% is reasonable because it would remain within a range that the Exchange believes would continue to incentivize ETP Holders to submit Retail Orders to the Exchange in order to qualify for the applicable credit of $0.0033 per share. This would continue to contribute to increasing liquidity available on the Exchange.

The Exchange believes that it is reasonable to add a new Basic Rate credit of $0.0030 per share for Retail Orders that provide liquidity. The Exchange believes that the proposed new credit would contribute further to balancing the effect of the more narrow activity that would count toward qualifying for the Retail Order Tier, as described above. In this regard, an ETP Holder that does not qualify for the Retail Order Tier would still be eligible for a credit for its Retail Orders that provide liquidity that is higher than the standard $0.0020 per share Basic Rate credit for providing liquidity, which the Exchange believes may be below the level that would continue to encourage submission of Retail Orders on the Exchange. The proposed new $0.0030 Basic Rate credit would be set at a level that would reasonably contribute to encouraging ETP Holders to submit Retail Orders. Retail Orders that provide liquidity would receive the new Basic Rate credit of $0.0030 per share if the ETP Holder does not qualify for the Retail Order Tier or another Tiered rate in the Fee Schedule.

The proposed new Retail Order Basic Rate credit would create an added financial incentive for ETP Holders to bring additional retail flow to a public market. The proposed new credit also is reasonable because it would reduce the costs of ETP Holders that represent retail flow and potentially also reduce costs to their customers. The Exchange also believes that the proposed $0.0030 credit is reasonable because it would be identical to the credit on New York Stock Exchange LLC for transactions in orders designated as ''retail'' that provide liquidity. The proposed credit also would be similar to the manner in which The Nasdaq Stock Market, LLC provides a $0.0033 credit for ''Designated Retail Orders'' that provide liquidity.[12]

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed change also is consistent with the Act because all similarly situated ETP Holders would pay the same rate, as is currently the case, and because all ETP Holders would be eligible to qualify for the rates by satisfying the related thresholds, where applicable. Furthermore, the submission of Retail Orders is optional for ETP Holders, in that an ETP Holder could choose whether to submit Retail Orders and, if it does, the extent of its activity in this regard.

Elimination of Obsolete Pricing

The Exchange believes that it is reasonable to eliminate the obsolete pricing tiers from the Fee Schedule because ETP Holders have not increased their activity to qualify for these tiers as significantly as the Exchange anticipated they would. The Exchange believes that this is equitable and not unfairly discriminatory because the tiers would be eliminated entirely—no ETP Holders would remain able to qualify for the eliminated tiers. This aspect of the proposed change would therefore result in a more streamlined Fee Schedule, including with respect to removal of related cross references.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging

[12] *See* NASDAQ Rule 7018.

[13] 15 U.S.C. 78f(b)(8).

additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act in this regard, because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting competition. The removal of obsolete pricing tiers is not competitive in nature, but would result in a more streamlined Fee Schedule.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2014–95 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–2014–95. 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 Section, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–2014–95 and should be submitted on or before October 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21651 Filed 9–10–14; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73008; File No. SR–NYSEMKT–2014–73]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fees for Non-Display Use of NYSE Amex Options Market Data

September 5, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 25, 2014, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees for non-display use of NYSE Amex Options market data, operative on September 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees for non-display use of NYSE Amex Options market data, operative on September 1, 2014.[3]

The Exchange established the current non-display fees for ArcaBook for Amex Options—Trades, ArcaBook for Amex Options—Top of Book, ArcaBook for Amex Options—Depth of Book, ArcaBook for Amex Options—Complex, ArcaBook for Amex Options—Series Status, and ArcaBook for Amex Options—Order Imbalance (collectively, ''Amex Options Products'') in May 2013.[4] Fees cover all six products.[5]

Under the proposal, non-display use would continue to mean accessing, processing, or consuming an Exchange data product delivered via direct and/or Redistributor[6] data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). As is the case today, non-display fees would apply to the Non-Display Use of the data product as part of automated calculations or algorithms to support trading decision-making processes or the operation of trading platforms.

The Exchange is proposing to expand the types of uses considered Non-Display Use to also include non-trading uses. In addition, the proposal would specify that Non-Display Use would include any trading use, rather than only certain types of trading, such as high frequency or algorithmic trading, as under the current fee structure. Under the proposal, examples of Non-Display Use would include any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management. The Exchange believes that non-trading uses benefit data recipients by allowing users to automate functions, achieving greater speed and accuracy, and in turn, for example, reducing costs of labor to perform the functions manually. This approach would address the difficulties of monitoring and auditing different types of trading versus non-trading uses of the data and the burden of counting devices used for non-trading purposes under the current fees.

Proposed Changes to Non-Display Fees

The Exchange proposes to amend the fee structure applicable to Non-Display Use of Amex Options Products. Specifically, the Exchange proposes certain changes to the three categories of, and fees applicable to, data recipients. The Exchange also proposes corresponding changes to the Fee Schedule text to remove references to the current category descriptions.

Under the proposal, Category 1 Fees would apply when a data recipient's Non-Display Use of real-time market data is on its own behalf as opposed to on behalf of its clients. This proposal represents an expansion of the application of Category 1 Fees, which currently apply solely to the Non-Display Use of real time market data for the purpose of principal trading, to usage of such data for non-trading purposes.

Under the proposal, Category 2 Fees would apply to a data recipient's Non-Display Use of real-time market data on behalf of its clients as opposed to on its own behalf. This proposal also represents an expansion of the application of Category 2 Fees, which currently apply solely to trading activities to facilitate a customer business, to usage of such data for non-trading purposes. In contrast to the current fee structure, data recipients will not be liable for Category 2 Non-Display fees for which they are also paying Category 1 Non-Display fees.[7]

The Exchange believes its proposal to apply Category 1 Fees and Category 2 Fees to Non-Display Use of market data for non-trading purposes would address the difficulties of monitoring and auditing trading versus non-trading uses of the data and the burden of counting devices used for purposes of applying the per-device fees. As discussed in more detail in the 2013 Release,[8] the ability to accurately count devices and audit such counts creates administrative challenges for vendors, data recipients, and the Exchange.

Under the proposal, Category 3 Fees would apply to data recipients' Non-Display Use of real-time market data for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platform(s), such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. Currently, Category 3 Fees apply where a data recipient's non-display use of market data is, in whole or in part, for the purpose of providing reference prices in the operation of one or more trading platforms. The Exchange believes its proposed revision to its description of the data recipients to whom Category 3 Fees apply is more precise because it focuses on the functions of internally matching orders.

In addition, the Exchange is proposing to change the application of Category 3 Fees to data recipients that also use data for purposes that give rise to Category 1 and/or Category 2 Fees. Currently, a data recipient is not liable for Category 3 Fees for those Amex Options Products for which it is also paying Category 1 and/or Category 2 Fees.[9] Under the proposal, a data recipient's Non-Display Use of real-time market data for Category 3 purposes would require such data recipient to pay Category 3 Fees in addition to any Category 1 Fees or Category 2 Fees it is required to pay for Non-Display Use of market data.

There will continue to be no monthly or other reporting requirements for data recipients' Non-Display Use. However, the Exchange continues to reserve the right to audit data recipients' Non-Display Use of Exchange market data products in accordance with the Exchange's vendor and subscriber agreements.

A data recipient that receives real-time Exchange market data for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before September 1, 2014. The Non-Display Use Declaration would

[3] The Exchange's affiliates have submitted or will be submitting similar proposals. *See, e.g.,* SR–NYSE–2014–43.

[4] *See* Securities Exchange Act Release No. 69553 (May 10, 2013), 78 FR 28926 (May 16, 2013) (SR–NYSEMKT–2013–40) (''2013 Release'').

[5] The Exchange began offering ArcaBook for Amex Options—Complex separately at no charge on May 1, 2014. *See* Securities Exchange Act Release No. 72074 (May 1, 2014), 79 FR 26277 (May 7, 2014) (SR–NYSEArca–2014–51).

[6] ''Redistributor'' means a vendor or any person that provides a real-time NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[7] *See* 2013 Release, *supra* note 4, at 28929.

[8] *See id.* at 28928.

[9] *See id.*

replace the current declaration on the NYSE Euronext Non-Display Usage Declaration.[10] A firm subject to Category 3 Fees would be required to identify each platform that uses data on a Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration. Beginning in 2016, data recipients would be required to submit, by January 31 of each year, a Non-Display Use Declaration. In addition, if a data recipient's use of real-time Exchange market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient would be required to update it at the time of the change to reflect the change of use.

Comparison of Current Fees to Proposed Fees

The chart below compares the proposed changes to current monthly fees:

Data feed	Current fee	Proposed fee
Amex Options Products Non-Display Category 1	$1,000	$5,000.*
Amex Options Products Non-Display Category 2	$1,000	$5,000.*
Amex Options Products Non-Display Category 3	$1,000, or $0 if Category 1 or 2 fees paid.	$5,000, capped at $15,000.

* Data recipients will not be liable for Category 2 Non-Display fees for which they are also paying Category 1 Non-Display fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually. The Exchange also notes that The NASDAQ Stock Market (''NASDAQ'') and NASDAQ OMX PHLX (''Phlx'') do not make any distinction in their non-display use fees between trading or non-trading uses, and as such, the proposed change will harmonize the Exchange's approach with those exchanges. Finally, the Exchange notes that eliminating the trading versus non-trading distinction would substantially simplify fee calculations and ease administrative burdens for the Exchange.

After further experience, the Exchange also believes that it is more equitable and not unfairly discriminatory to eliminate the distinction for non-trading versus trading uses in light of the significant value of both types of uses. The Exchange notes that because non-display fees are flat fees, the expansion to cover non-trading uses could only result in a fee increase for a data recipient that is using the data solely for non-trading purposes and is only subject to per-device fees; at this time, the Exchange has not identified such a data recipient. Based on data available to the Exchange, all data recipients use the data for at least one trading purpose, and therefore the changes to the fees that they will pay under the proposal would not be due to the elimination of the distinction between trading and non-trading uses. The Exchange further notes that based on Non-Display Use Declarations submitted to date, some users have declared no Non-Display Use, and as such the proposed changes would have no impact on them.

The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of its market data products and can correctly assess fees for the uses of those products. The annual submission requirement is equitable and not unfairly discriminatory because it will apply to all users.

The Exchange believes that the proposed fee increases of $4,000 per month for each of Categories 1, 2, and 3 is reasonable. In establishing the non-display fees in May 2013, the Exchange set its fees below comparable fees charged by certain of its competitors.[13] After gaining further experience with its new display/non-display fee structure, the Exchange believes that the proposed fees better reflect the significant value of the non-display data to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[14]

The fee increases are also reasonable in that they support the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves. For example, the Exchange will make its proprietary data products available over an upgraded distribution channel and protocol ''XDP'' early next year.

Charging a separate fee for Category 3 data recipients that already pay a fee under Category 1 or 2 is reasonable

[10] As described in more detail in the Statutory Basis section, in order to modulate the overall fee increase that could apply, if a firm subject to Category 3 Fees has more than three platforms, it would only be required to declare three platforms.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4), (5).

[13] *See* 2013 Release, *supra* note 4, at 28930.

[14] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

because it eliminates what is effectively a discount for such data recipients under the current Fee Schedule and results in a more equitable allocation of fees to users that derive a benefit from a Category 3 use, and as such is not unfairly discriminatory. The current fee can be viewed as having an effective non-display fee cap of $2,000 while the proposed fee would have an effective non-display fee cap of $20,000. The Exchange believes that the proposed fees (and their associated caps) more closely correspond to the value that Category 3 recipients derive from the various uses of the data, some of which are operating various types of alternative trading venues that directly compete for order flow with the Exchange. Limiting the fees in Category 3 to no more than three trading platforms and charging only one fee for users that fall under both Category 1 and 2 is reasonable because it modulates the size of the fee increase for certain recipients as compared to what they pay under the current fee structure, in much the same manner as the current fee does by limiting the non-display fees to a maximum of two categories. The Exchange does not believe that it will be burdensome for Category 3 recipients to determine, or the Exchange to audit, whether a recipient has one, two, three or more separate platforms.

The fees are also competitive with offerings by other exchanges, which structure and set their fees in a variety of ways. For example, NASDAQ Options Market (''NOM'') offers a $2,500 per month ''Non-Display Enterprise License'' fee that permits distribution of Best of NASDAQ Options (''BONO'') or NASDAQ ITCH-to-Trade Options (''ITTO'') to an unlimited number of non-display devices within a firm without any per user charge.[15] In addition, Phlx offers an alternative $10,000 per month ''Non-Display Enterprise License'' fee that permits distribution to an unlimited number of internal non-display subscribers without incurring additional fees for each internal subscriber.[16] The Non-Display Enterprise License covers non-display subscriber fees for all Phlx proprietary direct data feed products (Top of Phlx Options (''TOPO''), TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds) and is in addition to any other associated distributor fees for Phlx proprietary direct data feed products,[17] The Exchange further notes that its proposed fees are less than the non-display fees charged by the Options Price Reporting Authority (''OPRA'').[18]

The Exchange also notes that all of the products described herein are entirely optional. The Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase any of the products. Firms that do purchase non-display products do so with the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange for order flow; those firms are able to determine for themselves whether any specific product such as these are attractively priced or not.

Firms that do not wish to purchase the data at the new prices have a wide variety of alternative market data products from which to choose,[19] or if the non-display data products do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of them, such firms may simply choose to conduct their business operations in ways that do not require those data products. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[20] Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

635 F.3d at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[21]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically or offer any significant benefits.[22]

[15] *See* NASDAQ Options Rules Chapter XV, Section 4. Alternatively, NOM charges each professional subscriber $5 per month for BONO and $10 per month for ITTO.

[16] *See* Section IX of the NASDAQ OMX PHLX LLC Pricing Schedule and Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145). Alternatively, Phlx charges each professional subscriber $40 per month.

[17] *See id.*

[18] *See* Securities Exchange Act Release No. 67648 (August 14, 2012), 77 FR (August 17, 2012) (SR–OPRA–2012–04) (establishing effective October 1, 2012 a non-display application fee of $500/installation/month, with an enterprise fee alternative of $7500/month that would permit a professional subscriber to receive access to OPRA data for use in an unlimited number of non-display application installations).

[19] *See supra* notes 14–17. Because ArcaBook for Amex Options—Trades and ArcaBook for Amex Options—Top of Book are subsets of the consolidated core data offered by OPRA, customers may choose to purchase those consolidated data products instead.

[20] *See* In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014).

[21] *NetCoalition,* 615 F.3d at 535.

[22] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition. The market for proprietary options data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for options trades and sales of options market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own options market data. Proprietary options data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [23] Similarly, the options markets vigorously compete with respect to options data products.[24]

Moreover, competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary options data products and therefore constrain markets from overpricing proprietary options market data. Broker-dealers send their order flow to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. Options markets, similar to the equities markets, are highly fragmented.[25]

If an exchange succeeds in its competition for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary options market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its options market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are distributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available Amex Options Products described herein unless their customers request them, and customers will not elect to pay the proposed increased fees for non-display uses unless the non-display uses of these data products can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of their data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in July 2014 more than 80% of the options transaction volume on each of NYSE MKT and NYSE Arca was executed by market participants that purchased one or more proprietary market data products. A super-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint

to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[23] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[24] *See, e.g.,* Securities Exchange Act Release No. 67466 (July 19, 2012), 77 FR 43629 (July 25, 2012) (SR–Phlx–2012–93), which describes a variety of options market data products and their pricing.

[25] *See, e.g.,* Press Release, TABB Says US Equity Options Market Makers Need Scalable Technology to Compete in Today's Complex Market Structure (February 25, 2013), available at *http://www.tabbgroup.com/PageDetail.aspx?PageID=16&ItemID=1231;* Fragmentation Vexes Options Markets (April 21, 2014), available at *http://marketsmedia.com/fragmentation-vexes-options-market/.*

platform and have common costs.[26] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[27]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 self-regulatory organization (''SRO'') options markets. Two of the 12 have launched operations since December 2012.[28] The Exchange believes that these new entrants demonstrate that competition is robust.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS Exchange, Inc. (''BATS''), which previously operated as an ATS and obtained exchange status in 2008, has provided certain market data at no charge on its Web site in order to attract more order flow, and uses revenue rebates from resulting additional executions to maintain low execution charges for its users.[29] The Exchange currently offers ArcaBook for Arca Options—Complex for free. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.[30]

Existence of Alternatives. The large number of SROs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce and sell proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE Arca, Inc.; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; International Securities Exchange, LLC; ISE Gemini; NASDAQ; Phlx; BX; BATS; and Miami Exchange.

The fact that proprietary data from vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. For example, with respect to ArcaBook for Arca Options—Trades and ArcaBook for Arca Options—Top of Book, the data appears in the real-time core data offered by OPRA for a fee. Close substitute products also are offered by several competitors.[31] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute one or more other sources of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed non-display fees are generally lower than the maximum non-display fees charged by other exchanges such as NASDAQ and Phlx, for comparable products.[32]

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg

[26] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314, 57317 (September 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (September 14, 2010), 75 FR 57321, 57324 (September 20, 2010) (SR–NASDAQ–2010–111).

[27] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis.. . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[28] *See* Securities Exchange Act Release Nos. 70050 (July 26, 2013), 78 FR (August 1, 2013) (approving exchange registration for Topaz Exchange, LLC) (known as ISE Gemini); and 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (approving exchange registration for Miami International Securities Exchange LLC (''Miami Exchange'')).

[29] *See* description of free market data from BATS Options, available at *http://www.batsoptions.com/market_data/products/.* This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[30] The Exchange notes that a small number of Category 3 non-display data recipients could be using the market data strictly for competitive purposes (e.g., other exchanges) or for business purposes unrelated to trading or investment (e.g., Internet portals that wish to attract ''eyeballs'' to their pages primarily generate advertising revenue for themselves). The Exchange does not believe that the proposed fees will impose any unnecessary burden on these competitors or other businesses.

[31] *See supra* notes 15–18.

[32] *Id.*

Tradebook, Island, RediBook, Attain, TrackECN, and BATS. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008. Two new options exchanges have launched operations since December 2012.[33]

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary options market data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors, and has not considered irrelevant factors, in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[34] of the Act and subparagraph (f)(2) of Rule 19b–4[35] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[36] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–73 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–NYSEMKT–2014–73. 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–NYSEMKT–2014–73 and should be submitted on or before October 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

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[33] *See supra* note 28.

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(2).

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73007; File No. SR–ICC–2014–11]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change, As Modified by Amendment No. 2 Thereto, To Revise Rules To Provide for the 2014 ISDA Definitions

September 5, 2014.

I. Introduction

On July 24, 2014, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2014–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 5, 2014.[3] The Commission did not receive comments on the proposed rule change. On September 2, 2014, ICC filed Amendment No. 2 to the proposed rule change to correct a factual inaccuracy in a statement made in its filing.[4] For the reasons described below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78(s)(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72701 (Jul. 29, 2014); 79 FR 45565 (Aug. 5, 2014) (SR–ICC–2014–11).

[4] On August 28, 2014, ICC filed Amendment No. 1 to the proposed rule change. ICC withdrew Amendment No. 1 on September 2, 2014. ICC subsequently filed Amendment No. 2 on September 2, 2014. In Amendment No. 2, ICC clarified that CDS contracts on sovereigns cleared at ICC will be Converting Contracts (as discussed herein). ICC stated that its implementation of the 2014 ISDA definitions is intended to be fully consistent with the planned ISDA protocol implementation. ICC noted that, on August 15, 2014, ISDA published a memorandum and FAQ that, in relevant part, explains that based on industry feedback related to the draft protocol, the protocol would be amended to include certain emerging market sovereign single names. Following the protocol amendment, all sovereign single names cleared at ICC will now be included in the protocol. Amendment No. 2 corrects a factual inaccuracy in a statement made in ICC's filing, and because it does not materially affect the substance of the proposed rule change, the Commission is not publishing it for comment.

II. Description of the Proposed Rule Change

ICC has stated that the principal purpose of the proposed rule change is to amend ICC rules to incorporate references to revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (''ISDA'') on February 21, 2014 (the ''2014 ISDA Definitions''). ICC has stated that, as described by ISDA, the 2014 ISDA Definitions make a number of changes from the ISDA Credit Derivatives Definitions published previously in 2003 (as amended in 2009, the ''2003 ISDA Definitions'') to the standard terms for CDS Contracts, including (i) introduction of new terms applicable to credit events involving financial reference entities and settlement of such credit events, (ii) introduction of new terms applicable to credit events involving sovereign reference entities and settlement of such credit events, (iii) implementation of standard reference obligations applicable to certain reference entities, and (iv) various other improvements and drafting updates that reflect market experience and developments since the 2009 amendments to the 2003 ISDA Definitions. The 2014 ISDA Definitions will become effective on the industry implementation date of September 22, 2014.

ICC has proposed that, consistent with the approach being taken throughout the CDS market, the 2014 ISDA Definitions will be applicable to certain products cleared by ICC beginning on September 22, 2014. In addition, the proposed amendments will provide for the conversion of certain existing contracts (so-called ''Converting Contracts''), currently based on the 2003 ISDA Definitions, into contracts based on the 2014 ISDA Definitions. ICC asserts that this approach is consistent with expected industry practice for similar contracts not cleared by ICC, which will be subject to a multilateral amendment ''protocol'' sponsored by ISDA, and that ICC Participants plan to adhere to the ISDA protocol and would desire ICC to convert certain contracts cleared at ICC into contracts based on the 2014 ISDA Definitions, consistent with the ISDA protocol. For contracts that are not Converting Contracts, ICC expects to continue to accept for clearing both new transactions referencing the 2014 ISDA Definitions and new transactions referencing the 2003 ISDA Definitions (and such contracts based on different definitions will not be fungible). ICC proposes to publish on its Web site a list of Converting Contracts, which is expected to be the same as the list of contracts subject to the ISDA protocol. ICC anticipates that most ICC Contracts will be Converting Contracts with certain exceptions including certain financial reference entities.

To this end, ICC has proposed to (i) revise the ICC Clearing Rules (''Rules'') to make proper distinctions between the 2014 ISDA Definitions and the 2003 ISDA Definitions and related documentation and (ii) make conforming changes throughout the ICC Rules to reference provisions from the proper ISDA Definitions. ICC has proposed changes to Chapters 20, 21, 22 and 26 of the ICC Rules. ICC has also submitted revisions to the ICC Restructuring Procedures, which ICC states reflect proper distinctions between the 2003 ISDA Definitions and the 2014 ISDA Definitions.[5]

Finally, ICC has proposed revisions to the Risk Management Framework to reflect appropriate portfolio treatment between CDS Contracts cleared under the 2003 and 2014 ISDA Definitions. The revisions to the ICC Risk Management Framework would introduce a ''Risk Sub-Factor'' as a specific single name and any unique combination of instrument attributes (e.g., restructuring clause, 2003 or 2014 ISDA Definitions, debt tier, etc.). The union of all Risk Sub-Factors that share the same underlying single name would form a single name Risk Factor. The portfolio treatment at the Risk Sub-Factor level would be provided for in the Risk Management Framework, as appropriate. Additionally, the ICC Risk Management Framework would be revised to include long and short positions of Risk Sub-Factors for a single name Risk Factor in the Jump-to-Default requirement. The ICC Risk Management Framework also would be revised to include other cleanup and clarification changes (e.g., to address the difference in risk time horizon between North American and European instruments).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[6] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed revisions to the ICC Rules, Restructuring Procedures and Risk Management Framework are consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to ICC. The proposed rule change, which is principally designed to incorporate and implement the 2014 ISDA Definitions, will permit clearing of contracts, both new and existing, referencing the new definitions, while distinguishing, where applicable, contracts cleared by ICC between those referencing the 2014 ISDA Definitions and those referencing the 2003 ISDA Definitions for purposes of risk management and clearing operations. Additionally, ICC states that the proposed rule change is necessary to provide the market with the assurances that ICC plans to implement the standard credit derivatives definitions consistent with industry practice, thereby facilitating prompt and accurate clearance and settlement. The Commission therefore believes that the proposed rule change is reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[9]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the

[5] A more detailed description of the proposed changes to the ICC Rules, ICC Restructuring Procedures, and Risk Management Framework is set forth in the notice of filing of the proposed rule change. *See supra* note 3.

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–ICC–2014–11) as modified by Amendment No. 2 thereto be, and hereby is, approved.[12]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

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[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73004; File No. SR–NYSEArca–2014–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, 4, and 5, To List and Trade Shares of the Cambria Global Momentum ETF Under NYSE Arca Equities Rule 8.600

September 5, 2014.

I. Introduction

On July 1, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Cambria Global Momentum ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The Exchange filed Amendment No. 1 to the proposal on July 14, 2014, and on July 15, 2014, the Exchange filed Amendment No. 2 to the proposal.[3] The proposed rule change, as modified by Amendments No. 1 and 2, was published for comment in the **Federal Register** on July 22, 2014.[4] On July 22, 2014, the Exchange filed Amendment No. 3 to the proposal;[5] on July 29, 2014, the Exchange filed Amendment No. 4 to the proposal;[6] and on September 4, 2014, the Exchange filed partial Amendment No. 5 to the proposal.[7]

The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4 and 5.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Cambria ETF Trust (''Trust''), a Delaware statutory trust which is registered with the Commission as an open-end management investment company.[8] Cambria Investment Management, L.P. (''Adviser'') will serve as the investment adviser of the Fund. The Exchange states that the Adviser is not registered as a broker-dealer or affiliated with a broker-dealer.[9]

The Exchange has made the following representations and statements in describing the Fund and its principal investment policies, other investments, and investment restrictions.[10]

Principal Investment Policies

The Fund will seek to preserve and grow capital from investments in the U.S. and foreign equity, fixed income, commodity and currency markets, independent of market direction. The Fund will be considered a ''fund of funds'' that seeks to achieve its investment objective by primarily investing in other 1940 Act-registered exchange-traded funds (''ETFs'') and other exchange traded products (''ETPs''), including, but not limited to, exchange-traded notes (''ETNs''),[11] exchange traded currency trusts, and closed-end funds[12] (collectively, ''Underlying Vehicles'')[13] that offer diversified exposure, including inverse exposure,[14] to global regions (including

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety, and Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

[4] *See* Securities Exchange Act Release No. 72631 (July 16, 2014), 79 FR 42605 (''Notice'').

[5] Amendment No. 3 replaced and superseded Amendment No. 2 in its entirety. In Amendment No. 3, the Exchange modified inconsistent representations in the fling regarding leverage to clarify that the Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged returns (*i.e.,* 2X and 3X) of the Fund's broad-based securities market index (as defined in Form N–1A).

[6] Amendment No. 4 replaced and superseded Amendment No. 3 in its entirety. In Amendment No. 4, the Exchange modified Exhibit 1 to be consistent with the 19b–4, as amended by Amendment No. 3.

[7] Amendment No. 5 partially amended the filing, as amended by Amendment Nos. 1, 2, 3 and 4, to: (i) remove the Fund's ability to invest in inverse Underlying Vehicles (as defined herein); (ii) clarify that the Fund will not invest in leveraged Underlying Vehicles; and (iii) clarify that the Fund's investments will not be used to achieve inverse returns or leveraged returns. Because Amendment Nos. 3, 4 and 5 provide clarification to the proposed rule change and do not materially affect the substance of the proposed rule change or raise any unique or novel regulatory issues, Amendment Nos. 3, 4 and 5 do not require notice and comment.

[8] The Trust will be registered under the Investment Company Act of 1940 (''1940 Act''). The Exchange states that on March 4, 2014, the Trust filed an amendment to the Trust's registration statement on Form N–1A under the Securities Act of 1933 (''1933 Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–180879 and 811–22704) (''Registration Statement''). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30340 (January 4, 2013) (''Exemptive Order''). The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[9] *See* NYSE Arca Equities Rule 8.600, Commentary .06. The Exchange represents that in the event (a) the Adviser or any sub-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, such adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and such adviser or sub-adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[10] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and Registration Statement, as applicable. *See supra* notes 4 and 8, respectively.

[11] ETFs are registered investment companies whose shares are exchange-traded and give investors a proportional interest in the pool of securities and other assets held by the ETF. ETPs are exchange-traded equity securities whose value derives from an underlying asset or portfolio of assets, which may correlate to a benchmark, such as a commodity, currency, interest rate or index. ETFs are one type of ETP. ETNs are unsecured and unsubordinated debt securities whose value derives, in part, from an underlying asset or benchmark and, in part, from the credit quality of the securities' issuer.

[12] A closed-end fund is a pooled investment vehicle that is registered under the 1940 Act and whose shares are listed and traded on a U.S. national securities exchange.

[13] The Exchange states that for purposes of this filing, the term ''Underlying Vehicles'' includes Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Commodity Futures Trust Shares (as described in NYSE Arca Equities Rule 8.204); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. All Underlying Vehicles will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse (*i.e.,* –1X) or leveraged (*e.g.,* 2X, –2X, 3X or –3X) Underlying Vehicles.

[14] The Commission understands that, although the Fund will not invest in inverse Underlying Vehicles (*i.e.,* Underlying Vehicles that seek to achieve returns equal to –1X an index or benchmark), the Fund may invest in Underlying Vehicles that may provide inverse exposure in

Continued

emerging markets), countries, styles (*i.e.,* market capitalization, value, growth, etc.) and sectors. Under normal market conditions,[15] the Fund will invest at least 80% of its net assets in the securities of Underlying Vehicles.

The Fund will seek to preserve and grow capital by producing absolute returns with reduced volatility and manageable risk and drawdowns. The Fund will invest in Underlying Vehicles spanning all the major world asset classes including equities, bonds (including high yield bonds, which are commonly referred to as ''junk bonds''), real estate, derivatives, commodities, and currencies. The Adviser will actively manage the Fund's portfolio utilizing a quantitative strategy with risk management controls in an attempt to protect capital. Through Underlying Vehicles, the Fund may have exposure to companies in any industry and of any market capitalization. Under normal market conditions, the Fund expects to invest at least 40% of its net assets, including through investments in Underlying Vehicles, in securities of issuers located in at least three different countries (including the United States).

Through Underlying Vehicles, the Fund may invest in shares of real estate investment trusts (''REITs''), which are pooled investment vehicles that invest primarily in real estate or real estate-related loans and trade on a U.S. exchange.

Other Investments

While, under normal market conditions, the Fund will invest at least 80% of its net assets in Underlying Vehicles as described above, the Fund may invest its remaining 20% of net assets in other securities and financial instruments, other than Underlying Vehicles, including futures contracts, cash and cash equivalents, as described below.

The Fund may invest in exchange-traded common stocks. The Fund also may invest in foreign securities by purchasing ''Depositary Receipts,'' including American Depositary Receipts (''ADRs''), European Depositary Receipts (''EDRs''), and Global Depositary Receipts (''GDRs''), or other securities convertible into securities of issuers based in foreign countries. These securities may not necessarily be denominated in the same currency as the securities which they represent.[16]

With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group (''ISG'') or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Fund may invest in debt and other fixed income securities, as described below. Debt and other fixed income securities include fixed and floating rate securities of any maturity. Fixed rate securities pay a specified rate of interest or dividends. Floating rate securities pay a rate that is adjusted periodically by reference to a specified index or market rate. Fixed and floating rate securities may be issued by federal, state, local, and foreign governments and related agencies, and by a wide range of private issuers. The Fund's investments in debt and other fixed income securities will be limited to those described below.

The Fund may invest in indexed bonds, which are a type of fixed income security whose principal value and/or interest rate is adjusted periodically according to a specified instrument, index, or other statistic (*e.g.,* another security, inflation index, currency, or commodity).

The Fund may invest in securities issued or guaranteed by the U.S. Government, its agencies, instrumentalities, and political subdivisions;[17] securities issued by foreign governments, their authorities, agencies, instrumentalities, and political subdivisions; securities issued by supra-national agencies;[18] corporate debt securities; master demand notes;[19] Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper;[20] and inflation-indexed securities. The Fund may invest also in zero coupon securities, which may be issued by a wide variety of corporate and governmental issuers.

The Fund may invest in fixed income securities of any credit quality, from investment grade securities to high yield securities. Investment grade securities are securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations (''Rating Organizations'') rating that security, such as Standard & Poor's Ratings Services (''Standard & Poor's'') or Moody's Investors Service, Inc. (''Moody's''), or rated in one of the four highest rating categories by one Rating Organization if it is the only

certain circumstances, such as ETFs that pursue a long/short strategy.

[15] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[16] Generally, ADRs, in registered form, are denominated in U.S. dollars and are designed for use in the U.S. securities markets, GDRs, in bearer form, are issued and designed for use outside the United States, and EDRs, in bearer form, may be denominated in other currencies and are designed for use in European securities markets. ADRs are receipts typically issued by a U.S. bank or trust company evidencing ownership of the underlying securities. EDRs are European receipts evidencing a similar arrangement. GDRs are receipts typically issued by non-United States banks and trust companies that evidence ownership of either foreign or domestic securities. ADRs may be sponsored or unsponsored, but unsponsored ADRs will not exceed 10% of the Fund's net assets.

[17] U.S. Government securities include securities issued or guaranteed by the U.S. Government or its authorities, agencies, or instrumentalities. Foreign government securities include securities issued or guaranteed by foreign governments (including political subdivisions) or their authorities, agencies, or instrumentalities or by supra-national agencies. Different kinds of U.S. government securities and foreign government securities have different kinds of government support. For example, some U.S. government securities (*e.g.,* U.S. Treasury bonds) are supported by the full faith and credit of the U.S. Other U.S. government securities are issued or guaranteed by federal agencies or government-chartered or -sponsored enterprises but are neither guaranteed nor insured by the U.S. government (*e.g.,* debt securities issued by the Federal Home Loan Mortgage Corporation (''Freddie Mac''), Federal National Mortgage Association (''Fannie Mae''), and Federal Home Loan Banks (''FHLBs''). Similarly, some foreign government securities are supported by the full faith and credit of a foreign national government or political subdivision and some are not.

[18] Supra-national agencies are agencies whose member nations make capital contributions to support the agencies' activities. Examples include the International Bank for Reconstruction and Development (the World Bank), the Asian Development Bank, the European Coal and Steel Community, and the Inter-American Development Bank.

[19] The Fund may invest in master demand notes that are denominated in U.S. dollars. Master demand notes are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master demand note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula or be a set rate. Although there is no secondary market in master demand notes, if such notes have a demand future, the payee may demand payment of the principal amount of the note upon relatively short notice. Master demand notes are generally illiquid and therefore subject to a Fund's percentage limitations for investments in illiquid securities.

[20] Commercial paper consists of short-term promissory notes issued by corporations. Commercial paper may be traded in the secondary market after its issuance.

Rating Organization rating that security, or unrated, if deemed to be of comparable quality [21] by the Adviser and traded publicly on the world market. The Fund, at the discretion of the Adviser, may retain a debt security that has been downgraded below the initial investment criteria.[22]

For securities that carry a rating assigned by a Rating Organization, the Adviser will use the highest rating assigned by the Rating Organization to determine a security's credit rating. Commercial paper must be rated at least ''A–1'' or equivalent by a Rating Organization. Corporate debt obligations must be rated at least ''B − ''or equivalent by a Rating Organization. For securities that are not rated by a Rating Organization, the Adviser's internal credit rating will apply and be subject to equivalent rating minimums.

The Fund may invest in futures contracts on indices, currencies, and commodities. The Fund will trade only futures contracts that are listed and traded on a U.S. board of trade. The Fund's investments in futures will be subject to the limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage that an investment company, such as the Fund, can obtain.

The Fund may temporarily invest a portion of its assets in cash or cash equivalents pending other investments or to maintain liquid assets required in connection with some of the Fund's investments. Cash and cash equivalents include money market instruments, such as obligations issued or guaranteed by the U.S. Government, its agencies and/or instrumentalities (including government-sponsored enterprises), bankers' acceptances, bank certificates of deposit, repurchase agreements,[23] and investment companies that invest primarily in such instruments (*i.e.,* money market funds). The Fund may hold funds in bank deposits in U.S. or foreign currency, including during the completion of investment programs.

The Fund may invest in the securities of other investment companies to the extent permitted by law. The Fund may make significant investments in money market funds. In addition, the Trust intends to enter into agreements with unaffiliated ETFs that permit such unaffiliated ETFs to sell, and the Fund to purchase, the unaffiliated ETFs' shares in excess of the limits imposed by Sections 12(d)(1)(A) and (B) of the 1940 Act.

To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities (*i.e.,* BBB or higher) and money market instruments (as described above). The Fund may be invested in these instruments for extended periods, depending on the Adviser's assessment of market conditions.

Investment Restrictions

The Fund may invest in the securities of other investment companies to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof.

The Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Internal Revenue Code.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser [24] and master demand notes, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid 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.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve inverse returns or leveraged returns (*e.g.,* –1X, 2X, and 3X) of the Fund's broad-based securities market index (as defined in Form N–1A).[25]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [26] and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4, and 5, is consistent with Section 6(b)(5) of the Act,[28] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[29] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares will be available via the Exchange's proprietary quote and trade services and via the Consolidated Tape Association's (''CTA'') high-speed line. In addition, the Intraday Indicative Value (''IIV''),[30]

[21] 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.

[22] Securities rated lower than Baa by Moody's, or equivalently rated by S&P or Fitch, are sometimes referred to as ''high yield securities'' or ''junk bonds.''

[23] A repurchase agreement is an agreement under which securities are acquired by a Fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The Fund may enter into repurchase agreements with banks and broker-dealers.

[24] 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 in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[25] The Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[26] 15 U.S.C. 78f.

[27] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[30] According to the Exchange, the IIV is an approximate per Share value of the Fund's portfolio holdings, which is disseminated every fifteen

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which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Exchange's Core Trading Session (9:30 a.m., Eastern Time to 4:00 p.m., Eastern Time) by one or more major market data vendors.[31] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day.[32] The NAV of Shares will be calculated each business day as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m., Eastern Time, on each day that the NYSE is open.[33] A basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. 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. Intra-day price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms. Intra-day price information on such assets will also be available through free and subscription services that can be accessed by authorized participants and other investors. For example, pricing information for exchange-traded securities (including exchange-traded equity securities (such as common stocks and Underlying Vehicles), futures contracts, and sponsored Depositary Receipts, will be readily available from the Web sites of the exchanges or boards of trade trading such securities or futures contracts, automated quotation systems, published or other public sources, and subscription services such as Bloomberg or Reuters. Pricing information for unsponsored Depositary Receipts, non-exchange-traded investment company securities, fixed income securities (including bonds; U.S. Government obligations; corporate debt securities; securities issued by foreign governments and supra-national agencies; master-demand notes; Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper; inflation-indexed securities; and zero coupon securities), repurchase agreements, and money market instruments will be available through brokers and dealers and/or subscription services, such as Markit, Bloomberg and Thompson Reuters. The Fund's Web site (*www.cambriafunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes 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.[34] The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[35] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted. Further, the Commission notes that the Reporting Authority that provides the Disclosed

seconds throughout the trading day by one or more market data vendors. The IIV will be based on the current market value of the Fund's ''Disclosed Portfolio'' as defined in Rule 8.600(c)(2). The IIV does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time. The IIV should not be viewed as a ''real-time'' update of the NAV of the Fund because the approximate value may not be calculated in the same manner as the NAV. The quotations for certain investments may not be updated during U.S. trading hours if such holdings do not trade in the U.S., except such quotations may be updated to reflect currency fluctuations.

[31] The Exchange states that several major market data vendors display or make widely available IIVs taken from the CTA or other data feeds.

[32] On a daily basis, the Fund will disclose on its 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); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; 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 the Fund's portfolio. The Web site information will be publicly available at no charge.

[33] The Fund will calculate its NAV per Share by taking the value of its total assets, subtracting any liabilities, and dividing that amount by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The Exchange represents that in calculating the NAV of the Fund's Shares, investments will generally be valued using market valuations. Market valuations are generally valuations (i) obtained from an exchange, a pricing service or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of a value supplied by an exchange, a pricing service or a major market maker (or dealer), in each case as approved by the Trust's Board of Trustees pursuant to the Trust's valuation policies and procedures. Thus, to the extent that the Fund uses a pricing vendor approved for the Trust by the Board, whether the pricing vendor bases valuations upon dealer quotes, a proprietary analysis of the relevant market, matrix pricing, sensitivity analysis, a combination of the above, or any other means, the price provided by the pricing vendor may be considered a market valuation. Exchange-traded equity securities, including Underlying Vehicles, common stocks and sponsored Depositary Receipts, as well as futures contracts, will be valued at the official closing price on their principal exchange or board of trade, or, lacking any current reported sale at the time of valuation, at the mean of the most recent bid and asked quotations on their principal exchange or board of trade. Unsponsored Depositary Receipts, fixed income securities (including bonds; U.S. Government obligations; corporate debt securities; securities issued by foreign governments and supra-national agencies; master-demand notes; Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper; inflation-indexed securities; zero coupon securities; and money market instruments) will be valued at the mean between the most recent bid and asked quotations. Repurchase agreements will be valued at cost. Fixed-income instruments maturing in 60 days or less will be valued at amortized cost, and those maturing in excess of 60 days will be valued at the midpoint of bid and asked quotations. Investments in non-exchange-traded investment companies (including money market funds) will be valued at their NAV. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current exchange rate on the date of valuation as quoted by one or more third parties. If a market quotation is not readily available or is deemed not to reflect an instrument's market value, the Fund will determine its fair value pursuant to policies and procedures approved by the Board. The Fund may use fair valuation to price securities that trade on a foreign exchange, if any, when a significant event has occurred after the foreign exchange closes but before the time at which the Fund's NAV is calculated.

[34] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[35] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund 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.

Portfolio of the Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[36] The Commission further notes that 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.[37] The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also represents that the Adviser is not a broker-dealer and is not affiliated with a broker-dealer.[38]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Underlying Vehicles, other exchange-traded equity securities, and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and Underlying Vehicles, other exchange-traded equity securities, and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Underlying Vehicles, other exchange-traded equity securities, and futures from markets and 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 Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule10A–3 under the Act,[39] as provided by NYSE Arca Equities Rule 5.3.

(6) Under normal market conditions, the Fund will invest at least 80% of its net assets in the securities of Underlying Vehicles. All Underlying Vehicles will be listed and traded in the U.S. on a national securities exchange.

(7) The Fund will not invest in inverse (*i.e.,* –1X) or leveraged (*e.g.,* 2X, –2X, 3X or –3X) Underlying Vehicles.

(8) Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(9) Unsponsored ADRs will not exceed 10% of the Fund's net assets.

(10) The Fund will trade only futures contracts that are listed and traded on a U.S. board of trade. The Fund's investments in futures will be subject to the limits on leverage imposed by the 1940 Act.

(11) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and master demand notes, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(12) The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve inverse returns or leveraged returns (*e.g.,* –1X, 2X, or 3X) of the Fund's broad-based securities market index (as defined in Form N–1A).

(13) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4, and 5, is consistent with Section 6(b)(5) of the Act[40] and the rules and regulations thereunder

[36] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[37] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[38] *See supra* note 9 and accompanying text. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[39] 17 CFR 240.10A–3.

[40] 15 U.S.C. 78f(b)(5).

applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–NYSEArca–2014–76), as modified by Amendment Nos. 1, 2, 3, 4, and 5, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21643 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73005; File No. SR–EDGX–2014–23]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

September 5, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to increase the fee for orders yielding Flag D, which route or re-route orders to the New York Stock Exchange LLC (''NYSE'').

The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to increase the fee for orders yielding Flag D, which route or re-route to the NYSE. In securities priced at or above $1.00, the Exchange currently charges a fee of $0.0026 per share for Members' orders that yield Flag D, which route or re-route orders to the NYSE. The Exchange proposes to amend its Fee Schedule to increase the fee for orders that yield Flag D to $0.0027 per share in securities priced at or above $1.00.[4] The proposed change represents a pass through of the rate Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders to the NYSE that remove liquidity when it does not qualify for a volume tiered reduced fee. The proposed change is in response to the NYSE's September 2014 fee change where the NYSE increased its fee from $0.0026 per share to $0.0027 per share for orders in securities priced at or above $1.00.[5] When DE Route routes to and removes liquidity on the NYSE, it will now be charged a standard rate of $0.0027 per share.[6] DE Route will pass through this rate it is charged on the NYSE to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

The Exchange proposes to implement these amendment to its Fee Schedule on September 2, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposal to increase the fees for orders yielding Flag D represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Prior to the NYSE's September 2014 fee change, the NYSE charged DE Route a fee of $0.0026 per share in securities priced at or above $1.00, which DE Route passed through to the Exchange and the Exchange charged its Members. When DE Route routes to the NYSE, it will now be charged a standard rate of $0.0027 per share. The Exchange does not levy additional fees or offer additional rebates for orders that it routes to the NYSE through DE Route. Therefore, the Exchange believes that the proposed change to Flag D is equitable and reasonable because it accounts for the pricing changes on the NYSE, which enables the Exchange to charge its Members the applicable pass-through rate. Lastly, the Exchange notes that routing through DE Route is voluntary and believes that the proposed change is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] The Exchange does not propose to amend its fee for orders that yield Flag D in securities priced below $1.00.

[5] *See* NYSE Trader Update dated August 21, 2014, *http://www1.nyse.com/pdfs/NYSE_Client_Notice_Fee_Change_09_2014.pdf.*

[6] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on the NYSE, its rate for Flag D will not change.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

competing venues to maintain their competitive standing in the financial markets.

In particular, the Exchange believes that its proposal to pass through the amended fee for orders that yield Flag D would increase intermarket competition because it offers customers an alternative means to route to the NYSE for the same price that they would be charged if they entered orders on those trading centers directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2014–23 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–EDGX–2014–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2014–23, and should be submitted on or before October 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21644 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73006; File No. SR–EDGA–2014–23]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

September 5, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to increase the fee for orders yielding Flag D, which route or re-route orders to the New York Stock Exchange LLC (''NYSE'').

The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to increase the fee for orders yielding Flag D, which route or re-route to the NYSE. In securities priced at or above $1.00, the Exchange currently charges a fee of $0.0026 per share for Members' orders that yield Flag D, which route or re-route orders to the NYSE. The Exchange proposes to amend its Fee Schedule to increase the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

fee for orders that yield Flag D to $0.0027 per share in securities priced at or above $1.00.[4] The proposed change represents a pass through of the rate Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders to the NYSE that remove liquidity when it does not qualify for a volume tiered reduced fee. The proposed change is in response to the NYSE's September 2014 fee change where the NYSE increased its fee from $0.0026 per share to $0.0027 per share for orders in securities priced at or above $1.00.[5] When DE Route routes to and removes liquidity on the NYSE, it will now be charged a standard rate of $0.0027 per share.[6] DE Route will pass through this rate it is charged on the NYSE to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

The Exchange proposes to implement these amendment to its Fee Schedule on September 2, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposal to increase the fees for orders yielding Flag D represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Prior to the NYSE's September 2014 fee change, the NYSE charged DE Route a fee of $0.0026 per share in securities priced at or above $1.00, which DE Route passed through to the Exchange and the Exchange charged its Members. When DE Route routes to the NYSE, it will now be charged a standard rate of $0.0027 per share. The Exchange does not levy additional fees or offer additional rebates for orders that it routes to the NYSE through DE Route. Therefore, the Exchange believes that the proposed change to Flag D is equitable and reasonable because it accounts for the pricing changes on the NYSE, which enables the Exchange to charge its Members the applicable pass-through rate. Lastly, the Exchange notes that routing through DE Route is voluntary and believes that the proposed change is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

In particular, the Exchange believes that its proposal to pass through the amended fee for orders that yield Flag D would increase intermarket competition because it offers customers an alternative means to route to the NYSE for the same price that they would be charged if they entered orders on those trading centers directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–23 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–EDGA–2014–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2014–23, and should be submitted on or before October 2, 2014.

[4] The Exchange does not propose to amend its fee for orders that yield Flag D in securities priced below $1.00.

[5] *See* NYSE Trader Update dated August 21, 2014, *http://www1.nyse.com/pdfs/NYSE_Client_Notice_Fee_Change_09_2014.pdf.*

[6] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on the NYSE, its rate for Flag D will not change.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21645 Filed 9–10–14; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)
Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202–395–6974,
Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)
Social Security Administration, OLCA,
Attn: Reports Clearance Director,
3100 West High Rise,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410–966–2830,
Email address: *OR.Reports.Clearance@ssa.gov.*

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 10, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

Supplement to Claim of Person Outside the United States –20 CFR 422.505(b), 404.460, 404.463, and 42 CFR 407.27(c)—0960–0051

Claimants or beneficiaries (both United States (U.S.) citizens and aliens entitled to benefits) living outside the United States complete Form SSA–21 as a supplement to an application for benefits. SSA collects the information to determine eligibility for U.S. Social Security benefits for those months an alien beneficiary or claimant is outside the United States, and to determine if tax withholding applies. In addition, SSA uses the information to: (1) Allow beneficiaries or claimants to request a special payment exception in an SSA restricted country; (2) terminate supplemental medical insurance coverage for recipients who request it, because they are, or will be, out of the United States; and (3) allow claimants to collect a lump sum death benefit if the number holder died outside the United States and we do not have information to determine whether the lump sum death benefit is payable under the Social Security Act. The respondents are Social Security claimants, or individuals entitled to Social Security benefits, who are, will be, or have been residing outside the United States. for three months or longer. Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Paper SSA–21—U.S. Citizens	3,297	1	9	495
Paper SSA–21—U.S. Resident	521	1	15	130
MCS Macros SSA–21—U.S. Resident	1,844	1	11	338
Paper SSA–21—Resident of Tax Treaty Country	2,863	1	11	525
MCS Macros SSA–21—Resident of Tax Treaty Country	10,145	1	6	1,015
Paper SSA–21 –				
Non-Resident Alien (not a resident of a tax treaty country)	1,995	1	10	333
MCS Macros SSA–21—Non-Resident Alien (not a resident of a tax treaty country)	7,071	1	5	589
Totals	27,736			3,425

Dated: September 8, 2014.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2014–21654 Filed 9–10–14; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)
Office of Management and Budget
Attn: Desk Officer for SSA
Fax: 202–395–6974
Email address: *OIRA_Submission@omb.eop.gov*

(SSA)
Social Security Administration, OLCA
Attn: Reports Clearance Director

[11] 17 CFR 200.30–3(a)(12).

3100 West High Rise
6401 Security Blvd.
Baltimore, MD 21235
Fax: 410–966–2830
Email address: *OR.Reports.Clearance@ssa.gov*

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 10, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

Supplement to Claim of Person Outside the United States –20 CFR 422.505(b), 404.460, 404.463, and 42 CFR 407.27(c)—0960–0051.

Claimants or beneficiaries (both United States (U.S.) citizens and aliens entitled to benefits) living outside the United States complete Form SSA–21 as a supplement to an application for benefits. SSA collects the information to determine eligibility for U.S. Social Security benefits for those months an alien beneficiary or claimant is outside the United States, and to determine if tax withholding applies. In addition, SSA uses the information to: (1) Allow beneficiaries or claimants to request a special payment exception in an SSA restricted country; (2) terminate supplemental medical insurance coverage for recipients who request it, because they are, or will be, out of the United States; and (3) allow claimants to collect a lump sum death benefit if the number holder died outside the United States and we do not have information to determine whether the lump sum death benefit is payable under the Social Security Act. The respondents are Social Security claimants, or individuals entitled to Social Security benefits, who are, will be, or have been residing outside the United States. for three months or longer. Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Paper SSA–21—U.S. Citizens	3,297	1	9	495
Paper SSA–21—U.S. Resident	521	1	15	130
MCS Macros SSA–21—U.S. Resident	1,844	1	11	338
Paper SSA–21—Resident of Tax Treaty Country	2,863	1	11	525
MCS Macros SSA–21—Resident of Tax Treaty Country	10,145	1	6	1,015
Paper SSA–21 –				
Non-Resident Alien (not a resident of a tax treaty country)	1,995	1	10	333
MCS Macros SSA–21—Non-Resident Alien (not a resident of a tax treaty country)	7,071	1	5	589
Totals	27,736			3,425

Dated: September 8, 2014.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2014–21656 Filed 9–10–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8865]

Determination of the Secretary of State Relating to Iran Sanctions

This notice is to inform the public that the Secretary of State determined on August 29, 2014, pursuant to section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), that each of the following EU countries: Belgium, Czech Republic, France, Germany, Greece, Italy, Netherlands, Poland, Spain, and the United Kingdom (hereinafter ''EU10'') have maintained their crude oil purchases from Iran at zero over the preceding 180-day period. The Secretary of State last made exception determinations under 1245(d)(4)(D) of the NDAA regarding these purchasers on March 4th, 2014.

Dated: September 5, 2014.

Mary Burce Warlick,

Principal Deputy Assistant Secretary, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2014–21683 Filed 9–10–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2014–0510]

Implementation of Legislative Categorical Exclusion for Environmental Review of Performance Based Navigation Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for public comment; Extension of comment period.

SUMMARY: The FAA is extending the comment period on its notice regarding the Implementation of Legislative Categorical Exclusion for Environmental Review of Performance Based Navigation Procedures that was published on August 19, 2014.

DATES: Comments must be received on or before October 20, 2014.

ADDRESSES: Send comments identified by ''Docket Number FAA–2014–0510'' using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's

complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynne S. Pickard, Senior Advisor for Environmental Policy, Office of Environment and Energy (AEE–6), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3577; email *lynne.pickard@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on August 19, 2014 (79 FR 49141) requesting comments on its implementation of Section 213(c)(2) of the FAA Modernization and Reform Act of 2012, which directs the FAA to issue and file a categorical exclusion for any navigation performance or other performance based navigation (PBN) procedure that would result in measureable reductions in fuel consumption, carbon dioxide emissions, and noise on a per flight basis as compared to aircraft operations that follow existing instrument flight rule procedures in the same airspace. In September 2012, the FAA tasked the NextGen Advisory Committee (NAC) for assistance, especially on how measurable reductions in noise on a per flight basis might be measured and assessed, and the NAC developed a Net Noise Reduction Method which it recommended to the FAA. The FAA's notice provides the public an opportunity to comment on the Net Noise Reduction Method and possible variations of it.

On August 29, 2014, Airports Council International—North America (ACI–NA) requested a 30-day extension of the comment period, citing a need to communicate with its membership and facilitate industry participation in providing the FAA with meaningful comments. The FAA agrees that facilitating industry participation in the development of comments would be helpful, and therefore has decided to extend the comment period until October 20, 2014. The FAA expects that the additional time for comments will allow the preparation of meaningful comments which will help the FAA in its consideration of interpretive guidance to implement Section 213(c)(2).

Issued in Washington, DC, on September 5, 2014.

Lourdes Q. Maurice,

Executive Director, Office of Environment and Energy, Federal Aviation Administration.

[FR Doc. 2014–21698 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0078]

Notice of Petition for Approval of a Railroad Safety Program Plan

The Federal Railroad Administration (FRA) is providing notice that it has received a petition for approval of a Railroad Safety Program Plan (RSPP) submitted pursuant to Title 49 Code of Federal Regulations Part 236, Subpart H, Standards for Processor-Based Signal and Train Control Systems. The petition is listed below, including the party seeking approval, and the requisite docket number. FRA is not accepting comments on this RSPP.

The Canadian Pacific Railway Company submitted a petition for approval of an RSPP. The petition, the RSPP, and any related documents have been placed in the requisite docket (FRA–2014–0078) and are available for public inspection.

Interested parties are invited to review the RSPP and associated documents at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except on Federal Holidays. All documents in the public docket are available for inspection and copying on the Internet at *http://www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

Issued in Washington, DC, on September 4, 2014.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2014–21614 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0052]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated July 25, 2014, Southeastern Pennsylvania Transportation Authority (SEPTA) has petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from the Federal hours of service requirement for train employees engaged in commuter or intercity rail passenger transportation at 49 CFR 228.405(b)(4). FRA assigned the petition Docket Number FRA–2012–0052.

In its petition, SEPTA seeks a waiver allowing travel time from a train employee's home to all reporting points to count as time off duty. FRA's current policy only allows travel time, at a designated home terminal, from an employee's residence to a single fixed regular reporting point to be defined as commuting and time off duty. Travel time between a train employee's residence and other than regular reporting points is considered deadheading and can count as time on duty. In support of its request, SEPTA submitted fatigue analysis of employee work schedules, arguing that safety would not be compromised by approving the waiver request. SEPTA also provided information that the waiver would be in the public interest, because of increased employee availability that would reduce the financial burden placed on this publicly funded commuter railroad.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or

comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 27, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on September 4, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014–21616 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0096]

Petition for Amending Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated April 10, 2014, the NJ Transit Rail Operation (NJTR) has petitioned the Federal Railroad Administration (FRA) for an extension of a waiver granted in Docket Number FRA–2009–0096 on November 18, 2009, that provided relief from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240, Qualification and Certification of Locomotive Engineers, for a period of 5 years. The waiver extension would be contingent on the railroad's continued participation in the Confidential Close Call Reporting System (C3RS) pilot project.

The April 10, 2014, letter provides that the Implementing Memorandum of Agreement (IMOU) dated June 11, 2009, and all subsequent amendments that govern the C3RS pilot program will be modified and replaced. The new IMOU is dated August 20,

2014, and is based on a revised template provided by FRA. The new IMOU provides similar provisions to those of the current IMOU with three changes:

1. The addition of Article 3.2 will extend protections to tenant locomotive engineers and conductors in tenant/host operations on the NJTR system.
2. Article 6.4 will permit relief for all covered events under the FRA reporting threshold pursuant with 49 CFR 225, Railroad Accidents/Incidents: Reports Classification, and Investigation.
3. The National Aeronautics and Space Administration will replace the Bureau of Transportation Statistics as the third participating party.

NJTR; the Brotherhood of Locomotive Engineers and Trainmen; and Sheet Metal, Air, Rail and Transportation Workers Transportation Division seek to shield the reporting employees and the railroad from punitive sanctions that would otherwise arise as provided in selected sections of 49 CFR 240.307, *Revocation of certification,* to encourage locomotive engineer reporting of close calls and to protect locomotive engineers and NJTR from discipline or sanctions arising from the incidents reported pursuant to the new IMOU.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within October 14, 2014 of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice

of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on September 4, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014–21617 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0056]

Petition for Amending Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated April 10, 2014, the NJ Transit Rail Operation (NJTR) has petitioned the Federal Railroad Administration (FRA) for an

extension of a waiver granted in Docket Number FRA–2012–0056 on January 15, 2013, that provided relief from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 242, Qualification and Certification of Conductors, for a period of 5 years. The requested waiver extension will align the effective periods of the companion waiver granted in Docket Number FRA–2009–0096 for 49 CFR 240, Qualification and Certification of Locomotive Engineers, with the instant waiver in FRA–2012–0056, both of which are contingent on the railroad's continued participation in the Confidential Close Call Reporting System (C3RS) pilot project.

The April 10, 2014, letter provides the current IMOU dated June 11, 2009, and all subsequent amendments that govern the C3RS pilot program will be modified and replaced. The new IMOU is dated August 20, 2014, and is based on a revised template provided by the FRA. The new IMOU provides similar provisions to those of the current IMOU with three changes:

1. The addition of Article 3.2 will extend protections to tenant locomotive engineers and conductors in tenant/host operations on the NJTR system.

2. Article 6.4 will permit relief for all covered events under the FRA Reporting threshold pursuant with 49 CFR Part 225, Railroad Accidents/Incidents: Reports Classification, and Investigation.

3. The National Aeronautics and Space Administration will replace the Bureau of Transportation Statistics as the third participating party.

NJTR; the Brotherhood of Locomotive Engineers and Trainmen, and Sheet Metal, Air, Rail and Transportation Workers Transportation Division seek to shield the reporting employees and the railroad from punitive sanctions that would otherwise arise as provided in selected sections of 49 CFR 242.403, *Criteria for revoking certification,* to encourage locomotive engineer reporting of close calls and protect locomotive engineers and NJTR from discipline or sanctions arising from the incidents reported pursuant to the new IMOU.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within October 14, 2014 of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on September 4, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014–21615 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0081]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 8, 2014, the City of San Clemente, CA, (City) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings. FRA assigned the petition Docket Number FRA–2014–0081.

The City is seeking a waiver from various requirements of 49 CFR part 222 in order to eliminate the routine sounding of locomotive horns by trains approaching six pedestrian crossings and one private highway-rail grade crossing. The City proposes the use of a wayside horn in lieu of the locomotive horn to provide an audible warning at the crossings. The City's petition for a waiver proposes three options as a means to silence the routine sounding of the locomotive horn when a train approaches the pedestrian and private crossings.

- Option 1—Redefine the Length of a Quiet Zone. The City seeks a waiver from the requirement of 49 CFR 222.21(b)(3) that trains traveling in excess of 60 mph must not begin sounding the horn more than one-quarter mile in advance of the nearest public highway-rail grade crossing. The City requests a waiver that would change the distance from one-quarter mile to 2½ miles. This would allow the seven crossings to be included in the City's existing Federal quiet zone. Option 1 also requests that waivers be granted from the following regulations: 49 CFR 222.25(b)(1) and (2) so that an additional diagnostic team evaluation is not necessary at the private highway-rail crossing, 49 CFR 222.27(b) and (c) so that additional diagnostic team evaluations are not necessary at the six pedestrian crossings, 49 CFR 222.43(a)(1) so that a Notice of Intent is not necessary, and 49 CFR 222.39(b)(3) to allow a 20-day comment period instead of a 60-day comment period on a public authority application for FRA approval. The City also requests the following waivers be granted pertaining to the use of a wayside horn: 49 CFR 222.59(a)(1) to allow the use of a wayside horn at a pedestrian crossing and 49 CFR part 222, Appendix E, Paragraphs 4 and 6, to allow a minimum sound level of 80 dB(A) when measured 20 feet from the crossing gate and that a wayside horn does not need to be directed toward approaching traffic.
- Option 2—One-for-One Replacement. The City requests the following waivers be granted pertaining to the use of a wayside horn in lieu of the locomotive horn: 49 CFR

222.59(a)(1) to allow the use of a wayside horn at a pedestrian crossing and Appendix E to 49 CFR part 222, Paragraphs 4 and 6, to allow a minimum sound level of 80 dB(A) when measured 20 feet from the crossing gate and that a wayside horn does not need to be directed toward approaching traffic.

• Option 3—Establish a New Quiet Zone Without a Public Highway-Rail Crossing. The City requests a waiver from the definition of a new quiet zone as found in 49 CFR 222.9 so that a new quiet zone could be established without a public highway-rail grade crossing. Option 3 also requests that waivers be granted from the following regulations: 49 CFR 222.25(b)(1) and (2) so that an additional diagnostic team evaluation is not necessary at the private highway-rail crossing, 49 CFR 222.27(b) and (c) so that additional diagnostic team evaluations are not necessary at the six pedestrian crossings, 49 CFR 222.43(a)(1) so that a Notice of Intent is not necessary, and 49 CFR 222.39(b)(3) to allow a 20-day comment period instead of a 60-day comment period on a public authority application for FRA approval.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 27, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on September 4, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014–21613 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0085]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated, June 10, 2014, the Association of American Railroads, on behalf of CSX Transportation, Inc., the National Railroad Passenger Corporation, Norfolk Southern Railway Company, and Union Pacific Railroad Company, (collectively, ''petitioners'') petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 236.586, *Daily or after trip test,* and § 236.588, *Periodic test.* Section 236.586(a) provides that, except where tests prescribed by § 236.588 are performed at intervals of not more than 2 months, each locomotive equipped with an automatic cab signal or train stop or train control device operating in equipped territory shall be inspected for damage to the equipment and tested at least once each calendar day or within 24 hours before departure upon each trip. Section 236.588 provides that, except as provided in § 236.586, periodic test of the automatic train stop, train control, or cab signal apparatus shall be made at least once every 92 days, and on multiple-unit cars as specified by the carrier, subject to approval by FRA. The petitioners request to be permitted to increase the time between inspections to 184 days for a 5-year period. FRA assigned the petition Docket Number FRA–2014–0085.

The petitioners note that today's automatic train stop, train control, and cab signal apparatus use microprocessor-based technology. This technology provides enhanced safety because the microprocessor-based system has diagnostics that monitor the functioning of cab signal equipment and records faults, particularly with respect to features relevant to the periodic inspection. Major faults are instantly addressed; minor faults are addressed through later data analysis. In some cases, railroads have the capability of analyzing the data remotely, without the need for the locomotive to be shopped; and if the system detects a failure, the system goes into fail-safe mode and triggers a penalty air brake application.

Performing signal inspections pursuant to 49 CFR 236.588 in conjunction with and under the same schedule as the locomotive inspections under 49 CFR 229.23(b) would increase efficiency without compromising safety.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• Fax: 202–493–2251.

• Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 27, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on September 4, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014–21612 Filed 9–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—Integrand Assurance Company

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570, 2014 Revision, published July 1, 2014, at 79 FR 37398.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The underwriting limitation for INTEGRAND ASSURANCE COMPANY, which was listed in the Treasury Department Circular 570, published on July 1, 2014, is hereby amended to read $8,267,000. Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2014 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Bureau of the Fiscal Service, Financial Accounting and Services Branch, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Kevin McIntyre,

Manager, Financial Accounting Services Branch.

[FR Doc. 2014–21670 Filed 9–10–14; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5713 and Schedules A, B, and C (Form 5713)

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 5713, International Boycott Report.

DATES: Written comments should be received on or before November 10, 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 Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: International Boycott Report.

OMB Number: 1545–0216.

Form Number: 5713, and Schedules A, B, and C (Form 5713).

Abstract: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott, it may lose a portion of the following benefits: The foreign tax credit, deferral of income of a controlled foreign corporation, deferral of income of a domestic international sales corporation, or deferral of income of a foreign sales corporation. The IRS uses Form 5713 to determine if any of these benefits should be lost. The information is also used as the basis for a report to the Congress.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 2,584.

Estimated Time per Respondent: 48 hours, 24 minutes.

Estimated Total Annual Burden Hours: 69,495.

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: September 3, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–21593 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

DATES: Written comments should be received on or before November 10, 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 this regulation should be directed to R. Joseph Durbala, (202) 317–5746, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

OMB Number: 1545–1646.

Regulation Project Number: T.D. 8851

Abstract: Section 6046A requires U.S. persons to provide certain information with respect to the acquisition or disposition of a 10-percent interest in, or a 10-percent change in ownership of, a foreign partnership. This regulation provides reporting rules to identify U.S. persons with significant interests in foreign partnerships to ensure the correct reporting of items with respect to these interests.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals or households and not-for-profit institutions.

The burden is reflected in the burden of Form 8865.

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: September 3, 2014.

R. Joseph Durbala,

IRS, Reports Clearance Officer.

[FR Doc. 2014–21604 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–21

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 Revenue Procedure 2001–21, Debt Roll-Ups.

DATES: Written comments should be received on or before November 10, 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 regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Debt Roll-Ups.

OMB Number: 1545–1647.

Revenue Procedure Number: Revenue Procedure 2001–21.

Abstract: Revenue Procedure 2001–21 provides for an election that will facilitate the consolidation of two or more outstanding debt instruments into a single debt instrument. Under the election, taxpayers can treat certain exchanges of debt instruments as realization events for federal income tax purposes even though the exchanges do not result in significant medications under section 1.1001–3 of the Income Tax Regulations.

Current Actions: There are no changes to the paperwork burden relating to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all 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: August 27, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–21600 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–84

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 Revenue Procedure 2003–84, Optional election to make monthly 706(a) computations.

DATES: Written comments should be received on or before November 10, 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 regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Optional election to make monthly 706(a) computations.

OMB Number: 1545–1768.

Revenue Procedure Number: Revenue Procedure 2003–84.

Abstract: This procedure allows certain partnerships that invest in tax-exempt obligations to make an election that enables the partners to take into account monthly the inclusions required under sections 702 and 707(c) of the Code and provides rules for partnership income tax reporting under section 6031 for such partnerships. Rev. Proc. 2002–68 modified and superseded.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Time per Respondent/Recordkeeper: 1/2 hour.

Estimated Total Annual Reporting/Recordkeeping Hours: 500.

The following paragraph applies to all 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: September 3, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–21603 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning requirements respecting the adoption or change of accounting method; extensions of time to make elections.

DATES: Written comments should be received on or before November 10, 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 regulation should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time to Make Elections.

OMB Number: 1545–1488. Regulation Project Number: TD 8742.

Abstract: This final regulation provides the procedures for requesting

an extension of time to make certain elections, including changes in accounting method and accounting period. In addition, the regulation provides the standards that the IRS will use in determining whether to grant taxpayers extensions of time to make these elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 5,000.

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: September 3, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–21595 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8329 and 8330

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 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs) and Form 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

DATES: Written comments should be received on or before November 10, 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(s) and instructions should be directed to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs) and Form 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

OMB Number: 1545–0922.

Form Number: Forms 8329 and 8330.

Abstract: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to provide the IRS with information on the issuance of mortgage credit certificates (MCCs) authorized under Internal Revenue Code section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and state, local or tribal governments.

Estimated Number of Responses: 10,000—Form 8329; 2,000—Form 8330.

Estimated Time per Response: 5 hours, 53 minutes—Form 8329; 7 hours, 28 minutes—Form 8330.

Estimated Total Annual Burden Hours: 58,800—Form 8329; 14,920—Form 8330.

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 informationdisplays 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: August 27, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–21599 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedures 2003–79, 2007–64, and 2006–46

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 Revenue Procedures 2003–79, 2007–64, 2006–46, Changes in Periods of Accounting.

DATES: Written comments should be received on or before November 10, 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 revenue procedures should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Periods of Accounting.

OMB Number: 1545–1786.

Revenue Procedure Numbers: Revenue Procedures 2003–79, 2007–64, and 2006–46.

Abstract: Revenue Procedures 2003–79, 2007–64, and 2006–46, provide the comprehensive administrative rules and guidance, for affected taxpayers adopting, changing, or retaining annual accounting periods, for federal income tax purposes. In order to determine whether a taxpayer has properly adopted, changed to, or retained an annual accounting period, certain information regarding the taxpayer's qualification for and use of the requested annual accounting period is required. The revenue procedures request the information necessary to make that determination when the information is not otherwise available.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization, individuals, not-for-profit institutions and farms.

Estimated Number of Respondents: 800.

Estimated Average Time per Respondent: 53 minutes.

Estimated Total Annual Burden Hours: 700.

Also, the burden is reflected in the burdens of Forms 1128 and 2553.

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: September 3, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–21602 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning financial asset securitization investment trust; real estate mortgage investment conduits; real estate mortgage investment conduits.

DATES: Written comments should be received on or before November 10, 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 regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Financial Asset Securitization Investment Trusts; Real Estate Mortgage Investment Conduits.

OMB Number: 1545–1675.

Regulation Project Number: [REG–100276–97; REG–122450–98]; TD 9004 (final).

Abstract: REG–122450–98 Sections 1.860E–1(c)(4)–(10) of the Treasury Regulations provide circumstances under which a transferor of a noneconomic residual interest in a Real Estate Mortgage Investment Conduit (REMIC) meeting the investigation, and two representation requirements may avail itself of the safe harbor by satisfying either the formula test or asset test. This regulation provides start-up and transitional rules applicable to financial asset securitization investment trust. TD 9004 contains final regulations relating to safe harbor transfers of noneconomic residual interests in real estate mortgage investment conduits (REMICs). The final regulations provide additional limitations on the circumstances under which transferors may claim safe harbor treatment.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents and/or Record-Keeping: 620.

Estimated Average Annual Burden Hours per Respondent and/or Record-Keeping: 1 hour 58 minutes.

Estimated Total Annual Reporting and/or Record Keeping Burden: 1,220.

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: August 27, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–21601 Filed 9–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee September 23–24, 2014, Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for September 23–24, 2014.

Date: September 23–24, 2014.

Time: September 23 9:30 a.m. to 4:30 p.m.; September 24 9:00 a.m. to 12:00 p.m.

Location: Conference Rooms B & C, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and consideration of candidate designs for the 2015 and 2016 First Spouse Bullion Coin Program, the 2015 and 2016 American Eagle Platinum Bullion Coin Program, and the 2016 America the Beautiful Quarters® Program Coins honoring Shawnee National Forest, Cumberland Gap National Historical Park, Harpers Ferry National Historical Park, Theodore Roosevelt National Park, and Fort Moultrie (Fort Sumter National Monument); review and consideration of additional tribal candidate designs for the Fond du Lac Band of Lake Superior Chippewa Code Talkers Recognition Congressional Medals; review and consideration of candidate designs for the World War II Members of the Civil Air Patrol Congressional Gold Medal; discussion of a proposed art medal program; and discussion of the FY2014 Annual Report.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: September 5, 2014.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2014–21618 Filed 9–10–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0688]

Proposed Information Collection (Security for Government Financing) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine if the contractor has adequate security to warrant payment in advance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 10, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Waleska Pierantoni-Monge, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *waleska.pierantoni-monge@va.gov.* Please refer to ''OMB Control No. 2900–0688'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Waleska Pierantoni-Monge at (202) 632–5400, Fax (202) 343–1434

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) 832.202–4, Security for Government Financing.

OMB Control Number: 2900–0688.

Type of Review: Revision of a currently approved collection.

Abstract: VA will use the data collected under VAAR 832.202–4, Security for Government Financing to assess whether or not the contractor's overall financial condition represents adequate security to warrant paying the contractor in advance.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: 10

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10.

Dated: September 8, 2014.

By direction of the Secretary:

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–21655 Filed 9–10–14; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Environmental Protection Agency

40 CFR Part 58

Revisions to Ambient Monitoring Quality Assurance and Other Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2013–0619; FRL–9915–16–OAR]

RIN 2060–AR59

Revisions to Ambient Monitoring Quality Assurance and Other Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes revisions to ambient air monitoring requirements for criteria pollutants to provide clarifications to existing requirements to reduce the compliance burden of monitoring agencies operating ambient networks. This proposal focuses on reorganizing and clarifying quality assurance requirements, simplifying and reducing data reporting and certification requirements, clarifying the annual monitoring network plan public notice requirements, revising certain network design criteria for nonsource lead monitoring, and addressing other issues in part 58 Ambient Air Quality Surveillance Requirements.

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0619, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Email: *A-and-R-Docket@epa.gov.* Include docket ID No. EPA–HQ–OAR–2013–0619 in the subject line of the message.
- Fax: (202) 566–9744
- Mail: Environmental Protection Agency, Mail code 28221T, Attention Docket No. EPA–HQ–OAR–2013–0619, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- Hand/Courier Delivery: EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0619. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *http://www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., 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 Air and Radiation Docket and Information Center, EPA/DC, Room 3334, WJC West Building, 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 and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Weinstock, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C304–06, Research Triangle Park, NC 27711; telephone: (919) 541–3661; fax: (919) 541–1903; email: *Weinstock.lewis@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

This action applies to state, territorial, and local air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. Categories and entities potentially regulated by this action include:

Category	NAICS [a] code
State/territorial/local/tribal government.	924110

[a] North American Industry Classification System.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control. A redline/strikeout document comparing the proposed revisions to the appropriate sections of the current rules is located in the docket.

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

I. Background

The EPA is proposing revisions to ambient air requirements for criteria pollutants to provide clarifications to existing requirements to reduce the compliance burden of monitoring agencies operating ambient networks. This proposal focuses on ambient monitoring requirements that are found in 40 CFR part 58 and the associated appendices (A, D, and new Appendix B), including issues such as operating schedules, the development of annual monitoring network plans, data reporting and certification requirements, and the operation of the required quality assurance (QA) program.

The EPA last completed a comprehensive revision of ambient air monitoring regulations in a final rule published on October 17, 2006 (see 71 FR 61236). Minor revisions were completed in a direct final rule published on June 12, 2007 (see 72 FR 32193). Periodic pollutant-specific monitoring updates have occurred in conjunction with revisions to the National Ambient Air Quality Standards (NAAQS). In such cases, the monitoring revisions were typically finalized as part of the NAAQS final rules.[1]

II. Proposed Changes to the Ambient Monitoring Requirements

A. General Information

The following proposed changes to monitoring requirements impact these subparts of part 58—Ambient Air Quality Surveillance: Subpart A—General Provisions, and Subpart B—Monitoring Network. Specific proposed changes to these subparts are described below.

B. Definitions

The EPA proposes to add and revise several terms to ensure consistent interpretation within the monitoring regulations and to harmonize usage of terms with the definition of key metadata fields that are important components of the Air Quality System (AQS).[2]

The EPA proposes to add the term ''Certifying Agency'' to the list of definitions. The certifying agency field was added to AQS in 2013 as part of the development of a revised process for states and the EPA Regions to meet the data certification requirements described in 40 CFR 58.15. The new term specifically describes any monitoring agency that is responsible for meeting data certification requirements for a set of monitors. In practice, certifying agencies are typically a state, local, or tribal agency depending on the particular data reporting arrangements that have been approved by an EPA regional office for a given state. A list of certifying agencies by individual monitor is available on the AQS–TTN Web site.[3]

The term ''Chemical Speciation Network'' or CSN is being proposed for addition to the definition list. The CSN network has been functionally defined as being comprised of the Speciation Trends Network sites and the supplemental speciation sites that are collectively operated by monitoring agencies to obtain $PM_{2.5}$ chemical species data.

The term ''Implementation Plan'' is being proposed for addition to provide more specificity to current definitions that reference the word ''plan'' in their description. The EPA wishes to ensure that references to State Implementation Plans (SIPs) are not confused with references to Annual Monitoring Network Plans that are described in 40 CFR 58.10.

The term ''Local Agency'' is being proposed for revision to clarify that such organizations are responsible for implementing portions of annual monitoring network plans. The current definition refers to the carrying out of a plan which is not specifically defined, leading to possible confusion with SIPs.

The term ''meteorological measurements'' is being proposed for clarification that such measurements refer to required parameters at NCore and photochemical assessment monitoring stations (PAMS).

[1] Links to the NAAQS final rules are available at: *http://www.epa.gov/air/criteria.html.*

[2] The AQS is the EPA's repository of ambient air quality data. The AQS stores data from over 10,000 monitors, 5,000 of which are currently active. State, local and tribal agencies collect the data and submit it to the AQS on a periodic basis. See *http://www.epa.gov/ttn/airs/airsaqs/* for additional information.

[3] *http://www.epa.gov/ttn/airs/airsaqs/memos/criteria_monitor_list_by_certifying_agency_and_PQAO.xls.*

The terms ''Monitoring Agency'' and ''Monitoring Organization'' are being proposed for clarification to include tribal monitoring agencies and to simplify the monitoring organization definition to reference the aforementioned monitoring agency definition.

The term ''NCore'' is being proposed for revision to remove nitrogen dioxide (NO_2) and lead in PM_{10} (Pb-PM_{10}) as a required measurement and to expand the definition of basic meteorology to specifically reference the required measurements: Wind speed, wind direction, temperature, and relative humidity. The EPA clarifies that NO_2 was never a required NCore measurement and that the current definition was erroneous on this issue. Additionally, the requirement to measure Pb-PM_{10} at NCore sites in areas over 500,000 population is being proposed for elimination in the rule.

The term ''Near-road NO_2 Monitor'' is being proposed for revision to ''Near-road Monitor.'' This revision is being made to broaden the definition of near-road monitors to include all such monitors operating under the specific requirements described in 40 CFR part 58, appendix D (sections 4.2.1, 4.3.2, 4.7.1(b)(2)) and appendix E (section 6.4(a), Table E–4) for near-road measurement of $PM_{2.5}$ and carbon monoxide (CO) in addition to NO_2.

The term ''Network Plan'' is being proposed for addition to clarify that any such references in 40 CFR part 58 refer to the annual monitoring network plan required in 40 CFR 58.10.

The term ''Plan'' is being proposed for deletion as its usage has been replaced with more specific references to either the annual monitoring network plan required in 40 CFR 58.10 or the SIP approved or promulgated pursuant to section 110 of the Clean Air Act.

The term ''Population-oriented Monitoring (or sites)'' is being proposed for deletion. This term along with the related usage of the concept of population-oriented monitoring was deleted from 40 CFR part 58 in the 2013 $PM_{2.5}$ NAAQS final rule (see 78 FR 3235–3236). As explained in that rule, the action was taken to ensure consistency with the longstanding definition of ambient air applied to the other NAAQS pollutants.

The term ''Primary Monitor'' is being proposed for addition to the definition list. The usage of this term has become important in AQS to better define the processes used to calculate design values when more than one monitor is being operated by a monitoring agency for a given pollutant. This term identifies the primary monitor used as the default data source in AQS for creating a combined site record.

The term ''Primary Quality Assurance Organization'' is being proposed for revision to include the usage of the acronym, ''PQAO.''

The terms ''PSD Monitoring Organization'' and ''PSD Monitoring Network'' are being added to support the proposed new appendix B that will pertain specifically to QA requirements for prevention of significant deterioration (PSD) networks.

The term ''PSD Reviewing Authority'' is being added to support the addition of appendix B to the part 58 appendices and to clarify the identification of the lead authority in determining the applicability of QA requirements for PSD monitoring projects.

The term ''Reporting Organization'' is being proposed for revision to clarify that the term refers specifically to the reporting of data as defined in AQS. The AQS does allow the distinct designation of agency roles that include analyzing, certifying, collecting, reporting, and PQAO.

The term ''SLAMS'' (state and local air monitoring stations) is being proposed for clarification to clearly indicate that the designation of a monitor as SLAMS refers to a monitor required under appendix D of part 58. The SLAMS monitors make up networks that include NCore, PAMS, CSN, and other state or local agency sites that have been so designated in annual monitoring network plans.

The terms ''State Agency'' and ''STN'' are proposed for minor wording changes for purposes of clarity only.

The term ''State Speciation Site'' is being proposed for deletion in lieu of the proposed addition of ''Supplemental Speciation Station'' to better describe the distinct elements of the CSN network which includes the Speciation Trends Network Stations that are required under section 4.7.4 of appendix D of part 58 and supplemental speciation stations which are operated for specific monitoring agency needs and are not considered to be required monitors under appendix D.

C. Annual Monitoring Network Plan and Periodic Network Assessment

The EPA finalized the current Annual Monitoring Network Plan requirement as part of the 2006 amendments to the ambient monitoring requirements (see 71 FR 61247–61249). The revised requirements were intended to consolidate separate network plan requirements that existed for SLAMS and national air monitoring stations (NAMS) networks, clarify processes for providing public input in the network plans and obtaining formal EPA Regional Office review, and revise the required plan elements to address other changes that had occurred in part 58. Since 2006, further revisions to the annual monitoring network plan requirements have occurred to address new requirements for monitoring networks including the NCore multi-pollutant network, source-oriented lead (Pb), near-road monitoring for NO_2, CO and $PM_{2.5}$, other required NAAQS monitoring, and data quality requirements for continuous $PM_{2.5}$ Federal Equivalent Methods (FEMs).

The current Annual Monitoring Network Plan requirements state that plans must be made available for public inspection for at least 30 days prior to submission to the EPA. Additionally, any plans that propose SLAMS network modifications are subject to EPA Regional Administrator approval, and either the monitoring agency or the EPA Regional Office must provide an opportunity for public comment. This process to improve transparency pertaining to the planning of ambient monitoring networks has been successful and the EPA believes that state and local agencies are increasingly receiving public comments on these plans.[4] To aid in the visibility of these plans, the EPA hosts an annual monitoring network plan summary page on its Ambient Monitoring Technical Information Center (AMTIC) Web site.[5]

Since the revision of the annual monitoring network plan process in 2006, the EPA has received feedback from its regional offices as well as some states that the regulatory language pertaining to public involvement has been unclear. Areas of confusion include determining the difference between the process of obtaining public inspection versus comment, the responsibility of monitoring agencies to respond to public comment in their submitted plans, and the responsibility of the EPA regional offices to obtain public comment depending on a monitoring agency's prior action as well as whether the annual monitoring network plan was modified based on discussions with the monitoring agency following plan submission.

The EPA believes that the intent of the 2006 revision to these requirements was to support wider public involvement in the planning and implementation of air monitoring

[4] The EPA notes that there is no specified process for obtaining public input into draft annual monitoring network plans although the typical process is to post the plans on state or local Web sites along with an on-line process to obtain public comments.

[5] See *http://www.epa.gov/ttn/amtic/plans.html.*

networks, and, to that extent, the solicitation of public comments prior to the submission of the annual monitoring network plan to the EPA regional office is a desirable part of the process. Indeed, the EPA stated in the preamble to the 2006 amendments that ''Although the public inspection requirement does not specifically require states to obtain and respond to received comments, such a process is encouraged with the subsequent transmission of comments to the appropriate EPA regional office for review'' (see 71 FR 61248).

Given the heightened interest and visibility of the annual monitoring network plan process since 2006, the EPA believes that it is appropriate to propose that the public inspection aspect of this requirement contained in 40 CFR 58.10(a)(1) be revised to clearly indicate that obtaining public comment is a required part of the process, and that plans that are submitted to the EPA regional offices should address such comments that were received during the public notice period. The EPA understands that this proposed change in process could increase burden for those monitoring agencies that have not routinely incorporated public comments into their annual monitoring network plan process. However, we believe that these efforts will increase the transparency of the current process and potentially reduce questions and adverse comment from stakeholders who have not been included in annual monitoring network plan discussions prior to submission to the EPA. For those monitoring agencies that already have been posting plans for public comment, this proposed change should have no net effect on workload.

A related part of the annual monitoring network plan process is described in 40 CFR 58.10(a)(2) with the distinction that this section pertains specifically to plans that propose SLAMS modifications and thereby also require specific approval from the EPA Regional Administrator. Similar to the public comment issue described above, the process of obtaining such comment for plans that contain network modifications was not clearly described, with the regulatory text initially placing the responsibility on the EPA regional offices to obtain public comment, but then providing monitoring agencies with the option of obtaining public comment, which consequently would relieve the EPA regional office from having to do so. Consistent with the proposed change to the comment process described above, the EPA is proposing changes to the text in 40 CFR 58.10(a)(2) to reflect the fact that public comments will have been required to be obtained by monitoring agencies prior to submission and that the role of the EPA regional office will be to review the submitted plan together with public comments and any modifications to the plan based on these comments. On an overall basis, the EPA believes that this proposed change to clearly place the responsibility for obtaining public comment on monitoring agencies makes sense since these organizations are, in effect, closer to their stakeholders and in a better position to notify the public about the availability and key issues contained in annual monitoring network plans, compared with similar efforts by the EPA regions that oversee many such agencies.

On a related note, the EPA emphasizes the value of the partnership between monitoring agencies and their respective EPA regional offices, and encourages an active dialogue between these parties during the development and review of annual monitoring network plans. Although the monitoring regulations only require that the EPA Regional Administrators approve annual monitoring network plans that propose changes to SLAMS stations, the EPA encourages monitoring agencies to seek formal approval of submitted plans regardless of whether SLAMS changes are proposed or not. Such a process would ensure that not only plans with proposed modifications are formally approved, but also that plans where potential network changes are indeed appropriate but not proposed, would be subject to discussion. Although the EPA is not proposing that annual monitoring network plans that do not propose changes to SLAMS should also be subject to the EPA Regional Administrator's approval, we support close working relationships between monitoring agencies and the EPA regions and see value in having a formal review of all such plans, regardless of whether network modifications are proposed.

Another aspect of the annual monitoring network plan requirements is the listing of required information for each proposed and existing site as described in 40 CFR 58.10(b). The EPA is proposing to add two elements to this list as described below.

First, the EPA is proposing to require that a PAMS network description be specifically included as a part of the annual monitoring network plan for any monitoring agencies affected by PAMS requirements. The requirements for such a plan are already referenced in appendix D, sections 5.2 and 5.4 of this part. In fact, the requirement for an ''approved PAMS network description provided by the state'' is already specified in section 5.4. Accordingly, the EPA is proposing that a PAMS network description be a required element in annual monitoring network plans for affected monitoring agencies, and that any such plans already developed for PAMS networks in accordance with section 5 of appendix D could be used to meet this proposed requirement. The EPA believes that the burden impact of this proposed change should be minimal, as a review of archived 2012 annual monitoring network plans posted on the EPA's AMTIC Web page shows that many such plans already include references to PAMS stations. For purposes of consistency and clarity, however, the EPA believes there is merit for proposing this revision to the annual monitoring network plan requirements so that stakeholders interested in the operation of PAMS stations can find the relevant information in one place.

Second, the EPA is proposing language that affects ''long-term'' Special Purpose Monitors (SPMs), i.e., those SPMs operating for longer than 24 months whose data could be used to calculate design values for NAAQS pollutants in cases where the EPA approved methods are being employed. As long as such monitors are classified as SPMs, their operation can be discontinued without EPA approval per 40 CFR 58.20(f). While such operational flexibility is a key component of special purpose monitoring, the issue can become more complex when longer-term SPMs measure elevated levels of criteria pollutants and potentially become design value monitors for a region. In such cases, the EPA is faced with scenarios where key monitors that can impact the attainment status of a region can potentially be discontinued without prior notification or approval. Given the important regulatory implications of such monitoring network decisions, the EPA believes that it is important that the ongoing operation and treatment of such SPMs be specifically called out and discussed in annual monitoring network plans. Therefore, the EPA is proposing that a new required element be added to the annual monitoring network plan requirements. Specifically, the EPA is proposing that such long-term SPMs be identified in the plans along with a discussion of the rationale for keeping the monitor(s) as SPMs or potentially reclassifying to SLAMS. The EPA is not proposing that such monitors must become SLAMS, only that the ongoing operation of such monitors and the rationale for retaining them as SPMs be explicitly discussed to avoid confusion

and the potential for unintended complexities in the designations process if any design value SPMs would be discontinued without adequate discussion.

The EPA is proposing minor edits to the annual monitoring network plan requirements to revise terminology referring to $PM_{2.5}$ speciation monitoring, to note the proposed addition of appendix B to the QA requirements (see section III.B of this preamble), and to clarify that annual monitoring network plans should include statements addressing whether the operation of each monitor meets the requirements of the associated appendices in part 58.

Finally, the issue has arisen concerning the flexibility that the EPA Regional Administrators have with reference to the approvals that are required within 120 days of annual monitoring network plan approval, for example, in the situation where the majority of the submitted plan is acceptable but one or more of the required elements is problematic. In these situations, which we believe to be infrequent, the existing regulatory language provides sufficient flexibility for such situations to be handled on a case-by-case basis, for example, through the use of a partial approval process where the Regional Administrator's approval decision letter specifies what elements of the submitted plan are approved and what elements are not. Alternatively, if the plan satisfies the requirements for network adequacy under appendix D and the monitors are suitable for regulatory decisions (consistent with the requirements of appendix A), the Regional Administrator has the discretion to approve the plan, while noting technical deficiencies to be corrected. We would expect that the resolution of the specific items under discussion would be documented through follow-up communications with the submitting monitoring agency to ensure that a complete record exists for the basis of the annual monitoring network plan approval.

The EPA solicits comments on all of the proposed changes to annual monitoring network plans requirements contained in 40 CFR 58.10.

D. Network Technical Requirements

The EPA is proposing to revise the language in 40 CFR 58.11(a)(3) to note the proposed revisions to appendix B to the QA requirements (see section III.B of this preamble) that would pertain to PSD monitoring sites.

E. Operating Schedules

The operating schedule requirements described in 40 CFR 58.12 pertain to the minimum required frequency of sampling for continuous analyzers (for example, hourly averages) and manual methods for particulate matter (PM) and Pb sampling (typically 24-hour averages for manual methods). The EPA is proposing to revise these requirements in three ways: By proposing added flexibility in the minimum required sampling for $PM_{2.5}$ mass sampling and for $PM_{2.5}$ speciation sampling; by modifying language pertaining to continuous mass monitoring to reflect revisions in regulatory language that were finalized in the 2013 p.m. NAAQS final rule; and by clarifying the applicability of certain criteria that can lead to an increase in the required sampling frequency, for example, to a daily schedule.

With regard to the minimum required sampling frequency for manual $PM_{2.5}$ samplers, current requirements state that at least a 1-in-3 day frequency is mandated for required SLAMS monitors without a collocated continuous monitor. For the majority of such manual $PM_{2.5}$ samplers, the EPA continues to believe that a 1-in-3 day sampling frequency is appropriate to meet the data quality objectives that support the $PM_{2.5}$ NAAQS.[6] For a subset of these monitors, however, the EPA believes that some regulatory flexibility may be appropriate in situations where a particular monitor is highly unlikely to record a violation of the $PM_{2.5}$ NAAQS. Such situations might occur in areas with very low $PM_{2.5}$ concentrations relative to the NAAQS and/or in urban areas with many more monitors than are required by appendix D and a subset of those monitors are reading lower than other monitors in the area. In these situations, the EPA believes it is appropriate to propose that the required sampling frequency could be reduced to 1-in-6 day sampling or another alternate schedule through a case-by-case approval by the EPA Regional Administrator. Such approvals could be based on factors that are already described in 40 CFR 58.12(d)(1)(ii) such as historical $PM_{2.5}$ data assessments, the attainment status of the area, the location of design value sites, and the presence of continuous $PM_{2.5}$ monitors at nearby locations. The EPA envisions that the request for such reductions in sampling frequency would occur during the annual monitoring network plan process as operating schedules are a required part of the plans as stated in 40 CFR 58.10(b)(4).

For sites with a collocated continuous monitor, the EPA also believes that the current regulatory flexibility to reduce to 1-in-6 day sampling or a seasonal sampling schedule is appropriate based on factors described above, and in certain cases, may also be applicable to lower reading SLAMS sites without a collocated continuous monitor, for example, to reduce frequency from 1-in-6 day sampling to a seasonal schedule. Accordingly, we have proposed such flexibility through changes in the regulatory language in 40 CFR 58.12(d)(1)(i) and (ii).

The EPA also believes that some flexibility for sampling frequency is appropriate to propose for $PM_{2.5}$ Chemical Speciation Stations, specifically the Speciation Trends Network (STN) sites that are at approximately 53 locations.[7] The STN stations are currently required to sample on at least a 1-in-3 day frequency with no opportunity for flexibility. While the EPA firmly believes in the long-term importance of the STN stations to support the development of SIPs, modeling exercises, health studies, and the investigation of air pollution episodes and exceptional events, we do not believe that the current inflexibility with regard to sampling frequency is in the best interests of monitoring agencies, the EPA, or stakeholders. For the past several years, the EPA has been investigating alternative monitoring technologies such as continuous $PM_{2.5}$ speciation methods that can supplement or potentially even replace manual $PM_{2.5}$ speciation methods.[8] As these methods become more refined, the EPA may wish to selectively reduce sampling frequency at manual samplers for one or more channels to conserve resources for reinvestment in other needs within the CSN network. Additionally, the EPA is currently conducting an assessment of the entire CSN network to evaluate the long-term viability of the program in the context of changes in air quality, the recently revised PM NAAQS, rising analytical costs, and flat or declining resources. Accordingly, for the reasons mentioned above, the EPA is proposing that a reduction in sampling frequency from 1-in-3 day be permissible for manual $PM_{2.5}$ samplers at STN stations. The approval for such changes at STN stations, on a case by case basis, would be made by the EPA Administrator as the authority for changes to STN has

[6] According to a retrieval from AQS dated 12–23–2013, approximately 65% of primary $PM_{2.5}$ samplers (those monitors with a parameter occurrence code of ''1'') operated on a 1-in-3 day sampling frequency.

[7] *http://www.epa.gov/ttn/amtic/specgen.html.*

[8] *http://www.epa.gov/ttnamti1/spesunset.html.*

been retained at the Administrator level per appendix D of this part, section 4.7.4. Factors that would be considered as part of the decision would include an area's design value, the role of the particular site in national health studies, the correlation of the site's species data with nearby sites, and presence of other leveraged measurements. In practice, we would expect a close working relationship with the EPA regional offices and monitoring agencies to consider such changes to STN, preferably as part of the annual monitoring network plan process, taking into account the findings of the CSN assessment process that is expected to be completed later in 2014, as well as a parallel effort being undertaken for the Interagency Monitoring of Protected Visual Environments (IMPROVE) network.[9]

The EPA is proposing editorial revisions to 40 CFR 58.12(d)(1)(ii) to harmonize the language regarding the use of continuous FEM or approved regional methods (ARM) monitors to support sampling frequency flexibility for manual $PM_{2.5}$ samplers with the current language in 40 CFR 58.12(d)(1)(iii) that was revised as part of 2013 PM NAAQS final rule. Specifically, the phrase ''unless it is identified in the monitoring agency's annual monitoring network plan as not appropriate for comparison to the NAAQS and the EPA Regional Administrator has approved that the data from that monitor may be excluded from comparison to the NAAQS'' is being proposed for appending to the current regulatory language. This change reflects the new process that was finalized in the 2013 PM NAAQS final rule that allows monitoring agencies to request that continuous $PM_{2.5}$ FEM data be excluded from NAAQS comparison based on technical criteria described in 40 CFR 58.11(e) (see 78 FR 3241–3244). If such requests are made by monitoring agencies and subsequently approved by the EPA regional offices as part of the annual monitoring plan process, it follows that the data from these continuous $PM_{2.5}$ FEMs would also not be of sufficient quality to support a request for sampling reduction for a collocated manual $PM_{2.5}$ sampler. The EPA revised the relevant language in one section of 40 CFR 58.12 during the 2013 PM rulemaking but failed to revise a similar phrase in another section of 40 CFR 58.12. Accordingly, the EPA is proposing the change to ensure consistent regulatory language throughout 40 CFR 58.12. Within these editorial changes, we are also proposing the addition of the phrase ''and the EPA Regional Administrator has approved that the data from that monitor may be excluded from comparison to the NAAQS'' to the revisions that were made with the 2013 PM NAAQS. This revision is being proposed to clearly indicate that two distinct actions are necessary for the data from a continuous $PM_{2.5}$ FEM to be considered not comparable to the NAAQS; first, the identification of the relevant monitor(s) in an agency's annual monitoring network plan, and, second, the approval by the EPA Regional Administrator of that request to exclude data. The language used by the EPA in the relevant sections of 40 CFR 58.12 related to the initial request by monitoring agencies but did not specifically address the needed approval by the EPA.

Finally, the EPA is clarifying the applicability of statements in 40 CFR 58.12(d)(1)(ii) and (iii) that reference the relationship of sampling frequency to site design values. Specifically, we are proposing clarifications and revisions affecting the following statements: (1) ''Required SLAMS stations whose measurements determine the design value for their area and that are within ±10 percent of the NAAQS; and all required sites where one or more 24-hour values have exceeded the NAAQS each year for a consecutive period of at least 3 years are required to maintain at least a 1-in-3 day sampling frequency,'' and (2) ''Required SLAMS stations whose measurements determine the 24-hour design value for their area and whose data are within ±5 percent of the level of the 24-hour $PM_{2.5}$ NAAQS must have a Federal Reference Method (FRM) or FEM operate on a daily schedule if that area's design value for the annual NAAQS is less than the level of the annual $PM_{2.5}$ standard.'' Since these provisions were finalized in 2006, there has been some confusion among monitoring agencies and regional offices concerning the applicability of the sampling frequency adjustments since design values are recalculated annually and, in some situations, such revised design values can either fall below the comparative criteria or rise above the criteria. For example, if according to 40 CFR 58.12(d)(1)(iii) a sampler must be on a daily sampling schedule because its design value is within ±5 percent of the 24-hour NAAQS and it meets the other listed criteria, how and when should the sampling frequency be revised if the referenced 24-hour design value falls out of the ±5 percent criteria the following year? In an extreme example, what would happen if the 24-hour design value changed each year to be alternately within the 5 percent criteria and then not within the criteria?

It was not the EPA's intention in the 2006 monitoring revisions to create scenarios in which the required sampling frequencies for individual samplers would be ''chasing'' annual changes in design values. Such a framework would be difficult to implement for both monitoring agencies and regional offices for logistical reasons including the scheduling of operators and the availability of $PM_{2.5}$ filters, and also because of the time lag involved with reporting and certifying data and the validation of revised design values, which typically does not occur until the summer following the completion of each calendar year's sampling. To provide some clarity to this situation as well as to provide a framework where changes in sampling frequency occur on a more consistent and predictable basis, the EPA is proposing that design value-driven sampling frequency changes be maintained for a minimum 3-year period once such a change is triggered. Additionally, such changes in sampling frequency would be required to be implemented no later than January 1 of the year which followed the recalculation and certification of a triggering design value. For example, if a triggering design value that required a change to daily sampling frequency was calculated in the summer of 2014 based on 2011–2013 certified data, then the affected sampler would be required to have an increased sampling frequency no later than January 1, 2015, and would maintain that daily frequency through at least 2017, regardless of changes to the triggering design value in the intervening years.

To accomplish these proposed changes, the EPA is proposing changes in the 40 CFR 58.12 regulatory text to clarify that sampling frequency changes that are triggered by design values must be maintained until the triggering design value site no longer meets the criteria for at least 3 consecutive years. Specifically, these changes include the insertion of the phrase ''until the design value no longer meets these criteria for 3 consecutive years'' into 40 CFR 58.12(d)(1)(ii) and the sentence ''The daily schedule must be maintained until the referenced design values no longer meet these criteria for 3 consecutive years'' into 40 CFR 58.12(d)(1)(iii). The EPA notes that where a design value is based on 3 years of data, 3 consecutive years of design values would require 5 years of data (e.g., 2010–2012, 2011–2013, 2012–2014). New regulatory

[9] *http://vista.cira.colostate.edu/improve/Default.htm.*

language has been proposed in 40 CFR 58.12(d)(1)(iv) to document the timing of when design value-driven changes in sampling frequency must be implemented.

On balance, the EPA believes that the overall impact of proposed changes to the operating schedule requirements will be a modest reduction in the burden for monitoring agencies. We believe that the number of $PM_{2.5}$ FRM and CSN samplers impacted by these proposed changes will be relatively small, but where they occur will provide some logistical relief for sites that are less critical in terms of NAAQS implementation and other key objectives. The EPA solicits comment on all of these proposed changes to 40 CFR 58.12 requirements.

F. System Modification

In the 2006 monitoring amendments, the EPA finalized a requirement in 40 CFR 58.14(a) for monitoring agencies to ''develop and implement a plan and schedule to modify the ambient air quality network that complies with the finding of the network assessments required every 5 years by 58.10(e).'' The remainder of the associated regulatory language reads very much like the required procedure for making annual monitoring network plans available for public inspection, comment, and the EPA Regional Administrator's approval as described in 40 CFR 58.10(a)(1) and (2). Since 2006, there has been confusion between the EPA and the monitoring agencies as to whether a separate plan was required to be submitted by 40 CFR 58.14(a) relative to the annual monitoring network plan, with that separate plan devoted specifically to discussing the results of the 5-year network assessment.

A review of the 2006 monitoring proposal and final rule reveals no specific discussion concerning the submission of a distinct plan devoted specifically to the implementation of the 5-year network assessment. While the EPA continues to support the importance of the network assessment requirement,[10] there appears to be no specific benefit to the requirement for a distinct plan to discuss the 5-year network assessments, and the inference of the need for such a plan may be attributable to some redundancy in the aforementioned requirements when the regulatory language was revised in 2006. Monitoring agencies, for example, could include a specific section or attachment to the annual monitoring network plan that fulfilled all the requirements described in 40 CFR 58.14(a) including how each agency would implement the findings of the assessment and the schedule for doing so. By including such information in the annual monitoring network plans, the implied need to develop a separate plan with the attendant burden of public posting, obtaining public comment, and the EPA Regional Administrator's review and approval can be avoided, reducing the burden on all parties.

In terms of timing, these specific sections or attachments referring to the 5-year network assessments could be required either in the year when the assessment is due (e.g., 2015) or in the year following when the assessment is due (e.g., 2016). The submission in the year following the network assessment would allow more time for monitoring agencies to fully consider the results of the 5-year assessment and would also allow the public more time to review and comment on the recommendations.

Accordingly, the EPA is proposing to revise the regulatory language in 40 CFR 58.14(a) to clearly indicate that a separate plan is not needed to account for the findings of the 5-year network assessment, and that the information concerning the implementation of the 5-year assessment, referred to in the proposed regulatory language as a ''network modification plan,'' shall be submitted as part of the annual monitoring network plan that is no later than the year after the network assessment is due.[11] According to the proposed schedule, the annual monitoring network plans that are due in 2016, 2021, etc., would contain the information referencing the network assessments.

The EPA is also proposing to revise an incorrect cross-reference in the current text of 40 CFR 58.14(a) in which the network assessment requirement is noted as being contained in 58.10(e) when the correct cross-reference is 58.10(d).

G. Annual Air Monitoring Data Certification

The data certification requirement is intended to provide ambient air quality data users with an indication that all required validation and reporting steps have been completed, and that the certified data sets are now considered final and appropriate for all uses including the calculation of design values and the determination of NAAQS attainment status. The formal certification process currently involves the transmission of a data certification letter to the EPA signed by a senior monitoring agency official that references the list of monitors being certified. The letter is accompanied by required AQS reports that summarize the data being certified and the accompanying QA data that support the validation of the referenced list of monitors. Once the letter and required reports are submitted to the EPA, the data certification requirement has been fulfilled. In practice, the EPA has provided an additional discretionary review of the data certification submissions by monitoring agencies to make sure the submissions are complete and that the EPA agrees that the referenced data are of appropriate quality. When these reviews have been completed, the EPA's review has been documented by the presence of a specific AQS flag for each monitor-year of data that has been certified and reviewed.

The actual breadth of data certification requirements has not materially changed since the original requirements were finalized in 1979 as part of the requirement for monitoring agencies to submit an annual SLAMS summary report (see 44 FR 27573). Data certification requirements were last revised in 2006 when the deadline for certification was changed to May 1 from July 1 for most measurements.

Current requirements include the certification of data collected at all SLAMS and SPMs using FRM, FEM, or ARM methods. In practice, this requirement includes a very wide range of measurements that are not limited to criteria pollutants but also extend to non-criteria pollutant measurements at PAMS stations, meteorological measurements at PAMS and NCore stations, and $PM_{2.5}$ chemical speciation parameters. For monitoring agencies operating these complex stations, this places an additional burden on the data review and validation process in addition to the routine procedures already in place to validate and report data as required by 40 CFR 58.16. For example, current PAMS requirements include the reporting of approximately 54 individual ''target list'' volatile organic compounds per station while many dozens of $PM_{2.5}$ species are reported at CSN stations.

None of these specialized monitoring programs were in place when the data certification requirements were originally promulgated and the large number of measurements being obtained

[10] The next 5-year network assessment will be due no later than July 1, 2015, according to the schedule established by 40 CFR 58.10(d).

[11] Monitoring agencies, at their discretion, could submit the network modification plan in the year that the assessment is due if sufficient feedback had been received. On balance, EPA believes that the extra year following the completion of the network assessment would be valuable to assure a productive outcome from the assessment process.

in typical modern-day monitoring networks has resulted in a burden overload that has threatened the viability of the data certification process. For example, monitoring agencies have struggled with the availability of specific QA checks that can be used to meet the certification requirements for PAMS and CSN data, and the EPA's discretionary review of data certification submissions have become increasingly incomplete or delayed due to the enormous number of monitors being submitted for certification under the current requirements.

The EPA believes that the data certification requirements need to be revised to streamline the associated workload for monitoring agencies as well as the EPA so that the process can be focused on those measurements that have greatest impacts on state programs, namely the criteria pollutants that support the calculation of annual design values and the mandatory designations process. By focusing the data certification process on the NAAQS, the greatest value will be derived from the certification process and both the monitoring agencies and the EPA will be able to devote scarce resources to the most critical of ambient monitoring objectives. The EPA is not implying that the need for thorough data validation processes is unimportant for non-criteria pollutants. However we believe that existing QA plans and standard operating procedures, together with the regulatory language in 40 CFR 58.16(c) to edit and report validated data, is sufficient to assure the quality of non-criteria pollutant measurements being reported to AQS.

Accordingly, the EPA is proposing several changes in the data certification requirements to accomplish a streamlining of this important process. First, to support the focus on certification of criteria pollutant measurements, the EPA is proposing to revise relevant sections of 40 CFR 58.15 to focus the requirement on FRM, FEM, and ARM monitors at SLAMS and at SPM stations rather than at all SLAMS which also include PAMS and CSN measurements that may not utilize federally approved methods. This proposed wording change limits the data certification requirement to criteria pollutants since the EPA approved methods do not exist for non-criteria measurements. Second, the EPA is also proposing that the required AQS reports be submitted to the Regional Administrator rather than through the Regional Administrator to the Administrator as is currently required. From a process standpoint, this proposed change effectively places each EPA regional office in charge of the entire data certification process (including the discretionary review) versus the EPA headquarters where the discretionary reviews have taken place in the past. This delegation of responsibility for the discretionary review will allow this important part of the certification process to be shared among the ten EPA regional offices, and result in a more timely review of certification results and the posting of appropriate certification status flags in AQS. The EPA notes that significant progress has already been made in revising this part of the certification process and that a new AQS report, the AMP 600, has been developed to more efficiently support the sharing of relevant information between certifying agencies and the EPA regional offices.[12]

Additionally, minor editorial changes are being proposed in 40 CFR 58.15 to generalize the title of the official responsible for data certification (senior official versus senior air pollution control officer) and to remove an outdated reference to the former due date for the data certification letter (July 1 versus the current due date of May 1).

H. Data Submittal and Archiving Requirements

The requirements described in 40 CFR 58.16 address the specific measurements that must be reported to AQS as well as the relevant schedule for doing so. Required measurements include criteria pollutants in support of NAAQS monitoring objectives as well as public reporting, specific ozone (O_3) and $PM_{2.5}$ precursor measurements such as those obtained at PAMS, NCore, and CSN stations, selected meteorological measurements at PAMS and NCore stations, and associated QA data that support the assessment of precision and bias.

In 1997, an additional set of required supplemental measurements was added to 40 CFR 58.16 in support of the newly promulgated FRM for $PM_{2.5}$, described in 40 CFR part 50, appendix L. These measurements included maximum, minimum, and average ambient temperature; maximum, minimum, and average ambient pressure; flow rate coefficient of variation (CV); total sample volume; and elapsed sample time. In the 2006 monitoring amendments, many of these supplemental measurements were removed from the requirements based on the EPA's confidence that the $PM_{2.5}$ FRM was meeting data quality objectives (see 71 FR 2748). At that time, reporting requirements were retained for average daily ambient temperature and average daily ambient pressure, as well as any applicable sampler flags, in addition to $PM_{2.5}$ mass and field blank mass. Given the additional years of data supporting the performance of the $PM_{2.5}$ FRM as well as the near ubiquitous availability of meteorological data available from sources such as the National Weather Service automated surface observing system[13] in addition to air quality networks, the EPA believes that it is no longer necessary to require agencies to report the average daily temperature and average daily pressure from manual $PM_{2.5}$ samplers, thereby providing some modest relief from the associated reporting burden. Accordingly, the EPA is proposing to remove AQS reporting requirements for average daily temperature and average daily pressure as related to $PM_{2.5}$ measurements with the expectation that monitoring agencies will retain such measurements as needed to support data validation needs as well as to fulfill requirements in associated QA project plans and standard operating procedures. The EPA is also proposing to remove similar language referenced elsewhere in 40 CFR 58.16 that pertains to measurements at Pb sites as well as to other average temperature and average pressure measurements recorded by samplers or from nearby airports. For the reasons noted above, the EPA believes that meteorological data are more than adequately available from a number of sources, and that the removal of specific requirements for such data to be reported to AQS represents an opportunity for burden reduction. The EPA notes that the requirement to report specific meteorological data for NCore and PAMS stations remains unchanged.

The EPA is also proposing a change to the data reporting schedule described in 40 CFR 58.16(b) and (d) to provide additional flexibility for reporting $PM_{2.5}$ chemical speciation data measured at CSN stations. Specifically, we are proposing that such data be required to be reported to AQS within 6 months following the end of each quarterly reporting period, as is presently required for certain PAMS measurements such as volatile organic compounds. This change would provide an additional 90 days for $PM_{2.5}$ chemical speciation data to be reported compared with the current requirement of reporting 90 days after the end of each

[12] Note relevant training material available on the AQS TTN Web site: *http://www.epa.gov/ttn/airs/airsaqs/training/2013_Q2_Webinar_Final.pdf.*

[13] See *http://www.nws.noaa.gov/ost/asostech.html.*

quarterly reporting period. This change is being proposed to provide both the EPA and monitoring agencies with potential data reporting flexibility as technological and procedural revisions are considered for the national analytical frameworks that support the CSN network. Given that the primary objectives of the CSN (and IMPROVE) programs are to support long-term needs such as SIP development, modeling, and health studies, the EPA believes that such programs would not be negatively impacted by the revised reporting requirements and that potential contractual efficiencies could be realized by allowing more time for analytical laboratories to complete their QA reviews and report their results to AQS.

I. Network Design Criteria (Appendix D)

The EPA is proposing two changes that affect the required suite of measurements in the NCore network. This multi-pollutant network became operational on January 1, 2011, and includes approximately 80 stations that are located in both urban and rural areas.[14]

The EPA is proposing a minor change to section 3 of appendix D to part 58, the design criteria for NCore sites. Specifically, we are proposing to delete the requirement to measure speciated $PM_{10\text{-}2.5}$ from the list of measurements in section 3(b). An identical revision was finalized in the text of 40 CFR 58.16(a) in the 2013 p.m. NAAQS final rule (see 78 FR 3244). At that time, we noted the lack of consensus on appropriate sampling and analytical techniques for speciated $PM_{10\text{-}2.5}$, and the pending analysis of data from a pilot project that examined these issues. Based on the supportive comments received from monitoring agencies and multi-state organizations, the EPA deleted the requirement for speciated $PM_{10\text{-}2.5}$ from 40 CFR 58.16(a). During this process, the EPA inadvertently failed to complete a similar change that was required in the language of section 3 of appendix D. Accordingly we are proposing this change to align the NCore monitoring requirements between the two sections noted above.

The EPA is also proposing to delete the requirement to measure Pb at urban NCore sites, either as Pb in Total Suspended Particles (Pb–TSP) or as Pb–PM_{10}. This requirement was finalized as part of the reconsideration of Pb monitoring requirements that occurred in 2010 (see 75 FR 81126). At that time, we noted that monitoring of Pb at such nonsource locations at NCore sites would support the characterization of typical neighborhood-scale Pb concentrations in urban areas to assist with the understanding of the risk posed by Pb to the general population. We also noted that such information could assist with the determination of nonattainment boundaries and support the development of long-term trends.

Since this requirement was finalized in late 2010, nonsource lead data has been measured at 50 urban NCore sites, with the majority of sites having already collected at least 2 years of data. In all cases, valid ambient Pb readings have been low, with maximum 3-month rolling averages typically reading around 0.01 micrograms per cubic meter as compared to the NAAQS level of 0.15 micrograms per cubic meter.[15] We expect the majority of sites to have the 3 years necessary to calculate a design value following the completion of monitoring in 2014. Given the uniformly low readings being measured at these NCore sites, we believe it is appropriate to consider eliminating this requirement. As noted in the associated docket memo, nonsource Pb data will continue to be measured (as Pb–PM_{10}) at the 27 National Air Toxics Trends Sites (NATTS) and at hundreds of $PM_{2.5}$ speciation stations that comprise the CSN and IMPROVE networks. The EPA believes that these ongoing networks adequately support the nonsource monitoring objectives articulated in the 2010 Pb monitoring reconsideration.

Accordingly, the EPA is proposing to delete the requirement to monitor for nonsource Pb at NCore sites from appendix D of 40 CFR part 58.[16] Given the requirement to collect a minimum of 3 years of Pb data in order to support the calculation of design values, the EPA proposes that monitoring agencies would be able to request permission to discontinue nonsource monitoring following the collection of at least 3 years of data at each urban NCore site.[17] Affected monitoring agencies should work closely with their respective EPA regional offices to ensure coordination of these changes to the network.

The EPA solicits comments on these proposed changes to Pb monitoring requirements.

III. Proposed Changes to Quality Assurance Requirements

A. Quality Assurance Requirements for Monitors Used in Evaluations for National Ambient Air Quality Standards—Appendix A

1. General Information

The following proposed changes to monitoring requirements impact these subparts of part 58—Ambient Air Quality Surveillance; appendix A—Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring. Changes that affect the overall appendix follow while those specific to the various sections of the appendix will be addressed under a specific section heading. The EPA notes that the entire regulatory text section for appendix A is being reprinted with this proposal since this section is being reorganized for clarity as well as being selectively revised as described in detail below. Likewise, although the EPA is proposing a new appendix B to apply to PSD monitors, much of the content of appendix B is taken directly from the existing requirements for these monitors set forth in appendix A. The EPA is soliciting comment on the specific provisions of appendices A and B that are being proposed for revision. However, there are a number of provisions that are being reprinted in the regulatory text solely for clarity to assist the public in understanding the changes being proposed; the EPA is not soliciting comment on those provisions and considers changes to those provisions to be beyond the scope of this rulemaking.

The QA requirements in appendix A have been developed for measuring the criteria pollutants of O_3, NO_2, sulfur dioxide (SO_2), CO, Pb and PM (PM_{10} and $PM_{2.5}$) and are minimum requirements for monitoring these ambient air pollutants for use in NAAQS attainment demonstrations. To emphasize the objective of this appendix, the EPA proposes to change the title of appendix A to ''Quality Assurance Requirements for Monitors used in Evaluations of National Ambient Air Quality Standards,'' and remove the terms SLAMS and SPMs from the title. We do, however, in the applicability paragraph, indicate that any monitor identified as SLAMS must meet the appendix A criteria in order to avoid any confusion about SLAMS monitors measuring criteria pollutants.

[14] See *http://www.epa.gov/ttn/amtic/ncore/index.html* for more information.

[15] See supporting information for reconsideration of existing requirements to monitor for lead at urban NCore site, Kevin Cavender, Docket number EPA–HQ–OAR–2013–0619.

[16] Specific revisions are proposed in 40 CFR part 58, appendix D, section 3(b) and sections 4.5(b) and 4.5(c).

[17] The EPA will review requests for shutdown under the provisions of 40 CFR 58.14. Although EPA anticipates that these nonsource monitors will have design values well below the NAAQS and will be eligible to be discontinued after three years of data have been collected, in the event that a monitor records levels approaching the NAAQS it may not qualify to be discontinued.

Special purpose monitors may in fact be monitoring for a criteria pollutant for other objectives than NAAQS determinations. Therefore, appendix A attempts to clarify in the title and the applicability section that the QA requirements specified in this appendix are for criteria pollutant monitors that are designated, through the part 58 ambient air regulations and monitoring organization annual monitoring network plans, as eligible to be used for NAAQS evaluation purposes. The applicability section also provides a reporting mechanism in AQS to identify any criteria pollutant monitors that are not used for NAAQS evaluations. The criteria pollutants identified for NAAQS exclusion will require review and approval by the EPA regional offices and will increase transparency and efficiencies in the NAAQS designation, data quality evaluation and data certification processes.

The current appendix A regulation has separate sections for automated (continuous) and manual method types. Since there are continuous and manual methods for measuring PM which have different quality control (QC) requirements, monitoring organizations have found it difficult to navigate the current appendix A requirements. The EPA proposes to reformat the document by pollutant rather than by method type. The four gaseous pollutants (CO, NO_2, SO_2 and O_3) will be contained in one section since the QC requirements are very similar, and separate sections will be provided for PM_{10}, $PM_{2.5}$, and Pb.

In the 2006 monitoring rule revisions, the PSD QA requirements, which were previously in appendix B, were added to appendix A and appendix B was reserved. The PSD requirements, in most cases, mimicked appendix A in structure but because PSD monitoring is often only for a period of one year, some of the frequencies of implementation of the PSD requirements are higher than the appendix A requirements. In addition, the agencies governing the implementation, assessment and approval of the QA requirements are different for PSD and ambient air monitoring for NAAQS decisions (i.e., the EPA regions for appendix A versus reviewing authorities for PSD). The combined regulations have caused confusion among monitoring organizations and those implementing PSD requirements, and the EPA proposes that the PSD requirements be moved back to a separate appendix B. This change would also provide more flexibility for revision if changes in either appendix are needed. Details of this proposed change will follow in Section III.B.

Finally, the EPA proposes that the appendix A regulation emphasize the use of PQAO and moved the definition and explanation to the beginning of the regulation in order to ensure that the application and use of PQAO in appendix A is clearly understood. The definition for PQAO is not being proposed for change. Since the PQAO can be a consolidation of a number of local monitoring organizations, the EPA proposes to add a sentence clarifying that the agency identified as the PQAO (usually the state agency) will be responsible for overseeing that the appendix A requirements are being met by all consolidated local agencies within the PQAO. Current appendix A regulation requires PQAOs to be approved by the EPA regions during network reviews or audits. The EPA believes this approval can occur at any time and proposes to eliminate the wording that suggests that PQAO approvals can only occur during events like network reviews or audits.

2. Quality System Requirements

The EPA proposes to remove the QA requirements for $PM_{10-2.5}$ (see current sections 3.2.6, 3.2.8, 3.3.6, 3.3.8, 4.3). Appendix A has traditionally been used to describe the QA requirements of the criteria pollutants used in making NAAQS attainment decisions. While the 40 CFR part 58 Ambient Air Monitoring regulation requires monitoring for the CSN, PAMS, and total oxides of Nitrogen (NO_y) for NCore, the QA requirements for these networks are found in technical assistance documents and not in appendix A. In 2006, the EPA proposed a $PM_{10-2.5}$ NAAQS along with requisite QA requirements in appendix A. While the $PM_{10-2.5}$ NAAQS was not promulgated, $PM_{10-2.5}$ monitoring was required to be performed at NCore sites and the EPA proposed requisite QA requirements in appendix A. Some of the PM QC requirements, like collocation for precision and the performance evaluation programs for bias, are accomplished on a percentage of monitoring sites within a PQAO. For example, collocated sampling for $PM_{2.5}$ and PM_{10} is required at approximately 15 percent of the monitoring sites within a PQAO. Since virtually every NCore site is the responsibility of a different PQAO, the appendix A requirements for $PM_{10-2.5}$, if implemented at the PQAO level, would have been required to be implemented at almost every NCore site, which would have been expensive and an unintended burden. Therefore, the EPA required the implementation of the $PM_{10-2.5}$ QC requirements at a national level and worked with the EPA regions and monitoring organizations to identify the sites that would implement the requirements. The implementation of the $PM_{10-2.5}$ QC requirements at NCore sites fundamentally changed how QC is implemented in appendix A and has been a cause of confusion with these parties. Since $PM_{10-2.5}$ is not a NAAQS pollutant and the QC requirements cannot be cost-effectively implemented at a PQAO level, the EPA is proposing to eliminate the $PM_{10-2.5}$ requirements including flow rate verifications, semi-annual flow rate audits, collocated sampling procedures, and the $PM_{10-2.5}$ Performance Evaluation Program (PEP). Similar to the technical assistance documents associated for the CSN [18] and PAMS [19] networks, the EPA will develop QA guidance for the $PM_{10-2.5}$ network which will afford more flexibility for implementation and revision of QC activities for $PM_{10-2.5}$.

The EPA proposes that the QA Pb requirements of collocated sampling (see current section 3.3.4.3) and Pb performance evaluation procedures (see current section 3.3.4.4) for non-source NCore sites be eliminated. The 2010 Pb rule in 40 CFR part 58, appendix D, section 4.5(b), added a requirement to conduct non-source oriented Pb monitoring at each NCore site in a core based statistical area (CBSA) with a population of 500,000 or more. This requirement had some monitoring organizations implementing Pb monitoring at only one site, the NCore site. Since the appendix A requirements are focused on PQAOs, the QC requirements would increase at PQAOs who were required to implement Pb monitoring at NCore. Similar to the $PM_{10-2.5}$ QA requirements, the requirement for Pb at NCore sites forced the EPA away from a focus on PQAOs to working with the EPA regions and monitoring organizations for implementation of the Pb Performance Evaluation Program (Pb-PEP) at national levels. Therefore, the EPA is proposing to eliminate the collocation requirement and the Pb-PEP requirements while retaining the requirements for flow rate verifications and flow rate audits which do not require additional monitors or independent sampling and analysis. Similar to the CSN and PAMS programs, the EPA will develop QA guidance for the Pb NCore network which will afford more flexibility for change/revision to accommodate Pb monitoring at non-source NCore sites. Additionally, the

[18] See *http://www.epa.gov/ttn/amtic/specguid.html* for CSN quality assurance project plan.

[19] See *http://www.epa.gov/ttn/amtic/pamsguidance.html* for PAMS technical assistance document.

EPA is proposing to delete the requirement to measure Pb at these specific NCore sites, either as Pb-TSP or as Pb-PM_{10} (see section II.I of this rule). If that proposed change is finalized, it will eliminate the need for any associated QA requirements including collocation, Pb-PEP or any QC requirements for these monitors. If the proposed change to NCore Pb requirements is not finalized, then the EPA will consider the proposed revision to QA requirements as described above on its own merits.

The EPA proposes that quality management plan (QMP) (current section 2.1.1) and quality assurance project plan (QAPP) (current section 2.1.2) submission and approval dates be reported by monitoring organizations and the EPA. This will allow for timely and accurate reporting of this information. Since 2007, the EPA has been tracking the submission and approval of QMPs and QAPPs by polling the EPA regions each year and updating a spreadsheet to the AMTIC Web site. The development of the annual spreadsheet is time consuming on the part of monitoring organizations and the EPA. It is expected that simplified reporting at the monitoring organization and the EPA regional office level to AQS will reduce entry errors and the burden of incorporating this information into annual spreadsheets, and increase transparency of this important quality system documentation. In order to reduce the initial burden of this data entry activity, the EPA has populated AQS with the last set of updated QMP and QAPP data from the annual spreadsheet review cycle. If this portion of the proposal is finalized, monitoring organizations will only need to update AQS as necessary.

In addition, some monitoring organizations have received delegation of authority to approve their QAPP through the monitoring organization's own QA organization. The EPA proposes that if a PQAO or monitoring organization has been delegated authority to review and approve their QAPP, an electronic copy must be submitted to the EPA regional office at the time it is submitted to the PQAO/monitoring organization's QAPP approving authority. Submission of an electronic version to the EPA at the time of completion is not considered an added burden on the monitoring organization because such submission is already a standard practice as part of the review process for technical systems audits.

The EPA proposes to add some clarifying language to the section describing the National Performance Evaluation Program (NPEP) (current section 2.4) explaining self-implementation of the performance evaluation by the monitoring organization. The clarification also adds the definition of independent assessment which is included in the PEP ($PM_{2.5}$-PEP, Pb-PEP and National Performance Audit Program (NPAP)) QAPPs and guidance and is included in the self-implementation memo sent to the monitoring organizations on an annual basis and posted on the AMTIC Web site [20]. The clarification is not a new requirement but provides a better reference for this information in addition to the annual memo sent to the monitoring organizations.

The EPA proposes to add some clarifying language to the technical systems audits (TSA) section (current section 2.4). The current TSA requirements are performed at the monitoring organization level. Since the EPA is revising the language in appendix A to focus on PQAOs instead of monitoring organizations, this may have an effect on those EPA Regions that want to perform TSA on monitoring organizations within a PQAO (a PQAO can be a single monitoring organization or a consolidation of a number of local monitoring organizations). The EPA proposes a TSA frequency of 3 years for each PQAO, but includes language that if a PQAO is made up of a number of monitoring organizations, all monitoring organizations within the PQAO be audited within 6 years. This proposed language maintains the every 3 years TSA requirement as it applies to PQAOs but provides additional flexibility for the EPA regions to audit every monitoring organization within the PQAO every 6 years. This change does not materially affect the burden on monitoring organizations.

The EPA proposes to require monitoring organizations to complete an annual survey for the Ambient Air Protocol Gas Verification Program (AA–PGVP) (current section 2.6.1). Since 2009, the EPA has had a separate information collection request (ICR) requiring monitoring organizations to complete an annual survey of the producers that supply their gas standards (for calibrations and QC) in order to be able to select standards from these producers for verification. The survey generally takes less than 10 minutes to complete. The EPA proposes to add the requirement to appendix A. In addition, the EPA proposes to add language that monitoring organizations participate, at the request of the EPA, in the AA–PGVP by sending a gas standard to one of the verification laboratories every 5 years. Since many monitoring organizations already volunteer to send in cylinders, this proposed new requirement may not materially affect most agencies and will not affect those agencies not using gas standards.

3. Quality Control Checks for Gases

The EPA proposes to lower the audit concentrations (current section 3.2.1) of the one-point QC checks to 0.005 and 0.08 parts per million (ppm) for SO_2, NO_2, and O_3 (currently 0.01 to 0.1 ppm), and to between 0.5 and 5 ppm for CO monitors (currently 1 and 10 ppm). With the development of more sensitive monitoring instruments with lower detection limits, technical improvements in calibrators, and lower ambient air concentrations in general, the EPA feels this revision will better reflect the precision and bias of the data. Since the audit concentrations are selected using the mean or median concentration of typical ambient air concentrations (guidance on this is provided in the QA Handbook [21]), the EPA is proposing to add some clarification to the current language by requiring monitoring organizations to select either the highest or lowest concentration in the ranges identified if their mean or median concentrations are above or below the prescribed range. There is no additional burden to this requirement since the frequency is the same and the audit concentrations are not so low as to make them unachievable to generate or measure.

The EPA proposes to remove reference to zero and span adjustments (current section 3.2.1.1) and revise the one-point QC language to simply require that the QC check be conducted before any calibration or adjustment to the monitor. Recent revisions of the QA Handbook discourage the implementation of frequent span adjustments so the proposed language helps to clarify that no adjustment be made prior to implementation of the one-point QC check.

The EPA proposes to remove the requirement (current section 3.2.2) to implement an annual performance evaluation for one monitor in each calendar quarter when monitoring organizations have less than four monitoring instruments. The minimum requirement for the annual performance evaluation for the primary monitor at a site is one per year. The current regulation requires evaluation of the

[20] See *http://www.epa.gov/ttn/amtic/npepqa.html.*

[21] QA Handbook for Air Pollution Measurement Vol. II, Ambient Air Quality Monitoring Program at: *http://www.epa.gov/ttn/amtic/qalist.html.*

monitors at 25 percent per quarter so that the performance evaluations are performed in all four quarters. There are cases where some monitoring organizations have less than four primary monitors for a gaseous pollutant, and the current language suggests that a monitor already receiving a performance evaluation be re-audited to provide for performance evaluations in all four quarters. This is a burden reduction for monitoring agencies operating smaller networks and does not change the requirement of an annual performance evaluation for each primary monitor.

The current annual performance evaluation language (current section 3.2.2.1) requires that the audits be conducted by selecting three consecutive audit levels (currently five audit levels are provided in appendix A). Due to the implementation of the NCore network, the inception of trace gas monitors, and lower ambient air concentrations being measured under typical circumstances, there is a need for audit levels at lower concentrations to more accurately represent the uncertainties present in much of the ambient data. The EPA proposes to expand the audit levels from five to ten and remove the requirement to audit three consecutive levels. The current regulation also requires that the three audit levels should bracket 80 percent of the ambient air concentrations measured by the analyzer. This current language has caused some confusion and monitoring organizations have requested the use of an audit point to establish monitor accuracy around the NAAQS levels. Therefore, the EPA is proposing to revise the language so that two of the audits levels selected represent 10–80 percent of routinely-collected ambient concentrations either measured by the monitor or in the PQAOs network of monitors. The proposed revision allows the third point to be selected at the NAAQS level (e.g., 75 ppb for SO_2) or above the highest 3-year routine hourly concentration, whichever is greater.

The EPA proposes to revise the language (current section 3.2.2.2(a)) addressing the limits on excess nitric oxide (NO) that must be followed during gas phase titration (GPT) procedures involving NO_2 audits. The current NO limit (maintaining at least 0.08 ppm) is very restrictive and requires auditors to make numerous mid-audit adjustments during a GPT that result in making the NO_2 audit a very time consuming procedure. Monitoring agency staff have advised us that the observance of such excess NO limits has no apparent effect on NO_2 calibrations being conducted with modern-day GPT capable calibration equipment and, therefore, that the requirement in the context of performing audits is unnecessary.[22] We also note the increasing availability of the EPA approved direct NO_2 methods that do not utilize converters, rendering the use of GPT techniques that require the output of NO and NO_X to be a potentially diminishingly used procedure in the future. Accordingly, we have proposed a more general statement regarding GPT that acknowledges the ongoing usage of monitoring agency procedures and guidance documents that have successfully supported NO_2 calibration activities. The EPA believes that if such procedures have been successfully used during calibrations when instrument adjustments are potentially being made, then such procedures are appropriate for audit use when instruments are not subject to adjustment. The EPA solicits comment on this proposed generalization of the GPT requirements, including whether a more specific set of requirements similar to the current excess NO levels can be developed based on operational experience and/or peer reviewed literature.

The EPA proposes to remove language (current section 3.2.2.2(b)) in the annual performance evaluation section that requires regional approval for audit gases for any monitors operating at ranges higher that 1.0 ppm for O_3, SO_2 and NO_2 and greater than 50 ppm for CO. The EPA does not need to approve a monitoring organization's use of audit gases to audit above proposed concentration levels. There should be very few cases where a performance evaluation needs to be performed above level 10, but there may be some legitimate instances (e.g., SO_2 audits in areas impacted by volcanic emissions). Since data reported to AQS above the highest level may be flagged or rejected, the EPA proposes that PQAOs notify the EPA regions of sites auditing at concentrations above level 10 so that reporting accommodations can be made.

The EPA proposes to provide additional explanatory language in appendix A to describe the NPAP (current section 2.4). The NPAP has been a long standing program for the ambient air monitoring community. The NPAP is a performance evaluation which is a type of audit where quantitative data are collected independently in order to evaluate the proficiency of an analyst, monitoring instrument or laboratory. It has been briefly mentioned in section 2.4 of the current appendix A requirements. Since 2007, the EPA has distributed a memo to all monitoring organizations in order to determine whether the monitoring organization plans to self-implement the NPAP program or utilize the federally implemented program. In order to make this decision, the NPAP adequacy and independence requirements are described in the memo. The EPA proposes to include these same requirements in appendix A in a separate section for NPAP. In addition, the memo currently states that 20 percent of the sites would be audited each year and, therefore, all sites would be audited in a 5-year period. Since there is a possibility that monitoring organizations may want some higher priority sites audited more frequently, the EPA is proposing to revise the language to require all sites to be audited within a 6-year period to provide more flexibility and discretion for monitoring agencies. This revision does not change the number of sites audited in any given year, but allows for increased frequency of sites deemed as high priority.

4. Quality Control Checks for Particulate Monitors

The EPA proposes to require that flow rate verifications (current section 3.2.3) be reported to AQS. Particulate matter concentrations (e.g., $PM_{2.5}$, PM_{10}, Pb) are reported in mass per unit of volume (e.g., $\mu g/m^3$). Flow rate verifications are implemented at required frequencies in order to ensure that the PM sampler is providing an accurate and repeatable measure of volume which is critical for the determination of concentration. If a given flow rate verification does not meet acceptance criteria, the EPA guidance suggests that data may be invalidated back to the most recent acceptable verification which is why these checks are performed at higher frequencies. Implementation of the flow rate verification is currently a requirement, but the reporting to AQS has only been a requirement for PM_{10} continuous instruments. This is the only QC requirement in appendix A that was not fully required for reporting for all pollutants and has been a cause of confusion. When performing TSAs, the EPA regions review the flow rate verification information. There are cases where it is difficult to find the flow rate verification information to ascertain completeness, data quality and whether corrective actions have been implemented in the case of flow rate verification failures. In addition, the EPA regions have mentioned that some of the monitoring organizations have

[22] See supporting information in Excess NO Issue paper, Mike Papp and Lewis Weinstock, Docket number EPA–HQ–OAR–2013–0619.

been reporting this data to AQS in an effort to increase transparency and reliability in data quality. In a recent review of 2012 data, out of the 1,110 SLAMS $PM_{2.5}$ samplers providing flow rate audit data (which are required to be reported), flow rate verification data was also reported for 543 samplers or about 49 percent for the samplers with flow rate audit data. With the development of a new QA transaction in AQS, we believe that the reporting of flow rate verification data would improve the evaluation of data quality for data certification and at national levels, provide consistent interpretation in the regulation for all PM pollutants without being overly burdensome (approximately 12 per sampler per year).

In addition, the flow rate verification requirements for all the particulate monitors suggest randomization of the implementation of flow rate verifications with respect to time of day, day of the week and routine service and adjustments. Since this is a suggestion, the EPA proposes to remove this language from the regulation and instead include it in QA guidance.

The EPA proposes to add clarifying language to the $PM_{2.5}$ collocation requirements (current section 3.2.5) that a site can only count for the collocation of the method designation of the primary monitor at that site. Precision is estimated at the PQAO level and at 15 percent of the sites for each method designation that is designated as a primary monitor. When developing the collocation requirements, the EPA intended to have the collocated monitors distributed to as many sites as possible in order to capture as much of the temporal and spatial variability in the PQAO. Therefore, since there can be only one primary monitor at a site for any given time period, it was originally intended that the primary monitor and the QA collocated monitor (for the primary) at a monitoring site count as one collocation. There have been some cases where multiple monitoring methods have been placed at a single site to fulfill multiple collocation requirements, which is not the intent of the current requirement. For example, a site (Site A) may have a primary monitor that is designated as a FRM (FRM A). This site may also have a FEM (FEM B) at the site that is not the primary monitor. If this site was selected for collocation, then the QA collocated monitor must be the same method designation as the primary, so the site would be collocated with another FRM A monitor. For primary monitors that are FEMs, the current requirement calls for the first QA collocated monitor of a FEM primary monitor be a FRM monitor. Some monitoring organizations have been using the collocated FRM monitors at Site A to satisfy the collocation requirements for other sites (e.g., Sites B, C, D) that have a FEM (FEM B or other FEM) as the primary monitor rather than placing a QA collocated FRM monitor at Site B (C or D). This was not the intent of the original regulation and the EPA provided additional guidance to monitoring organizations in 2010 [23] on the correct (intended) interpretation. This revision does not change the current regulation and does not increase or decrease burden, but is intended to provide clarity on how the PQAO identifies the number and types of monitors needed to achieve the collocation requirements.

The EPA proposes to provide more flexibility to monitoring organizations when selecting sites for collocation. Appendix A currently (current section 3.2.5.3) requires 80 percent of the collocated monitors be deployed at sites within ±20 percent of the NAAQS and if the monitoring organization does not have sites within that range, then 60 percent of the sites are to be deployed among the highest 25 percent of all sites within the network. Monitoring organizations have found this difficult to achieve. Some monitoring organizations do not have many sites and, at times, due to permission, access and limited space issues, the requirement was not always achievable. Realizing that the collocated monitors provide precision estimates for the PQAO (since only 15 percent of the sites are collocated), while also acknowledging that sites that measure concentrations close to the NAAQS are important, the EPA proposes to require that 50 percent (reduction from 80 percent) of the collocated monitors be deployed at sites within ±20 percent of the NAAQS, and if the monitoring organization does not have sites within that range, then 50 percent of the sites are to be deployed among the highest sites within the network. Although this requirement does not change the number of sites requiring collocation, it does provide the monitoring organizations additional flexibility in its choice of collocated sites.

5. Calculations for Data Quality Assessment

In order to provide reasonable estimates of data quality, the EPA uses data above an established threshold concentration usually related to the detection limits of the measurement. Measurement pairs are selected for use in the precision and bias calculations only when both measurements are above a threshold concentration.

For many years, the threshold concentration for Pb precision and bias data was 0.02 ug/m^3. The EPA promulgated a new Pb FRM (see 78 FR 40000) utilizing the Inductively Coupled Plasma Mass Spectrometry (ICP–MS) analysis technique in 2013 as a revision to appendix G of 40 CFR part 50 [24]. This new FRM demonstrated method detection limits (MDLs) [25] below 0.0002 μg/m^3, which is well below the EPA requirement of five percent of the current Pb NAAQS level of 0.15 μg/m^3 or 0.0075 μg/m^3. As a result of the increased sensitivity inherent in this new FRM, the EPA proposes to lower the acceptable Pb concentration (current section 4) from the current value of 0.02 ug/m^3 to 0.002 μg/m^3 for measurements obtained using the new Pb FRM and other more recently approved equivalent methods that have the requisite increased sensitivity.[26] The current 0.02 ug/m^3 value will be retained for the previous Pb FRM that has subsequently been re-designated as Federal Equivalent Method EQLA–0813–803, as well as older equivalent methods that were approved prior to the more recent work on developing more sensitive methods. Since ambient Pb concentrations are lower and methods more sensitive, lowering the threshold concentration will allow much more collocated information to be evaluated which will provide more representative estimates of precision and bias.

The EPA also proposes to remove the total suspended particulate (TSP) threshold concentration for precision and bias since TSP is no longer a NAAQS required pollutant and the EPA no longer has QC requirements for it.

The EPA proposes to remove the statistical check currently described in section 4.1.5 of appendix A. The check was developed to perform a comparison of the one-point QC checks and the annual performance evaluation data performed by the same PQAO. The section suggests that 95 percent of all the bias estimates from the annual performance evaluation (reported as a

[23] QA EYE Issue 9 Page 3 at: *http://www.epa.gov/ttn/amtic/qanews.html.*

[24] See 78 FR 40000, July 3, 2013.

[25] MDL is described as the minimum concentration of a substance that can be measured and reported with 99-percent confidence that the analyte concentration is greater than zero.

[26] FEMS approved on or after March 4, 2010, have the required sensitivity to utilize the 0.002 μg/m^3 reporting limit with the exception of manual equivalent method EQLA–0813–803, the previous FRM based on flame atomic absorption spectroscopy.

percent difference) should fall within the 95 percent probability interval developed using the one-point QC checks. The problem with this check is that PQAOs with very good repeatability on the one-point QC check data had a hard time meeting this requirement since the probability interval became very tight, making it more difficult for better performing PQAOs to meet the requirement. Separate statistics to evaluate the one-point QC checks and the performance evaluations are already promulgated, so the removal of this check does not affect data quality assessments.

Similar to the statistical comparison of performance evaluations data, the EPA proposes to remove the statistical check (current section 4.2.4) to compare the flow rate audit data and flow rate verification data. The existing language suggests that 95 percent of all the flow rate audit data results (reported as percent difference) should fall within the 95 percent probability interval developed from the flow rate verification data for the PQAO. The problem, as with the one-point QC check, was that monitoring organizations with very good repeatability on the flow rate verifications had a hard time meeting this requirement since the probability interval became very tight, making it difficult for better performing PQAOs to meet the requirement. Separate statistics to evaluate the flow rate verifications and flow rate audits are already promulgated, so the removal of this check does not affect data quality assessments.

B. Quality Assurance Requirements for Monitors Used in Evaluations of Prevention of Significant Deterioration Projects-Appendix B

1. General Information

The following proposed changes to monitoring requirements impact these subparts of part 58—Ambient Air Quality Surveillance; appendix B—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring. Changes that affect the overall appendix follow while those specific to the various sections of the appendix will be addressed under specific section headings. Since the PSD QA have been included in appendix A since 2006, section headings refer to the current appendix A sections.

The quality assurance requirements in appendix B have been developed for measuring the criteria pollutants of O_3, NO_2, SO_2, CO, $PM_{2.5}$, PM_{10} and Pb and are minimum QA requirements for the control and assessment of the quality of the PSD ambient air monitoring data submitted to the PSD reviewing authority [27] or the EPA by an organization operating a network of PSD stations.

In the 2006 monitoring rule revisions, the PSD QA requirements, which were previously in appendix B, were consolidated with appendix A and appendix B was held in reserve. The PSD requirements, in most cases, parallel appendix A in structure and content but because PSD monitoring is only required for a period of one year or less, some of the frequencies of implementation of the QC requirements for PSD are higher than the corresponding appendix A requirements. In addition, the agencies governing the implementation, assessment and approval of the QA requirements are different; the reviewing authorities for PSD monitoring and the EPA regions for ambient air monitoring for NAAQS decisions. The combined regulations have caused confusion or misinterpretations of the regulations among the public and monitoring organizations implementing NAAQS or PSD requirements, and have resulted in failure, in some cases, to perform the necessary QC requirements. Accordingly, the EPA proposes that the PSD QA requirements be removed from appendix A and returned to appendix B which is currently reserved. Separating the two sets of QA requirements would clearly distinguish the PSD QA requirements and allow more flexibility for future revisions to either monitoring program.

With this proposed rule, the EPA would not change most of the QC requirements for PSD. Therefore, the discussion that follows will cover those sections of the PSD requirements that the EPA proposes to change from the current appendix A requirements.

The applicability section of appendix B clarifies that the PSD QA requirements are not assumed to be minimum requirements for data used in NAAQS decisions. One reason for this distinction is in the flexibility allowed in PSD monitoring for the NPEP (current appendix A section 2.4). The proposed PSD requirements allow the PSD reviewing authority to decide whether implementation of the NPEP will be performed. The NPEP, which is described in appendix A, includes the NPAP, $PM_{2.5}$ Performance Evaluation Program ($PM_{2.5}$-PEP), and the Pb-PEP. Accordingly, under the proposed rule, if a PSD reviewing authority were to have the intent of using PSD data for any official comparison to the NAAQS beyond the permitting application, such as for attainment/nonattainment designations or clean data determinations, then all requirements in appendix B including implementation of the NPEP would apply. In this case, monitoring would more closely conform to the appendix A requirements. The EPA proposes this flexibility for PSD because the NPEP requires either federal implementation or implementation by a qualified individual, group or organization that is not part of the organization directly performing and accountable for the work being assessed. The NPEP may require specialized equipment, certified auditors and a number of activities which are enumerated in the sections associated with these programs. Arranging this type of support service may be more difficult for the operator of a single or small number of PSD monitoring stations operating for only a year or less.

The EPA cannot accept funding from private contractors or industry, and federal implementation of the NPEP for PSD would face several funding and logistical hurdles. This creates an inequity in the NPEP implementation options available to the PSD monitoring organizations compared to the state/local/tribal monitoring organization monitoring for NAAQS compliance. The EPA has had success in training and certifying private contractors in various categories of performance evaluations conducted under NPEP, but many have not made the necessary investments in capital equipment to implement all categories of the performance evaluations. Since the monitoring objectives for the collection of data for PSD are not necessarily the same as those for NAAQS evaluations, the EPA proposes to allow the PSD reviewing authority to determine whether a PSD monitoring project must implement the NPEP.

The EPA proposes to clarify the definition of PSD PQAO. The PQAO was first defined in appendix A in 2006 (current appendix A section 3.1.1) when the PSD requirements were combined with appendix A. The definition is not substantially changed for PSD, but the EPA proposes to clarify that a PSD PQAO can only be associated with one PSD reviewing authority. Distinguishing among the PSD PQAOs that coordinate with a PSD reviewing authority would be consistent with discrete jurisdictions for PSD permitting, and it would simplify oversight of the QA requirements for each PSD network.

[27] Permitting authority and reviewing authority are often used synonymously in PSD permitting. Since reviewing authority has been defined in 40 CFR 51.166(b), it is used throughout appendix B.

Given that companies may apply for PSD permits throughout the United States, it is expected that some PSD monitoring organizations will work with multiple reviewing authorities. The PSD PQAO code which may appear in the AQS data base and other records defines the PSD monitoring organization or a coordinated aggregation of such organizations that is responsible for a set of stations within one PSD reviewing authority that monitors the same pollutant and for which data quality assessments will be pooled. The PSD monitoring organizations that work with multiple PSD reviewing authorities would have individual PSD PQAO codes for each PSD reviewing authority. This approach will allow for the flexibility to develop appropriate quality systems for each PSD reviewing authority.

The EPA proposes to add definitions of ''PSD monitoring organization'' and ''PSD monitoring network'' to 40 CFR 58.1. The definitions have been developed to improve understanding of the appendix B regulations.

Since the EPA uses the term ''monitoring organization'' quite frequently in the NAAQS associated ambient air regulations, the EPA wants to provide a better definition of the term in the PSD QA requirements. Therefore, the EPA proposes the term ''PSD monitoring organization'' to identify ''a source owner/operator, a government agency, or its contractor that operates an ambient air pollution monitoring network for PSD purposes.''

The EPA also proposes to define ''PSD monitoring network'' in order to distinguish ''a set of monitors that provide concentration information for a specific PSD permit.'' The EPA will place both definitions in 40 CFR 58.1.

2. Quality System Requirements

The EPA proposes to remove the $PM_{10-2.5}$ requirements for flow rate verifications, semi-annual flow rate audits, collocated sampling procedures and $PM_{10-2.5}$ Performance Evaluation Program from appendix B (current appendix A sections 3.2.6, 3.2.8, 3.3.6, 3.3.8, 4.3). In 2006, the EPA proposed a $PM_{10-2.5}$ NAAQS along with requisite QA requirements in appendix A. While the $PM_{10-2.5}$ NAAQS was not promulgated, $PM_{10-2.5}$ monitoring was required to be performed at NCore sites and the EPA proposed requisite QA requirements in appendix A. Since PSD monitoring is distinct from monitoring at NCore sites and $PM_{10-2.5}$ is not a criteria pollutant, it will be removed from the PSD QA requirements.

The EPA proposes that the Pb QA requirements of collocated sampling (current appendix A section 3.3.4.3) and Pb performance evaluation procedures (current appendix A section 3.3.4.4) for non-source oriented NCore sites be eliminated for PSD. The 2010 Pb rule in 40 CFR part 58, appendix D, section 4.5(b), added a requirement to conduct non-source oriented Pb monitoring at each NCore site in a CBSA with a population of 500,000 or more. Since PSD does not implement NCore sites, the EPA proposes to eliminate the Pb QA language specific to non-source NCore sites from PSD while retaining the PSD QA requirements for routine Pb monitoring.

The EPA proposes that elements of QMPs and QAPPs which are separate documents and are described in appendix A, sections 2.1.1 and 2.1.2, can be combined into a single document for PSD monitoring networks. The QMP provides a ''blueprint'' of a PSD monitoring organization's quality system. It includes quality policies and describes how the organization as a whole manages and implements its quality system regardless of what monitoring is being performed. The QAPP includes details for implementing a specific PSD monitoring activity. For PSD monitoring, the EPA believes the project-specific QAPP takes priority but there are important aspects of the QMP that could be incorporated into the QAPP. The current appendix A requirements allow smaller organizations or organizations that do infrequent work with EPA to combine the QMP with the QAPP based on negotiations with the funding agency and provided guidance [28] on a graded approach to developing these documents. In the case of PSD QMPs and QAPPs, the EPA proposes that the PSD reviewing authority, which has the approval authority for these documents, also have the flexibility for allowing the PSD PQAO to combine pertinent elements of the QMP into the QAPP rather than requiring the submission of both QMP and QAPP documents separately.

The EPA proposes to add language to the appendix B version of the data quality objectives (DQO) section (current appendix A section 2.3.1) which allows flexibility for the PSD reviewing authority and the PSD monitoring organization to determine if adherence to the DQOs specified in appendix A, which are the DQO goals for NAAQS decisions, are appropriate or whether project-specific goals are necessary. Allowing the PSD reviewing authority and the PSD monitoring organization flexibility to change the DQOs does not change the implementation requirements for the types and frequency of the QC checks in appendix B, but does give some flexibility in the acceptance of data for use in specific projects for which the PSD data are collected. As an example, the goal for acceptable measurement uncertainty for the collection of O_3 data for NAAQS determinations is defined for precision as an upper 90 percent confidence limit for CV of seven percent and for bias as an upper 95 percent confidence limit for the absolute bias of seven percent. The precision and bias estimates are made with 3 years of one-point QC check data. A single or a few one-point QC checks over seven percent would not have a significant effect on meeting the DQO goal. The PSD monitoring DQO, depending on the objectives of the PSD monitoring network, may require a stricter DQO goal or one less restrictive. Since PSD monitoring covers a period of 1 year or less, one-point QC checks over seven percent will increase the likelihood of failing to meet the DQO goal since there would be fewer QC checks available in the monitoring period to estimate precision and bias. With fewer checks, any individual check will statistically have more influence over the precision or bias estimate. Realizing that PSD monitoring may have different monitoring objectives, the EPA proposes to add language that would allow decisions on data quality objectives to be determined through consultation between the appropriate PSD reviewing authority and PSD monitoring organization.

The EPA proposes to add some clarifying language to the section describing the NPEP (current appendix A section 2.4) to explain self-implementation of the performance evaluation by the PSD monitoring organization. Self-implementation of NPEP has always been an option for monitoring organizations but the requirements for self-implementation were described in the technical implementation documents (i.e., implementation plans and QAPPs) for the program and in an annual self-implementation decision memo that is distributed to monitoring organizations.[29] These major requirements for self-implementation are proposed to be included in the appendix B sections pertaining to the NPEP program (NPAP, $PM_{2.5}$-PEP and Pb-PEP).

The NPEP clarification also adds a definition of ''independent assessment.''

[28] Graded approach to Tribal QAPP and QMPs *http://www.epa.gov/ttn/amtic/cpreldoc.html.*

[29] *http://www.epa.gov/ttn/amtic/npepqa.html.*

The proposed definition is derived from the NPEP (NPAP, $PM_{2.5}$-PEP, and Pb-PEP) QAPPs and guidance; it also appears in the annual self-implementation memo described above. The clarification is not a new requirement but consolidates this information.

The EPA proposes to require PSD PQAOs to provide information to the PSD reviewing authority on the vendors of gas standards that they use (or will use) for the duration of the PSD monitoring project. A QAPP or monitoring plan may incorporate this information; however, that document must then be updated if there is a change in the vendor used. The current regulation (current appendix A section 2.6.1) requires any gas vendor advertising and distributing ''EPA Protocol Gas'' to participate in the AA–PGVP. The EPA posts a list of these vendors on the AMTIC Web site.[30] This is not expected to be a burden since information of this type is normally included in a QAPP or standard operating procedure for a monitoring activity.

3. Quality Control Checks for Gases

The EPA proposes to lower the audit concentrations (current appendix A section 3.2.1) of the one-point QC checks to 0.005 and 0.08 ppm for SO_2, NO_2, and O_3 (currently 0.01 to 0.1 ppm), and to between 0.5 and 5 ppm for CO monitors (currently 1 and 10 ppm). With the development of more sensitive monitoring instruments with lower detection limits, technical improvements in calibrators, and lower ambient air concentrations in general, the EPA believes this revision will better reflect the precision and bias of the routinely-collected ambient air data. Since the audit concentrations are selected using the mean or median concentration of typical ambient air data (guidance on this is provided in the QA Handbook [31]), the EPA is proposing to add some clarification to the current language by requiring PSD monitoring organizations to select either the highest or lowest concentration in the ranges identified if the mean or median values of the routinely-collected concentrations are above or below the prescribed range. There is no additional burden added by this requirement since the frequency is the same and the audit concentrations are not so low as to make them unachievable to generate or measure.

The EPA proposes to remove the existing reference to zero and span adjustments (current appendix A, section 3.2.1.1) and to revise the one-point QC language to simply require that the QC check be conducted before making any calibration or adjustment to the monitor. Recent revisions of the QA Handbook discourage the practice of making frequent span adjustments so the proposed language helps to clarify that no adjustment be made prior to implementation of the one-point QC check.

The current annual performance evaluation language (current appendix A, section 3.2.2.1) requires that the audits be conducted by selecting three consecutive audit levels (currently appendix A recognizes five audit levels). Due to the implementation of the NCore network, the inception of trace gas monitors, and lower ambient air concentrations being measured under typical circumstances, there is a need for audit levels at lower concentrations to more accurately represent the uncertainties present in the ambient air data. The EPA proposes to expand the audit levels from five to ten and remove the requirement to audit three consecutive levels. The current regulation also requires that the three audit levels should bracket 80 percent of the ambient air concentrations measured by the analyzer. This current ''bracketing language'' has caused some confusion and monitoring organizations have requested the use of an audit point to establish monitor accuracy around the NAAQS levels. Therefore, the EPA is proposing to revise the language so that two of the audit levels selected represent 10 to 80 percent of routinely-collected ambient concentrations either measured by the monitor or in the PSD PQAOs network of monitors. The proposed revision allows the third point to be selected at a concentration that is consistent with PSD-specific DQOs (e.g., the 75 ppb NAAQS level for SO_2).

The EPA proposes to revise the language (current appendix A, section 3.2.2.2(a)) addressing the limits on excess NO that must be followed during GPT procedures involving NO_2 audits. The current NO limit (maintaining at least 0.08 ppm) is very restrictive and requires auditors to make numerous mid-audit adjustments during a GPT that result in making the NO_2 audit a very time consuming procedure. Monitoring agency staff have advised us that the observance of such excess NO limits has no apparent effect on NO_2 calibrations being conducted with modern-day GPT-capable calibration equipment and, therefore, that the requirements in the context of performing audits is unnecessary.[32] We also note the increasing availability of the EPA-approved direct NO_2 methods that do not utilize converters, rendering the use of GPT techniques that require the output of NO and NO_X to be a potentially diminishingly used procedure in the future. Accordingly, we have proposed a more general statement regarding GPT that acknowledges the ongoing usage of monitoring agency procedures and guidance documents that have successfully supported NO_2 calibration activities. The EPA believes that if such procedures have been successfully used during calibrations when instrument adjustments are potentially being made, than such procedures are appropriate for audit use when instruments are not subject to adjustment. The EPA solicits comment on this proposed generalization of the GPT requirements, including whether a more specific set of requirements similar to the current excess NO levels can be developed based on operational experience and/or peer reviewed literature.

The EPA proposes to remove language (current appendix A section 3.2.2.2(b)) in the annual performance evaluation section that requires regional approval for audit gases for any monitors operating at ranges higher that 1.0 ppm for O_3, SO_2 and NO_2 and greater than 50 ppm for CO. The EPA does not need to approve a monitoring organization's use of audit gases to audit above proposed concentration levels since the EPA has identified the requirements for all audit gases used in the program in current appendix A, section 2.6.1. There should be very few cases where a performance evaluation needs to be performed above level 10 but there may be some legitimate instances (e.g., an SO_2 audit in areas impacted by volcanic emissions). Since data reported to AQS above the highest level may be rejected (if PSD PE data are reported to AQS), the EPA proposes that PQAOs notify the PSD reviewing authority of sites auditing at concentrations above level 10 so that reporting accommodations can be made.

The EPA proposes to describe the NPAP (current appendix A, section 2.4) in more detail. The NPAP is a long-standing program for the ambient air monitoring community. The NPAP is a performance evaluation which is a type of audit where quantitative data are collected independently in order to evaluate the proficiency of an analyst, monitoring instrument or laboratory.

[30] *http://www.epa.gov/ttn/amtic/aapgvp.html.*

[31] QA Handbook for Air Pollution Measurement Vol. II Ambient Air Quality Monitoring Program at: *http://www.epa.gov/ttn/amtic/qalist.html.*

[32] See supporting information in Excess NO Issue paper, Mike Papp and Lewis Weinstock, Docket number EPA–HQ–OAR–2013–0619.

This program has been briefly mentioned in section 2.4 of the current appendix A requirements. In appendix A, the EPA is proposing to add language consistent with an annual decision memorandum [33] distributed to all state and local monitoring organizations in order to determine whether the monitoring organization plans to self-implement the NPAP program or utilize the federally implemented program. In order to make this decision, the NPAP adequacy and independence requirements are described in the decision memorandum. The EPA proposes to include these same requirements in appendix B in a separate section for NPAP. As described in the applicability section, the implementation of NPAP is at the discretion of the PSD reviewing authority but must be implemented if data are used in any NAAQS determinations. Since PSD monitoring is implemented at shorter intervals (usually a year) and with fewer monitors, if NPAP is performed, it is required to be performed annually on each monitor operated in the PSD network.

4. Quality Control Checks for Particulate Monitors

The EPA proposes to have one flow rate verification frequency requirement for all PM PSD monitors. The current regulations (current appendix A, table A–2) provides for monthly flow rate verifications for most samplers used to monitor $PM_{2.5}$, PM_{10} and Pb and quarterly flow rate verifications for high-volume PM_{10} or TSP samplers (for Pb). With longer duration NAAQS monitoring, the quarterly verification frequencies are adequate for these high-volume PM_{10} or TSP samplers. However, with the short duration of PSD monitoring, the EPA believes that monthly flow rate verifications are more appropriate to ensure that any sampler flow rate problems are identified more quickly and to reduce the potential for a significant amount of data invalidation that could extend monitoring activities.

The EPA proposes to grant more flexibility to PSD monitoring organizations when selecting $PM_{2.5}$ method designations for sites that require collocation. Appendix A currently (current appendix A, section 3.2.5.2(b)) requires that if a primary monitor is a FEM, then the first QC collocated monitor must be a FRM monitor. Most of the FEM monitors are continuous monitors while the FRM monitors are filter-based. Continuous monitors (which are all FEMs) may be advantageous for use at the more remote PSD monitoring locations, since the site operator would not need to visit a site as often to retrieve filters (current FRMs are filter-based). The current collocation requirements for FEMs require a filter-based FRM for collocation which would mean a visit to retrieve the FRM filters at least one week after the QC collocated monitor operated. Therefore, the EPA proposes that the FRM be selected as the QC collocated monitor unless the PSD PQAO submits a waiver request to allow for collocation with a FEM to the PSD reviewing authority. If the request for a waiver is approved, then the QC monitor must be the same method designation as the primary FEM monitor.

The EPA proposes to allow the PSD reviewing authority to waive the $PM_{2.5}$ 3 μg/m³ concentration validity threshold for implementation of the $PM_{2.5}$-PEP in the last quarter of PSD monitoring. The $PM_{2.5}$-PEP (current appendix A section 3.2.7) requires five valid $PM_{2.5}$-PEP audits per year for $PM_{2.5}$ monitoring networks with less than or equal to five sites and eight valid $PM_{2.5}$-PEP audits per year with $PM_{2.5}$ monitoring networks greater than five sites. Any PEP sample collected with a concentration less than 3 μg/m³ are not considered valid, since they cannot be used for bias estimates, and re-sampling is required at a later date. With NAAQS related monitoring, which aggregates the $PM_{2.5}$-PEP data over a 3-year period, re-sampling is easily accomplished. Due to the relatively short-term nature of most PSD monitoring, the likelihood of measuring low concentrations in many areas attaining the $PM_{2.5}$ standard and the time required to weigh filters collected in performance evaluations, a PSD monitoring organization's QAPP may contain a provision to waive the 3 μg/m³ threshold for validity of performance evaluations conducted in the last quarter of monitoring, subject to approval by the PSD reviewing authority.

5. Calculations for Data Quality Assessment

In order to allow reasonable estimates of data quality, the EPA uses data above an established threshold concentration usually related to the detection limits of the measurement method. Measurement pairs are selected for use in the precision and bias calculations only when both measurements are above a threshold concentration.

For many years, the threshold concentration for Pb precision and bias data has been 0.02 ug/m³. The EPA promulgated a new Pb FRM utilizing the ICP–MS analysis technique in 2013 as a revision to appendix G of 40 CFR part 50.[34] This new FRM demonstrated MDLs [35] below 0.0002 μg/m³ which is well below the EPA requirement of five percent of the current Pb NAAQS level of 0.15 μg/m³ or 0.0075 μg/m³. As a result of the increased sensitivity inherent in this new FRM, the EPA proposes to lower the acceptable Pb concentration (current section 4) from the current value of 0.02 ug/m³ to 0.002 μg/m³ for measurements obtained using the new Pb FRM and other more recently approved equivalent methods that have the requisite increased sensitivity.[36] The current 0.02 ug/m³ value will be retained for the previous Pb FRM that has subsequently been redesignated as Federal Equivalent Method EQLA–0813–803 as well as older equivalent methods that were approved prior to the more recent work on developing more sensitive methods. Since ambient Pb concentrations are lower and methods more sensitive, lowering the threshold concentration will allow much more collocated information to be evaluated, which will provide more representative estimates of precision and bias.

The EPA also proposes to remove the TSP threshold concentration since TSP is no longer an ambient indicator of PM NAAQS required pollutant and the EPA no longer applies QC requirements for it.

The EPA proposes to remove the statistical check currently described in section 4.1.5 of appendix A. The check was developed to perform a comparison of the one-point QC checks and the annual performance evaluation data performed by the same PQAO. The section suggests that 95 percent of all the bias estimates of the annual performance evaluations (reported as a percent difference) should fall within the 95 percent probability interval developed using the one-point QC checks. The problem with this check is that PQAOs with very good repeatability on the one-point QC check data had a hard time meeting this requirement since the probability interval became very tight, making it more difficult for better performing PQAOs to meet the requirement. Separate statistics to

[33] *http://www.epa.gov/ttn/amtic/files/ambient/pm25/qa/npappep2014.pdf.*

[34] See 78 FR 40000, July 3, 2013.

[35] MDL is described as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero.

[36] FEMs approved on or after March 4, 2010, have the required sensitivity to utilize the 0.002 μg/m³ reporting limit with the exception of manual equivalent method EQLA–0813–803, the previous FRM based on flame atomic absorption spectroscopy.

evaluate the one-point QC checks and the performance evaluations are already promulgated, so the removal of this check does not affect data quality assessments.

Similar to the statistical comparison of performance evaluation data, the EPA proposes to remove the statistical check (current appendix A, section 4.2.4) to compare the flow rate audit data and flow rate verification data. The existing language suggests that 95 percent of all the flow rate audit data (reported as percent difference) should fall within the 95 percent probability interval developed from the flow rate verification data for the PQAO. The problem, as with the one-point QC check, was that monitoring organizations with very good repeatability on the flow rate verifications had a hard time meeting this requirement since the probability interval became very tight, making it difficult for better performing PQAOs to meet the requirement. Separate statistics to evaluate the flow rate verifications and flow rate audits are already promulgated so the removal of this check does not affect data quality assessments.

The EPA proposes to remove the reporting requirements that are currently in section 5 of appendix A because they do not pertain to PSD monitoring (current sections 5.1, 5.1.1 and 5.1.2.1). Since PSD organizations are not required to certify their data to the EPA nor report to AQS, the EPA will remove language related to these requirements and language that required the EPA to calculate and report the measurement uncertainty for the entire calendar year. The EPA will retain the quarterly PSD reporting requirements (current section 5.2 in appendix A) and require that those requirements be consistent with Part 58.16 as it pertains to PSD ambient air quality data and QC data, as described in appendix B.

IV. Statutory and Executive Order Reviews

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

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(b). While the EPA believes that the net effect of the proposed changes to requirements is a net decrease in burden, the current information collection request calculation tools are not sufficiently detailed to show a material change in burden compared with the existing requirements.

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 this 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 this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will neither impose emission measurement requirements beyond those specified in the current regulations, nor will it change any emission standard. As such, it will not present a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This 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 sections 202 or 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.

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. This action proposes minor changes to existing monitoring requirements and will not materially impact the time required to operate monitoring networks. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule imposes no requirements on tribal governments. This action proposes minor changes to existing monitoring requirements and will not materially impact the time required to operate monitoring networks. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive order 13175, the EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets E.O. 13045 (62 FR 19885, April 23, 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 E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (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. This action proposes minor changes to existing monitoring requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 (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 proposed rulemaking does not involve technical standards. Therefore this action is not subject to the NTTAA.

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

Executive Order (E.O.) 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 proposed 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.

List of Subjects in 40 CFR Part 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: August 13, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter 1 of the Code of Federal Regulations as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

■ 1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7405, 7410, 7414, 7601, 7611, 7614, and 7619.

■ 2. Revise § 58.1 to read as follows:

§ 58.1 Definitions.

As used in this part, all terms not defined herein have the meaning given them in the Clean Air Act.

AADT means the annual average daily traffic.

Act means the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*)

Additive and multiplicative bias means the linear regression intercept and slope of a linear plot fitted to corresponding candidate and reference method mean measurement data pairs.

Administrator means the Administrator of the Environmental Protection Agency (EPA) or his or her authorized representative.

Air Quality System (AQS) means the EPA's computerized system for storing and reporting of information relating to ambient air quality data.

Approved regional method (ARM) means a continuous $PM_{2.5}$ method that has been approved specifically within a state or local air monitoring network for purposes of comparison to the NAAQS and to meet other monitoring objectives.

AQCR means air quality control region.

Area-wide means all monitors sited at neighborhood, urban, and regional scales, as well as those monitors sited at either micro- or middle-scale that are representative of many such locations in the same CBSA.

Certifying agency means a state, local, or tribal agency responsible for meeting the data certification requirements in accordance with § 58.15 of this part for a unique set of monitors.

Chemical Speciation Network (CSN) includes Speciation Trends Network stations (STN) as specified in paragraph 4.7.4 of appendix D of this part and supplemental speciation stations that provide chemical species data of fine particulate.

CO means carbon monoxide.

Combined statistical area (CSA) is defined by the U.S. Office of Management and Budget as a geographical area consisting of two or more adjacent Core Based Statistical Areas (CBSA) with employment interchange of at least 15 percent. Combination is automatic if the employment interchange is 25 percent and determined by local opinion if more than 15 but less than 25 percent.

Core-based statistical area (CBSA) is defined by the U.S. Office of Management and Budget, as a statistical geographic entity consisting of the county or counties associated with at least one urbanized area/urban cluster of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration. Metropolitan Statistical Areas (MSAs) and micropolitan statistical areas are the two categories of CBSA (metropolitan areas have populations greater than 50,000; and micropolitan areas have populations between 10,000 and 50,000). In the case of very large cities where two or more CBSAs are combined, these larger areas are referred to as combined statistical areas (CSAs)

Corrected concentration pertains to the result of an accuracy or precision assessment test of an open path analyzer in which a high-concentration test or audit standard gas contained in a short test cell is inserted into the optical measurement beam of the instrument. When the pollutant concentration measured by the analyzer in such a test includes both the pollutant concentration in the test cell and the concentration in the atmosphere, the atmospheric pollutant concentration must be subtracted from the test measurement to obtain the corrected concentration test result. The corrected concentration is equal to the measured concentration minus the average of the atmospheric pollutant concentrations measured (without the test cell) immediately before and immediately after the test.

Design value means the calculated concentration according to the applicable appendix of part 50 of this chapter for the highest site in an attainment or nonattainment area.

EDO means environmental data operations.

Effective concentration pertains to testing an open path analyzer with a high-concentration calibration or audit standard gas contained in a short test cell inserted into the optical measurement beam of the instrument. Effective concentration is the equivalent ambient-level concentration that would produce the same spectral absorbance over the actual atmospheric monitoring path length as produced by the high-concentration gas in the short test cell. Quantitatively, effective concentration is equal to the actual concentration of the gas standard in the test cell multiplied by the ratio of the path length of the test cell to the actual atmospheric monitoring path length.

Federal equivalent method (FEM) means a method for measuring the concentration of an air pollutant in the ambient air that has been designated as an equivalent method in accordance with part 53; it does not include a method for which an equivalent method designation has been canceled in accordance with § 53.11 or § 53.16.

Federal reference method (FRM) means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to part 50 of this chapter, or a method that has been designated as a reference method in accordance with this part; it does not include a method for which a reference method designation has been canceled in accordance with § 53.11 or § 5316.

HNO_3 means nitric acid.

Implementation Plan means an implementation plan approved or promulgated by the EPA pursuant to section 110 of the Act.

Local agency means any local government agency, other than the state agency, which is charged by a state with the responsibility for carrying out a portion of the annual monitoring network plan required by § 58.10.

Meteorological measurements means measurements of wind speed, wind direction, barometric pressure, temperature, relative humidity, solar radiation, ultraviolet radiation, and/or precipitation that occur at stations including NCore and PAMS.

Metropolitan Statistical Area (MSA) means a CBSA associated with at least one urbanized area of 50,000 population or greater. The central county, plus adjacent counties with a high degree of integration, comprise the area.

Monitor means an instrument, sampler, analyzer, or other device that measures or assists in the measurement of atmospheric air pollutants and which is acceptable for use in ambient air surveillance under the applicable provisions of appendix C to this part.

Monitoring agency means a state, local or Tribal agency responsible for meeting the requirements of this part.

Monitoring organization means a monitoring agency or other monitoring organization responsible for operating a monitoring site for which the quality assurance regulations apply.

Monitoring path for an open path analyzer means the actual path in space between two geographical locations over which the pollutant concentration is measured and averaged.

Monitoring path length of an open path analyzer means the length of the monitoring path in the atmosphere over which the average pollutant concentration measurement (path-averaged concentration) is determined. See also, *optical measurement path length*.

Monitoring planning area (MPA) means a contiguous geographic area with established, well-defined boundaries, such as a CBSA, county or state, having a common area that is used for planning monitoring locations for $PM_{2.5}$. A MPA may cross state boundaries, such as the Philadelphia PA–NJ MSA, and be further subdivided into community monitoring zones. The MPAs are generally oriented toward CBSAs or CSAs with populations greater than 200,000, but for convenience, those portions of a state that are not associated with CBSAs can be considered as a single MPA.

NATTS means the national air toxics trends stations. This network provides hazardous air pollution ambient data.

NCore means the National Core multipollutant monitoring stations. Monitors at these sites are required to measure particles ($PM_{2.5}$, speciated $PM_{2.5}$, $PM_{10-2.5}$), O_3, SO_2, CO, nitrogen oxides (NO/NO_y), and meteorology (wind speed, wind direction, temperature, relative humidity).

Near-road monitor means any approved monitor meeting the applicable specifications described in 40 CFR part 58, appendix D (sections 4.2.1, 4.3.2, 4.7.1(b)(2)) and appendix E (section 6.4(a), Table E–4) for near-road measurement of $PM_{2.5}$, CO, or NO_2.

Network means all stations of a given type or types.

Network Plan means the Annual Monitoring Network Plan described in § 58.10 of this part.

NH_3 means ammonia.

NO_2 means nitrogen dioxide.

NO means nitrogen oxide.

NO_X means the sum of the concentrations of NO_2 and NO.

NO_y means the sum of all total reactive nitrogen oxides, including NO, NO_2, and other nitrogen oxides referred to as NO_Z.

O_3 means ozone.

Open path analyzer means an automated analytical method that measures the average atmospheric pollutant concentration in situ along one or more monitoring paths having a monitoring path length of 5 meters or more and that has been designated as a reference or equivalent method under the provisions of part 53 of this chapter.

Optical measurement path length means the actual length of the optical beam over which measurement of the pollutant is determined. The path-integrated pollutant concentration measured by the analyzer is divided by the optical measurement path length to determine the path-averaged concentration. Generally, the optical measurement path length is:

(1) Equal to the monitoring path length for a (bistatic) system having a transmitter and a receiver at opposite ends of the monitoring path;

(2) Equal to twice the monitoring path length for a (monostatic) system having a transmitter and receiver at one end of the monitoring path and a mirror or retroreflector at the other end; or

(3) Equal to some multiple of the monitoring path length for more complex systems having multiple passes of the measurement beam through the monitoring path.

PAMS means photochemical assessment monitoring stations.

Pb means lead.

PM means particulate matter, including but not limited to PM_{10}, PM_{10C}, $PM_{2.5}$, and $PM_{10-2.5}$.

$PM_{2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on appendix L of part 50 and designated in accordance with part 53, by an equivalent method designated in accordance with part 53, or by an approved regional method designated in accordance with appendix C to this part.

PM_{10} means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on appendix J of part 50 and designated in accordance with part 53 or by an equivalent method designated in accordance with part 53.

PM_{10C} means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on appendix O of part 50 and designated in accordance with part 53 or by an equivalent method designated in accordance with part 53.

$PM_{10-2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers and greater than a nominal 2.5 micrometers as measured by a reference method based on appendix O to part 50 and designated in accordance with part 53 or by an equivalent method designated in accordance with part 53.

Point analyzer means an automated analytical method that measures pollutant concentration in an ambient air sample extracted from the atmosphere at a specific inlet probe point, and that has been designated as a reference or equivalent method in accordance with part 53 of this chapter.

Primary Monitor means the monitor identified by the monitoring organization that provides concentration data used for comparison to the

NAAQS. For any specific site, only one monitor for each pollutant can be designated in AQS as primary monitor for a given period of time. The primary monitor identifies the default data source for creating a combined site record for purposes of NAAQS comparisons.

Primary quality assurance organization (PQAO) means a monitoring organization, a group of monitoring organizations or other organization that is responsible for a set of stations that monitor the same pollutant and for which data quality assessments can be pooled. Each criteria pollutant sampler/monitor at a monitoring station in the SLAMS and SPM networks must be associated with only one PQAO.

Probe means the actual inlet where an air sample is extracted from the atmosphere for delivery to a sampler or point analyzer for pollutant analysis.

PSD monitoring network means a set of stations that provide concentration information for a specific PSD permit.

PSD monitoring organization means a source owner/operator, a government agency, or a contractor of the source or agency that operates an ambient air pollution monitoring network for PSD purposes.

PSD reviewing authority means the state air pollution control agency, local agency, other state agency, tribe, or other agency authorized by the Administrator to carry out a permit program under § 51.165 and § 51.166, or the Administrator in the case of EPA-implemented permit programs under § 52.21.

PSD station means any station operated for the purpose of establishing the effect on air quality of the emissions from a proposed source for purposes of prevention of significant deterioration as required by § 51.24(n).

Regional Administrator means the Administrator of one of the ten EPA regional offices or his or her authorized representative.

Reporting organization means an entity, such as a state, local, or tribal monitoring agency, that reports air quality data to the EPA.

Site means a geographic location. One or more stations may be at the same site.

SLAMS means state or local air monitoring stations. The SLAMS include the ambient air quality monitoring sites and monitors that are required by appendix D of this part and are needed for the monitoring objectives of appendix D, including NAAQS comparisons, but may serve other data purposes. The SLAMS includes NCore, PAMS, CSN, and all other state or locally operated criteria pollutant monitors operated in accordance to this part, that have not been designated and approved by the Regional Administrator as SPM stations in an annual monitoring network plan.

SO_2 means sulfur dioxide.

Special purpose monitor (SPM) station means a monitor included in an agency's monitoring network that the agency has designated as a special purpose monitor station in its annual monitoring network plan and in the AQS, and which the agency does not count when showing compliance with the minimum requirements of this subpart for the number and siting of monitors of various types. Any SPM operated by an air monitoring agency must be included in the periodic assessments and annual monitoring network plan required by § 58.10 and approved by the Regional Administrator.

State agency means the air pollution control agency primarily responsible for development and implementation of a State Implementation Plan under the Act.

Station means a single monitor, or a group of monitors, located at a particular site.

STN station means a $PM_{2.5}$ chemical speciation station designated to be part of the speciation trends network. This network provides chemical species data of fine particulate.

Supplemental speciation station means a $PM_{2.5}$ chemical speciation station that is operated for monitoring agency needs and not part of the STN.

Traceable means that a local standard has been compared and certified, either directly or via not more than one intermediate standard, to a National Institute of Standards and Technology (NIST)-certified primary standard such as a NIST-traceable Reference Material (NTRM) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS).

TSP (total suspended particulates) means particulate matter as measured by the method described in appendix B of part 50.

Urbanized area means an area with a minimum residential population of at least 50,000 people and which generally includes core census block groups or blocks that have a population density of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile. The Census Bureau notes that under certain conditions, less densely settled territory may be part of each Urbanized Area.

VOCs means volatile organic compounds.

■ 3. In § 58.10:

■ a. Revise paragraphs (a)(1) and (a)(2).

■ b. Add paragraph (a)(9).

■ c. Add paragraph (b)(14).

The revisions and additions read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a)(1) Beginning July 1, 2007, the state, or where applicable local, agency shall submit to the Regional Administrator an annual monitoring network plan which shall provide for the documentation of the establishment and maintenance of an air quality surveillance system that consists of a network of SLAMS monitoring stations that can include FRM, FEM, and ARM monitors that are part of SLAMS, NCore, CSN, PAMS, and SPM stations. The plan shall include a purpose statement for each monitor along with a statement of whether the operation of each monitor meets the requirements of appendices A, B, C, D, and E of this part, where applicable. The Regional Administrator may require the submission of additional information as needed to evaluate compliance with applicable requirements of part 58 and its appendices. The annual monitoring network plan must be made available for public inspection and comment for at least 30 days prior to submission to the EPA and the submitted plan shall reference and address any such received comments.

(2) Any annual monitoring network plan that proposes SLAMS network modifications (including new or discontinued monitoring sites, new determinations that data are not of sufficient quality to be compared to the NAAQS, and changes in identification of monitors as suitable or not suitable for comparison against the annual $PM_{2.5}$ NAAQS) is subject to the approval of the EPA Regional Administrator, who shall approve or disapprove the plan within 120 days of submission of a complete plan to the EPA.

* * * * *

(9) A detailed description of the PAMS network being operated in accordance with the requirements of appendix D to this part shall be submitted as part of the annual monitoring network plan for review by the EPA Administrator. The PAMS Network Description described in section 5 of appendix D may be used to meet this requirement.

(b) * * *

(14) The identification of any SPMs operating for a longer period than 24 months that utilize FRM, FEM, and/or ARM monitors accompanied by a discussion of the rationale for retention

as an SPM rather than a reclassification to SLAMS.

* * * * *

■ 4. In § 58.11, revise paragraph (a)(3) to read as follows:

§ 58.11 Network technical requirements.

(a) * * *

(3) The owner or operator of an existing or a proposed source shall follow the quality assurance criteria in appendix B to this part that apply to PSD monitoring when operating a PSD site.

* * * * *

■ 5. In § 58.12:

■ a. Revise paragraph (d)(1).

■ b. Revise paragraph (d)(3).

The revisions read as follows:

§ 58.12 Operating schedules.

* * * * *

(d) * * *

(1)(i) Manual $PM_{2.5}$ samplers at required SLAMS stations without a collocated continuously operating $PM_{2.5}$ monitor must operate on at least a 1-in-3 day schedule unless a waiver for an alternative schedule has been approved per paragraph (d)(1)(ii) of this section.

(ii) For SLAMS $PM_{2.5}$ sites with both manual and continuous $PM_{2.5}$ monitors operating, the monitoring agency may request approval for a reduction to 1-in-6 day $PM_{2.5}$ sampling or for seasonal sampling from the EPA Regional Administrator. Other requests for a reduction to 1-in-6 day $PM_{2.5}$ sampling or for seasonal sampling may be approved on a case-by-case basis. The EPA Regional Administrator may grant sampling frequency reductions after consideration of factors (including but not limited to the historical $PM_{2.5}$ data quality assessments, the location of current $PM_{2.5}$ design value sites, and their regulatory data needs) if the Regional Administrator determines that the reduction in sampling frequency will not compromise data needed for implementation of the NAAQS. Required SLAMS stations whose measurements determine the design value for their area and that are within plus or minus 10 percent of the annual NAAQS, and all required sites where one or more 24-hour values have exceeded the 24-hour NAAQS each year for a consecutive period of at least 3 years are required to maintain at least a 1-in-3 day sampling frequency until the design value no longer meets these criteria for 3 consecutive years. A continuously operating FEM or ARM $PM_{2.5}$ monitor satisfies this requirement unless it is identified in the monitoring agency's annual monitoring network plan as not appropriate for comparison to the NAAQS and the EPA Regional Administrator has approved that the data from that monitor may be excluded from comparison to the NAAQS.

(iii) Required SLAMS stations whose measurements determine the 24-hour design value for their area and whose data are within plus or minus 5 percent of the level of the 24-hour $PM_{2.5}$ NAAQS must have an FRM or FEM operate on a daily schedule if that area's design value for the annual NAAQS is less than the level of the annual $PM_{2.5}$ standard. A continuously operating FEM or ARM $PM_{2.5}$ monitor satisfies this requirement unless it is identified in the monitoring agency's annual monitoring network plan as not appropriate for comparison to the NAAQS and the EPA Regional Administrator has approved that the data from that monitor may be excluded from comparison to the NAAQS. The daily schedule must be maintained until the referenced design values no longer meets these criteria for 3 consecutive years.

(iv) Changes in sampling frequency attributable to changes in design values shall be implemented no later than January 1 of the calendar year following the certification of such data as described in § 58.15.

* * * * *

(3) Manual $PM_{2.5}$ speciation samplers at STN stations must operate on at least a 1-in-3 day sampling frequency unless a reduction in sampling frequency has been approved by the EPA Administrator based on factors such as area's design value, the role of the particular site in national health studies, the correlation of the site's species data with nearby sites, and presence of other leveraged measurements.

* * * * *

■ 6. In § 58.14, revise paragraph (a) to read as follows:

§ 58.14 System modification.

(a) The state, or where appropriate local, agency shall develop and implement a network modification plan and schedule to modify the ambient air quality monitoring network that implements the findings of the network assessment required every 5 years by § 58.10(d). The network modification plan shall be submitted as part of the Annual Monitoring Network Plan that is due no later than the year after submittal of the network assessment.

* * * * *

■ 7. Revise § 58.15 to read as follows:

§ 58.15 Annual air monitoring data certification.

(a) The state, or where appropriate local, agency shall submit to the EPA Regional Administrator an annual air monitoring data certification letter to certify data collected by FRM, FEM, and ARM monitors at SLAMS and SPM sites that meet criteria in appendix A to this part from January 1 to December 31 of the previous year. The head official in each monitoring agency, or his or her designee, shall certify that the previous year of ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate to the best of her or his knowledge, taking into consideration the quality assurance findings. The annual data certification letter is due by May 1 of each year.

(b) Along with each certification letter, the state shall submit to the Regional Administrator an annual summary report of all the ambient air quality data collected by FRM, FEM, and ARM monitors at SLAMS and SPM sites. The annual report(s) shall be submitted for data collected from January 1 to December 31 of the previous year. The annual summary serves as the record of the specific data that is the object of the certification letter.

(c) Along with each certification letter, the state shall submit to the Regional Administrator a summary of the precision and accuracy data for all ambient air quality data collected by FRM, FEM, and ARM monitors at SLAMS and SPM sites. The summary of precision and accuracy shall be submitted for data collected from January 1 to December 31 of the previous year.

■ 8. In § 58.16, revise paragraphs (a), (c), and (d) to read as follows:

§ 58.16 Data submittal and archiving requirements.

(a) The state, or where appropriate, local agency, shall report to the Administrator, via AQS all ambient air quality data and associated quality assurance data for SO_2; CO; O_3; NO_2; NO; NO_y; NO_X; Pb-TSP mass concentration; Pb-PM_{10} mass concentration; PM_{10} mass concentration; $PM_{2.5}$ mass concentration; for filter-based $PM_{2.5}$ FRM/FEM, the field blank mass; chemically speciated $PM_{2.5}$ mass concentration data; $PM_{10-2.5}$ mass concentration; meteorological data from NCore and PAMS sites; and metadata records and information specified by the AQS Data Coding Manual (*http://www.epa.gov/ttn/airs/airsaqs/manuals/manuals.htm*). Air quality data and information must be submitted directly to the AQS via electronic transmission on the specified schedule described in paragraphs (b) and (d) of this section.

* * * * *

(c) Air quality data submitted for each reporting period must be edited,

validated, and entered into the AQS (within the time limits specified in paragraphs (b) and (d) of this section) pursuant to appropriate AQS procedures. The procedures for editing and validating data are described in the AQS Data Coding Manual and in each monitoring agency's quality assurance project plan.

(d) The state shall report VOC and if collected, carbonyl, NH_3, and HNO_3 data from PAMS sites, and chemically speciated $PM_{2.5}$ mass concentration data to AQS within 6 months following the end of each quarterly reporting period listed in paragraph (b) of this section.

* * * * *

■ 9. Revise Appendix A to part 58 to read as follows:

Appendix A to Part 58—Quality Assurance Requirements for Monitors Used in Evaluations of National Ambient Air Quality Standards

1. General Information
2. Quality System Requirements
3. Measurement Quality Check Requirements
4. Calculations for Data Quality Assessments
5. Reporting Requirements
6. References

1. General Information

1.1 *Applicability.* (a) This appendix specifies the minimum quality system requirements applicable to SLAMS and other monitor types whose data are intended to be used to determine compliance with the NAAQS (e.g., SPMs, tribal, CASTNET, industrial, etc), unless the EPA Regional Administrator has reviewed and approved the monitor for exclusion from NAAQS use and these quality assurance requirements.

(b) Primary quality assurance organizations are encouraged to develop and maintain quality systems more extensive than the required minimums. Additional guidance for the requirements reflected in this appendix can be found in the ''Quality Assurance Handbook for Air Pollution Measurement Systems,'' Volume II (see reference 10 of this appendix) and at a national level in references 1, 2, and 3 of this appendix.

1.2 *Primary Quality Assurance Organization (PQAO).* A PQAO is defined as a monitoring organization or a coordinated aggregation of such organizations that is responsible for a set of stations that monitors the same pollutant and for which data quality assessments will be pooled. Each criteria pollutant/monitor must be associated with only one PQAO. In some cases, data quality is assessed at the PQAO level.

1.2.1 Each PQAO shall be defined such that measurement uncertainty among all stations in the organization can be expected to be reasonably homogeneous as a result of common factors. Common factors that should be considered in defining PQAOs include:

(a) Operation by a common team of field operators according to a common set of procedures;

(b) Use of a common quality assurance project plan (QAPP) or standard operating procedures;

(c) Common calibration facilities and standards;

(d) Oversight by a common quality assurance organization; and

(e) Support by a common management organization (i.e., state agency) or laboratory.

Since data quality assessments are made and data certified at the PQAO level, the monitoring organization identified as the PQAO will be responsible for the oversight of the quality of data of all monitoring organizations within the PQAO.

1.2.2 Monitoring organizations having difficulty describing its PQAO or in assigning specific monitors to primary quality assurance organizations should consult with the appropriate EPA regional office. Any consolidation of monitoring organizations to PQAOs shall be subject to final approval by the appropriate EPA regional office.

1.2.3 Each PQAO is required to implement a quality system that provides sufficient information to assess the quality of the monitoring data. The quality system must, at a minimum, include the specific requirements described in this appendix. Failure to conduct or pass a required check or procedure, or a series of required checks or procedures, does not by itself invalidate data for regulatory decision making. Rather, PQAOs and the EPA shall use the checks and procedures required in this appendix in combination with other data quality information, reports, and similar documentation that demonstrate overall compliance with part 58. Accordingly, the EPA and PQAOs shall use a ''weight of evidence'' approach when determining the suitability of data for regulatory decisions. The EPA reserves the authority to use or not use monitoring data submitted by a monitoring organization when making regulatory decisions based on the EPA's assessment of the quality of the data. Consensus built validation templates or validation criteria already approved in Quality Assurance Project Plans (QAPPs) should be used as the basis for the weight of evidence approach.

1.3 *Definitions.*

(a) Measurement Uncertainty. A term used to describe deviations from a true concentration or estimate that are related to the measurement process and not to spatial or temporal population attributes of the air being measured.

(b) Precision. A measurement of mutual agreement among individual measurements of the same property usually under prescribed similar conditions, expressed generally in terms of the standard deviation.

(c) Bias. The systematic or persistent distortion of a measurement process which causes errors in one direction.

(d) Accuracy. The degree of agreement between an observed value and an accepted reference value. Accuracy includes a combination of random error (imprecision) and systematic error (bias) components which are due to sampling and analytical operations.

(e) Completeness. A measure of the amount of valid data obtained from a measurement system compared to the amount that was expected to be obtained under correct, normal conditions.

(f) Detection Limit. The lowest concentration or amount of target analyte that can be determined to be different from zero by a single measurement at a stated level of probability.

1.4 *Measurement Quality Checks.* The measurement quality checks described in sections 3 of this appendix shall be reported to AQS and are included in the data required for certification.

1.5 *Assessments and Reports.* Periodic assessments and documentation of data quality are required to be reported to the EPA. To provide national uniformity in this assessment and reporting of data quality for all networks, specific assessment and reporting procedures are prescribed in detail in sections 3, 4, and 5 of this appendix. On the other hand, the selection and extent of the quality assurance and quality control activities used by a monitoring organization depend on a number of local factors such as field and laboratory conditions, the objectives for monitoring, the level of data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, quality system requirements in section 2 of this appendix are specified in general terms to allow each monitoring organization to develop a quality system that is most efficient and effective for its own circumstances while achieving the data quality objectives described in this appendix.

2. Quality System Requirements

A quality system (reference 1 of this appendix) is the means by which an organization manages the quality of the monitoring information it produces in a systematic, organized manner. It provides a framework for planning, implementing, assessing and reporting work performed by an organization and for carrying out required quality assurance and quality control activities.

2.1 *Quality Management Plans and Quality Assurance Project Plans.* All PQAOs must develop a quality system that is described and approved in quality management plans (QMP) and QAPPs to ensure that the monitoring results:

(a) Meet a well-defined need, use, or purpose (reference 5 of this appendix);

(b) Provide data of adequate quality for the intended monitoring objectives;

(c) Satisfy stakeholder expectations;

(d) Comply with applicable standards specifications;

(e) Comply with statutory (and other legal) requirements; and

(f) Reflect consideration of cost and economics.

2.1.1 The QMP describes the quality system in terms of the organizational structure, functional responsibilities of management and staff, lines of authority, and required interfaces for those planning, implementing, assessing and reporting activities involving environmental data operations (EDO). The QMP must be suitably documented in accordance with EPA requirements (reference 2 of this appendix), and approved by the appropriate Regional Administrator, or his or her representative. The quality system described in the QMP

will be reviewed during the systems audits described in section 2.5 of this appendix. Organizations that implement long-term monitoring programs with EPA funds should have a separate QMP document. Smaller organizations, organizations that do infrequent work with the EPA or have monitoring programs of limited size or scope may combine the QMP with the QAPP if approved by, and subject to any conditions of the EPA. Additional guidance on this process can be found in reference 10 of this appendix. Approval of the recipient's QMP by the appropriate Regional Administrator or his or her representative may allow delegation of authority to review and approve environmental data collection activities adequately described and covered under the scope of the QMP and documented in appropriate planning documents (QAPP) to the PQAOs independent quality assurance function. Where a PQAO or monitoring organization has been delegated authority to review and approve their QAPP, an electronic copy must be submitted to the EPA region at the time it is submitted to the PQAO/monitoring organizations QAPP approving authority. The QAPP will be reviewed by the EPA during systems audits or circumstances related to data quality. The QMP submission and approval dates for PQAOs/monitoring organizations must be reported to AQS.

2.1.2 The QAPP is a formal document describing, in sufficient detail, the quality system that must be implemented to ensure that the results of work performed will satisfy the stated objectives. PQAOs must develop QAPPs that describe how the organization intends to control measurement uncertainty to an appropriate level in order to achieve the data quality objectives for the EDO. The quality assurance policy of the EPA requires every EDO to have a written and approved QAPP prior to the start of the EDO. It is the responsibility of the PQAO/monitoring organization to adhere to this policy. The QAPP must be suitably documented in accordance with EPA requirements (reference 3 of this appendix) which include standard operating procedures for all EDOs either within the document or by appropriate reference. The QAPP must identify each PQAO operating monitors under the QAPP as well as generally identify the sites and monitors to which it is applicable. The QAPP submission and approval dates must be reported to AQS.

2.1.3 'The PQAO/monitoring organization's quality system must have adequate resources both in personnel and funding to plan, implement, assess and report on the achievement of the requirements of this appendix and its approved QAPP.

2.2 *Independence of Quality Assurance.* The PQAO must provide for a quality assurance management function; that aspect of the overall management system of the organization that determines and implements the quality policy defined in a PQAO's QMP. Quality management includes strategic planning, allocation of resources and other systematic planning activities (e.g., planning, implementation, assessing and reporting) pertaining to the quality system. The quality assurance management function must have sufficient technical expertise and management authority to conduct independent oversight and assure the implementation of the organization's quality system relative to the ambient air quality monitoring program and should be organizationally independent of environmental data generation activities.

2.3. *Data Quality Performance Requirements.*

2.3.1 *Data Quality Objectives.* The DQOs, or the results of other systematic planning processes, are statements that define the appropriate type of data to collect and specify the tolerable levels of potential decision errors that will be used as a basis for establishing the quality and quantity of data needed to support the monitoring objectives (reference 5 of this appendix). The DQOs will be developed by the EPA to support the primary regulatory objectives for each criteria pollutant. As they are developed, they will be added to the regulation. The quality of the conclusions derived from data interpretation can be affected by population uncertainty (spatial or temporal uncertainty) and measurement uncertainty (uncertainty associated with collecting, analyzing, reducing and reporting concentration data). This appendix focuses on assessing and controlling measurement uncertainty.

2.3.1.1 *Measurement Uncertainty for Automated and Manual $PM_{2.5}$ Methods.* The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 10 percent and plus or minus 10 percent for total bias.

2.3.1.2 *Measurement Uncertainty for Automated O_3 Methods.* The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the CV of 7 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 7 percent.

2.3.1.3 *Measurement Uncertainty for Pb Methods.* The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the CV of 20 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

2.3.1.4 *Measurement Uncertainty for NO_2.* The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the CV of 15 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

2.3.1.5 *Measurement Uncertainty for SO_2.* The goal for acceptable measurement uncertainty for precision is defined as an upper 90 percent confidence limit for the CV of 10 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 10 percent.

2.4 *National Performance Evaluation Programs.* The PQAO shall provide for the implementation of a program of independent and adequate audits of all monitors providing data for NAAQS compliance purposes including the provision of adequate resources for such audit programs. A monitoring plan (or QAPP) which provides for PQAO participation in the EPA's National Performance Audit Program (NPAP), the $PM_{2.5}$ Performance Evaluation Program ($PM_{2.5}$-PEP) program and the Pb Performance Evaluation Program (Pb-PEP) and indicates the consent of the PQAO for the EPA to apply an appropriate portion of the grant funds, which the EPA would otherwise award to the PQAO for these QA activities, will be deemed by the EPA to meet this requirement. For clarification and to participate, PQAOs should contact either the appropriate EPA regional quality assurance (QA) coordinator at the appropriate EPA regional office location, or the NPAP coordinator at the EPA Air Quality Assessment Division, Office of Air Quality Planning and Standards, in Research Triangle Park, North Carolina. The PQAOs that plan to implement these programs (self-implement) rather than use the federal programs must meet the adequacy requirements found in the appropriate sections that follow, as well as meet the definition of independent assessment that follows.

2.4.1 *Independent assessment.* An assessment performed by a qualified individual, group, or organization that is not part of the organization directly performing and accountable for the work being assessed. This auditing organization must not be involved with the generation of the ambient air monitoring data. An organization can conduct the performance evaluation (PE) if it can meet this definition and has a management structure that, at a minimum, will allow for the separation of its routine sampling personnel from its auditing personnel by two levels of management. In addition, the sample analysis of audit filters must be performed by a laboratory facility and laboratory equipment separate from the facilities used for routine sample analysis. Field and laboratory personnel will be required to meet PE field and laboratory training and certification requirements to establish comparability to federally implemented programs.

2.5 *Technical Systems Audit Program.* Technical systems audits of each PQAO shall be conducted at least every 3 years by the appropriate EPA regional office and reported to the AQS. If a PQAO is made up of more than one monitoring organization, all monitoring organizations in the PQAO should be audited within 6 years (two TSA cycles of the PQAO). As an example, if a state has five local monitoring organizations that are consolidated under one PQAO, all five local monitoring organizations will receive a technical systems audit within a 6-year period. Systems audit programs are described in reference 10 of this appendix. For further instructions, PQAOs should contact the appropriate EPA regional QA coordinator.

2.6 *Gaseous and Flow Rate Audit Standards.*

2.6.1 Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentrations for carbon monoxide (CO), sulfur dioxide (SO_2), nitrogen oxide (NO), and nitrogen dioxide (NO_2) must be traceable to either a National Institute of Standards and Technology (NIST) Traceable Reference Material (NTRM) or a NIST-certified Gas

Manufacturer's Internal Standard (GMIS), certified in accordance with one of the procedures given in reference 4 of this appendix. Vendors advertising certification with the procedures provided in reference 4 of this appendix and distributing gases as ''EPA Protocol Gas'' for ambient air monitoring purposes must participate in the EPA Ambient Air Protocol Gas Verification Program or not use ''EPA'' in any form of advertising. Monitoring organizations must provide information to the EPA on the gas producers they use on an annual basis and those PQAOs purchasing standards will be obligated, at the request of the EPA, to participate in the program at least once every 5 years by sending a new unused standard to a designated verification laboratory.

2.6.2 Test concentrations for ozone (O_3) must be obtained in accordance with the ultraviolet photometric calibration procedure specified in appendix D to part 50 of this chapter and by means of a certified NIST-traceable O_3 transfer standard. Consult references 7 and 8 of this appendix for guidance on transfer standards for O_3.

2.6.3 Flow rate measurements must be made by a flow measuring instrument that is NIST-traceable to an authoritative volume or other applicable standard. Guidance for certifying some types of flowmeters is provided in reference 10 of this appendix.

2.7 *Primary Requirements and Guidance.* Requirements and guidance documents for developing the quality system are contained in references 1 through 11 of this appendix, which also contain many suggested procedures, checks, and control specifications. Reference 10 describes specific guidance for the development of a quality system for data collected for comparison to the NAAQS. Many specific quality control checks and specifications for methods are included in the respective reference methods described in part 50 of this chapter or in the respective equivalent method descriptions available from the EPA (reference 6 of this appendix). Similarly, quality control procedures related to specifically designated reference and equivalent method monitors are contained in the respective operation or instruction manuals associated with those monitors.

3. Measurement Quality Check Requirements

This section provides the requirements for PQAOs to perform the measurement quality checks that can be used to assess data quality. Data from these checks are required to be submitted to the AQS within the same time frame as routinely-collected ambient concentration data as described in 40 CFR 58.16. Table A–1 of this appendix provides a summary of the types and frequency of the measurement quality checks that will be described in this section.

3.1. *Gaseous Monitors of SO_2, NO_2, O_3, and CO.*

3.1.1 *One-Point Quality Control (QC) Check for SO_2, NO_2, O_3, and CO.* (a) A one-point QC check must be performed at least once every 2 weeks on each automated monitor used to measure SO_2, NO_2, O_3 and CO. With the advent of automated calibration systems, more frequent checking is strongly encouraged. See Reference 10 of this appendix for guidance on the review procedure. The QC check is made by challenging the monitor with a QC check gas of known concentration (effective concentration for open path monitors) between the prescribed range of 0.005 and 0.08 parts per million (ppm) for SO_2, NO_2, and O_3, and between the prescribed range of 0.5 and 5 ppm for CO monitors. The QC check gas concentration selected within the prescribed range must be related to the mean or median of the ambient air concentrations normally measured at sites within the monitoring network in order to appropriately reflect the precision and bias at these ambient air concentration ranges. If the mean or median concentrations at the sites are below or above the prescribed range for the relevant pollutant, select the lowest or highest concentration in the range. An additional QC check point is encouraged for those organizations that may have occasional high values or would like to confirm the monitors' linearity at the higher end of the operational range or around NAAQS concentrations.

(b) Point analyzers must operate in their normal sampling mode during the QC check and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The QC check must be conducted before any calibration or adjustment to the monitor.

(c) Open path monitors are tested by inserting a test cell containing a QC check gas concentration into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and as appropriate, reflecting devices should be used during the test, and the normal monitoring configuration of the instrument should be altered as little as possible to accommodate the test cell for the test. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentration of the QC check gas in the test cell must be selected to produce an effective concentration in the range specified earlier in this section. Generally, the QC test concentration measurement will be the sum of the atmospheric pollutant concentration and the QC test concentration. As such, the result must be corrected to remove the atmospheric concentration contribution. The corrected concentration is obtained by subtracting the average of the atmospheric concentrations measured by the open path instrument under test immediately before and immediately after the QC test from the QC check gas concentration measurement. If the difference between these before and after measurements is greater than 20 percent of the effective concentration of the test gas, discard the test result and repeat the test. If possible, open path monitors should be tested during periods when the atmospheric pollutant concentrations are relatively low and steady.

(d) Report the audit concentration of the QC gas and the corresponding measured concentration indicated by the monitor to AQS. The percent differences between these concentrations are used to assess the precision and bias of the monitoring data as described in sections 4.1.2 (precision) and 4.1.3 (bias) of this appendix.

3.1.2 *Annual performance evaluation for SO_2, NO_2, O_3, or CO.* A performance evaluation must be conducted on each primary monitor once a year. This can be accomplished by evaluating 25 percent of the primary monitors each quarter. The evaluation should be conducted by a trained experienced technician other than the routine site operator.

3.1.2.1 The evaluation is made by challenging the monitor with audit gas standards of known concentration from at least three audit levels. Two of the audit levels selected will represent a range of 10–80 percent of the typical ambient air concentrations either measured by the monitor or in the PQAOs network of monitors. The third point should be at the NAAQS level or above the highest 3-year ambient air hourly concentration, whichever is greater. An additional 4th level is encouraged for those agencies that would like to confirm the monitors' linearity at the higher end of the operational range. In rare circumstances, there may be sites measuring concentrations above audit level 10. Notify the appropriate EPA region and the AQS program in order to make accommodations for auditing at levels above level 10.

Audit level	Concentration range, ppm			
	O_3	SO_2	NO_2	CO
1	0.004–0.0059	0.0003–0.0029	0.0003–0.0029	0.020–0.059
2	0.006–0.019	0.0030–0.0049	0.0030–0.0049	0.060–0.199
3	0.020–0.039	0.0050–0.0079	0.0050–0.0079	0.200–0.899
4	0.040–0.069	0.0080–0.0199	0.0080–0.0199	0.900–2.999
5	0.070–0.089	0.0200–0.0499	0.0200–0.0499	3.000–7.999
6	0.090–0.119	0.0500–0.0999	0.0500–0.0999	8.000–15.999
7	0.120–0.139	0.1000–0.1499	0.1000–0.2999	16.000–30.999
8	0.140–0.169	0.1500–0.2599	0.3000–0.4999	31.000–39.999

Audit level	Concentration range, ppm			
	O_3	SO_2	NO_2	CO
9	0.170–0.189	0.2600–0.7999	0.5000–0.7999	40.000–49.999
10	0.190–0.259	0.8000–1.000	0.8000–1.000	50.000–60.000

3.1.2.2 The NO_2 audit techniques may vary depending on the ambient monitoring method. For chemiluminescence-type NO_2 analyzers, gas phase titration (GPT) techniques should be based on EPA guidance documents and monitoring agency experience. The NO_2 gas standards may be more appropriate than GPT for direct NO_2 methods that do not employ converters. Care should be taken to ensure the stability of such gas standards prior to use.

3.1.2.3 The standards from which audit gas test concentrations are obtained must meet the specifications of section 2.6.1 of this appendix. The gas standards and equipment used for the performance evaluation must not be the same as the standards and equipment used for one-point QC, calibrations, span evaluations or NPAP.

3.1.2.4 For point analyzers, the evaluation shall be carried out by allowing the monitor to analyze the audit gas test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable.

3.1.2.5 Open path monitors are evaluated by inserting a test cell containing the various audit gas concentrations into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and, as appropriate, reflecting devices should be used during the evaluation, and the normal monitoring configuration of the instrument should be modified as little as possible to accommodate the test cell for the evaluation. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentrations of the audit gas in the test cell must be selected to produce effective concentrations in the evaluation level ranges specified in this section of this appendix. Generally, each evaluation concentration measurement result will be the sum of the atmospheric pollutant concentration and the evaluation test concentration. As such, the result must be corrected to remove the atmospheric concentration contribution. The corrected concentration is obtained by subtracting the average of the atmospheric concentrations measured by the open path instrument under test immediately before and immediately after the evaluation test (or preferably before and after each evaluation concentration level) from the evaluation concentration measurement. If the difference between the before and after measurements is greater than 20 percent of the effective concentration of the test gas standard, discard the test result for that concentration level and repeat the test for that level. If possible, open path monitors should be evaluated during periods when the atmospheric pollutant concentrations are relatively low and steady. Also, if the open path instrument is not installed in a permanent manner, the monitoring path length must be reverified to be within plus or minus 3 percent to validate the evaluation since the monitoring path length is critical to the determination of the effective concentration.

3.1.2.6 Report both the evaluation concentrations (effective concentrations for open path monitors) of the audit gases and the corresponding measured concentration (corrected concentrations, if applicable, for open path monitors) indicated or produced by the monitor being tested to AQS. The percent differences between these concentrations are used to assess the quality of the monitoring data as described in section 4.1.1 of this appendix.

3.1.3 *National Performance Audit Program (NPAP).*

The NPAP is a performance evaluation which is a type of audit where quantitative data are collected independently in order to evaluate the proficiency of an analyst, monitoring instrument or laboratory. Details of the program can be found in reference 11 of this appendix. The program requirements include:

3.1.3.1 Performing audits of the primary monitors at 20 percent of monitoring sites per year, and 100 percent of the sites in 6 years. High-priority sites may be visited more often. Since not all gaseous criteria pollutants are monitored at every site within a PQAO, it is not required that 20 percent of the primary monitors for each pollutant receive an NPAP audit each year only that 20 percent of the PQAOs monitoring sites receive an NPAP audit. It is expected that over the 6-year period all primary monitors for all gaseous pollutants will receive an NPAP audit.

3.1.3.2 Developing a delivery system that will allow for the audit concentration gasses to be introduced to the probe inlet where logistically feasible.

3.1.3.3 Using audit gases that are verified against the NIST standard reference methods or special review procedures and validated annually for CO, SO_2 and NO_2, and at the beginning of each quarter of audits for O_3.

3.1.3.4 As described in section 2.4 of this appendix, the PQAO may elect, on an annual basis, to utilize the federally implemented NPAP program. If the PQAO plans to self-implement NPAP, the EPA will establish training and other technical requirements for PQAOs to establish comparability to federally implemented programs. In addition to meeting the requirements in sections 3.1.3.1 through 3.1.3.3 of this appendix, the PQAO must:

(a) Utilize an audit system equivalent to the federally implemented NPAP audit system and is separate from equipment used in annual performance evaluations.

(b) Perform a whole system check by having the NPAP system tested against an independent and qualified EPA lab, or equivalent.

(c) Evaluate the system with the EPA NPAP program through collocated auditing at an acceptable number of sites each year (at least one for an agency network of five or less sites; at least two for a network with more than five sites).

(d) Incorporate the NPAP in the PQAO's quality assurance project plan.

(e) Be subject to review by independent, EPA-trained personnel.

(f) Participate in initial and update training/certification sessions.

3.2 *$PM_{2.5}$.*

3.2.1 *Flow Rate Verification for $PM_{2.5}$.* A one-point flow rate verification check must be performed at least once every month (each verification minimally separated by 14 days) on each monitor used to measure $PM_{2.5}$. The verification is made by checking the operational flow rate of the monitor. If the verification is made in conjunction with a flow rate adjustment, it must be made prior to such flow rate adjustment. For the standard procedure, use a flow rate transfer standard certified in accordance with section 2.6 of this appendix to check the monitor's normal flow rate. Care should be used in selecting and using the flow rate measurement device such that it does not alter the normal operating flow rate of the monitor. Report the flow rate of the transfer standard and the corresponding flow rate measured by the monitor to AQS. The percent differences between the audit and measured flow rates are used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix (using flow rates in lieu of concentrations).

3.2.2 *Semi-Annual Flow Rate Audit for $PM_{2.5}$.* Audit the flow rate of the particulate monitor twice a year. The two audits should ideally be spaced between 5 and 7 months apart. The EPA strongly encourages more frequent auditing. The audit should (preferably) be conducted by a trained experienced technician other than the routine site operator. The audit is made by measuring the monitor's normal operating flow rate(s) using a flow rate transfer standard certified in accordance with section 2.6 of this appendix. The flow rate standard used for auditing must not be the same flow rate standard used for verifications or to calibrate the monitor. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate or volume standard. Care must be taken in auditing the flow rate to be certain that the flow measurement device does not alter the normal operating flow rate of the monitor. Report the audit flow rate of the transfer standard and the corresponding flow rate measured by the monitor to AQS. The

percent differences between these flow rates are used to evaluate monitor performance.

3.2.3 *Collocated Quality Control Sampling Procedures for $PM_{2.5}$.* For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the quality control monitor. There can be only one primary monitor at a monitoring site for a given time period.

3.2.3.1 For each distinct monitoring method designation (FRM or FEM) that a PQAO is using for a primary monitor, the PQAO must:

(a) Have 15 percent of the primary monitors of each method designation collocated (values of 0.5 and greater round up); and

(b) Have at least one collocated quality control monitor (if the total number of monitors is less than three). The first collocated monitor must be a designated FRM monitor.

3.2.3.2 In addition, monitors selected for collocation must also meet the following requirements:

(a) A primary monitor designated as an EPA FRM shall be collocated with a quality control monitor having the same EPA FRM method designation.

(b) For each primary monitor designated as an EPA FEM used by the PQAO, 50 percent of the monitors designated for collocation, or the first if only one collocation is necessary, shall be collocated with a FRM quality control monitor and 50 percent of the monitors shall be collocated with a monitor having the same method designation as the FEM primary monitor. If an odd number of collocated monitors is required, the additional monitor shall be a FRM quality control monitor. An example of the distribution of collocated monitors for each unique FEM is provided below. Table A–2 of this appendix demonstrates the procedure with a PQAO having an FRM and multiple FEMs.

#Primary FEMS of a unique method designation	#Collocated	#Collocated with an FRM	#Collocated with same method designation
"1–9"	1	1	0
"10–16"	2	1	1
"17–23"	3	2	1
"24–29"	4	2	2
"30–36"	5	3	2
"37–43"	6	3	3

3.2.3.3 Since the collocation requirements are used to assess precision of the primary monitors and there can only be one primary monitor at a monitoring site, a site can only count for the collocation of the method designation of the primary monitor at that site.

3.2.3.4 The collocated monitors should be deployed according to the following protocol:

(a) Fifty percent of the collocated quality control monitors should be deployed at sites with annual average or daily concentrations estimated to be within ±20 percent of either the annual or 24-hour NAAQS and the remainder at the PQAOs discretion;

(b) If an organization has no sites with annual average or daily concentrations within ±20 percent of the annual NAAQS or 24-hour NAAQS, 50 percent of the collocated quality control monitors should be deployed at those sites with the annual mean concentrations or 24-hour concentrations among the highest for all sites in the network and the remainder at the PQAOs discretion.

(c) The two collocated monitors must be within 4 meters (inlet to inlet) of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. A waiver allowing up to 10 meters horizontal distance and up to 3 meters vertical distance (inlet to inlet) between a primary and collocated sampler may be approved by the Regional Administrator for sites at a neighborhood or larger scale of representation during the annual network plan approval process. Calibration, sampling, and analysis must be the same for both primary and collocated quality control samplers and the same as for all other samplers in the network.

(d) Sample the collocated quality control monitor on a 1-in-12 day schedule. Report the measurements from both primary and collocated quality control monitors at each collocated sampling site to AQS. The calculations for evaluating precision between the two collocated monitors are described in section 4.2.1 of this appendix.

3.2.4 *$PM_{2.5}$ Performance Evaluation Program (PEP) Procedures.* The PEP is an independent assessment used to estimate total measurement system bias. These evaluations will be performed under the NPEP as described in section 2.4 of this appendix or a comparable program. Performance evaluations will be performed annually within each PQAO. For PQAOs with less than or equal to five monitoring sites, five valid performance evaluation audits must be collected and reported each year. For PQAOs with greater than five monitoring sites, eight valid performance evaluation audits must be collected and reported each year. A valid performance evaluation audit means that both the primary monitor and PEP audit concentrations are valid and above 3 $\mu g/m^3$. Siting of the PEP monitor should be consistent with section 3.2.3.7. However, any horizontal distance greater than 4 meters and any vertical distance greater than one meter must be reported to the EPA regional PEP coordinator. Additionally for every monitor designated as a primary monitor, a primary quality assurance organization must:

3.2.4.1 Have each method designation evaluated each year; and,

3.2.4.2 Have all FRM, FEM or ARM samplers subject to a PEP audit at least once every six years; which equates to approximately 15 percent of the monitoring sites audited each year.

3.2.4.3 Additional information concerning the PEP is contained in reference 10 of this appendix. The calculations for evaluating bias between the primary monitor and the performance evaluation monitor for $PM_{2.5}$ are described in section 4.2.5 of this appendix.

3.3 *PM_{10}.*

3.3.1 *Flow Rate Verification for PM_{10} Low Volume Samplers (less than 200 liter/minute).* A one-point flow rate verification check must be performed at least once every month (each verification minimally separated by 14 days) on each monitor used to measure PM_{10}. The verification is made by checking the operational flow rate of the monitor. If the verification is made in conjunction with a flow rate adjustment, it must be made prior to such flow rate adjustment. For the standard procedure, use a flow rate transfer standard certified in accordance with section 2.6 of this appendix to check the monitor's normal flow rate. Care should be taken in selecting and using the flow rate measurement device such that it does not alter the normal operating flow rate of the monitor. The percent differences between the audit and measured flow rates are reported to AQS and used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix (using flow rates in lieu of concentrations).

3.3.2 *Flow Rate Verification for PM_{10} High Volume Samplers (greater than 200 liters/minute).* For PM_{10} high volume samplers, the verification frequency is one verification every 90 days (quarter) with 4 in a year. Other than verification frequency, follow the same technical procedure as described in section 3.3.1 of this appendix.

3.3.3 *Semi-Annual Flow Rate Audit for PM_{10}.* Audit the flow rate of the particulate monitor twice a year. The two audits should ideally be spaced between 5 and 7 months apart. The EPA strongly encourages more frequent auditing. The audit should (preferably) be conducted by a trained experienced technician other than the routine site operator. The audit is made by measuring the monitor's normal operating

flow rate using a flow rate transfer standard certified in accordance with section 2.6 of this appendix. The flow rate standard used for auditing must not be the same flow rate standard used for verifications or to calibrate the monitor. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate or volume standard. Care must be taken in auditing the flow rate to be certain that the flow measurement device does not alter the normal operating flow rate of the monitor. Report the audit flow rate of the transfer standard and the corresponding flow rate measured by the monitor to AQS. The percent differences between these flow rates are used to evaluate monitor performance.

3.3.4 *Collocated Quality Control Sampling Procedures for Manual PM_{10}.* Collocated sampling for PM_{10} is only required for manual samplers. For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site and designate the other as the quality control monitor.

3.3.4.1 For manual PM_{10} samplers, a PQAO must:

(a) Have 15 percent of the primary monitors collocated (values of 0.5 and greater round up); and

(b) Have at least one collocated quality control monitor (if the total number of monitors is less than three).

3.3.4.2 The collocated quality control monitors should be deployed according to the following protocol:

(a) Fifty percent of the collocated quality control monitors should be deployed at sites with daily concentrations estimated to be within ±20 percent of the applicable NAAQS and the remainder at the PQAOs discretion;

(b) If an organization has no sites with daily concentrations within ±20 percent of the NAAQS, 50 percent of the collocated quality control monitors should be deployed at those sites with the daily mean concentrations among the highest for all sites in the network and the remainder at the PQAOs discretion.

(c) The two collocated monitors must be within 4 meters (inlet to inlet) of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. A waiver allowing up to 10 meters horizontal distance and up to 3 meters vertical distance (inlet to inlet) between a primary and collocated sampler may be approved by the Regional Administrator for sites at a neighborhood or larger scale of representation. This waiver may be approved during the annual network plan approval process. Calibration, sampling, and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

(d) Sample the collocated quality control monitor on a 1-in-12 day schedule. Report the measurements from both primary and collocated quality control monitors at each collocated sampling site to AQS. The calculations for evaluating precision between the two collocated monitors are described in section 4.2.1 of this appendix.

(e) In determining the number of collocated quality control sites required for PM_{10}, monitoring networks for lead (Pb-PM_{10}) should be treated independently from networks for particulate matter (PM), even though the separate networks may share one or more common samplers. However, a single quality control monitor that meets the collocation requirements for Pb-PM_{10} and PM_{10} may serve as a collocated quality control monitor for both networks. Extreme care must be taken when using the filter from a quality control monitor for both PM_{10} and Pb analysis. A PM_{10} filter weighing should occur prior to any Pb analysis.

3.4 *Pb.*

3.4.1 *Flow Rate Verification for Pb–PM_{10} Low Volume Samplers (less than 200 liter/minute).* A one-point flow rate verification check must be performed at least once every month (each verification minimally separated by 14 days) on each monitor used to measure Pb. The verification is made by checking the operational flow rate of the monitor. If the verification is made in conjunction with a flow rate adjustment, it must be made prior to such flow rate adjustment. For the standard procedure, use a flow rate transfer standard certified in accordance with section 2.6 of this appendix to check the monitor's normal flow rate. Care should be taken in selecting and using the flow rate measurement device such that it does not alter the normal operating flow rate of the monitor. The percent differences between the audit and measured flow rates are reported to AQS and used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix (using flow rates in lieu of concentrations).

3.4.2 *Flow Rate Verification for Pb High Volume Samplers (greater than 200 liters/minute).* For high volume samplers, the verification frequency is one verification every 90 days (quarter) with four in a year. Other than verification frequency, follow the same technical procedure as described in section 3.4.1 of this appendix.

3.4.3 *Semi-Annual Flow Rate Audit for Pb.* Audit the flow rate of the particulate monitor twice a year. The two audits should ideally be spaced between 5 and 7 months apart. The EPA strongly encourages more frequent auditing. The audit should (preferably) be conducted by a trained experienced technician other than the routine site operator. The audit is made by measuring the monitor's normal operating flow rate using a flow rate transfer standard certified in accordance with section 2.6 of this appendix. The flow rate standard used for auditing must not be the same flow rate standard used for verifications or to calibrate the monitor. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate or volume standard. Care must be taken in auditing the flow rate to be certain that the flow measurement device does not alter the normal operating flow rate of the monitor. Report the audit flow rate of the transfer standard and the corresponding flow rate measured by the monitor to AQS. The percent differences between these flow rates are used to evaluate monitor performance.

3.4.4 *Collocated Quality Control Sampling for TSP Pb for monitoring sites other than non-source NCore.* For each pair of collocated monitors for manual TSP Pb samplers, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the quality control monitor.

3.4.4.1 A PQAO must:

(a) Have 15 percent of the primary monitors (not counting non-source NCore sites in PQAO) collocated. Values of 0.5 and greater round up; and

(b) Have at least one collocated quality control monitor (if the total number of monitors is less than three).

3.4.4.2 The collocated quality control monitors should be deployed according to the following protocol:

(a) The first collocated Pb site selected must be the site measuring the highest Pb concentrations in the network. If the site is impractical, alternative sites, approved by the EPA Regional Administrator, may be selected. If additional collocated sites are necessary, collocated sites may be chosen that reflect average ambient air Pb concentrations in the network.

(b) The two collocated monitors must be within 4 meters (inlet to inlet) of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference.

(c) Sample the collocated quality control monitor on a 1-in-12 day schedule. Report the measurements from both primary and collocated quality control monitors at each collocated sampling site to AQS. The calculations for evaluating precision between the two collocated monitors are described in section 4.2.1 of this appendix.

3.4.5 *Collocated Quality Control Sampling for Pb-PM_{10} at monitoring sites other than non-source NCore.* If a PQAO is monitoring for Pb-PM_{10} at sites other than at a non-source oriented NCore site then the PQAO must:

3.4.5.1 Have 15 percent of the primary monitors (not counting non-source NCore sites in PQAO) collocated. Values of 0.5 and greater round up; and

3.4.5.2 Have at least one collocated quality control monitor (if the total number of monitors is less than three).

3.4.5.3 The collocated monitors should be deployed according to the following protocol:

(a) Fifty percent of the collocated quality control monitors should be deployed at sites with the highest 3-month average concentrations and the remainder at the PQAOs discretion.

(b) The two collocated monitors must be within 4 meters (inlet to inlet) of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. A waiver allowing up to 10 meters horizontal distance and up to 3 meters vertical distance (inlet to inlet) between a primary and collocated sampler may be approved by the Regional Administrator for sites at a neighborhood or larger scale of representation. This waiver may be approved during the annual network plan approval

process. Calibration, sampling, and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

(c) Sample the collocated quality control monitor on a 1-in-12 day schedule. Report the measurements from both primary and collocated quality control monitors at each collocated sampling site to AQS. The calculations for evaluating precision between the two collocated monitors are described in section 4.2.1 of this appendix.

(d) In determining the number of collocated quality control sites required for Pb-PM_{10}, monitoring networks for PM_{10} should be treated independently from networks for Pb-PM_{10}, even though the separate networks may share one or more common samplers. However, a single quality control monitor that meets the collocation requirements for Pb-PM_{10} and PM_{10} may serve as a collocated quality control monitor for both networks. Extreme care must be taken when using a using the filter from a quality control monitor for both PM_{10} and Pb analysis. A PM_{10} filter weighing should occur prior to any Pb analysis.

3.4.6 *Pb Analysis Audits.* Each calendar quarter, audit the Pb reference or equivalent method analytical procedure using filters containing a known quantity of Pb. These audit filters are prepared by depositing a Pb standard on unexposed filters and allowing them to dry thoroughly. The audit samples must be prepared using batches of reagents different from those used to calibrate the Pb analytical equipment being audited. Prepare audit samples in the following concentration ranges:

Range	Equivalent ambient Pb concentration, µg/m³
1	30–100% of Pb NAAQS.
2	200–300% of Pb NAAQS.

(a) Extract the audit samples using the same extraction procedure used for exposed filters.

(b) Analyze three audit samples in each of the two ranges each quarter samples are analyzed. The audit sample analyses shall be distributed as much as possible over the entire calendar quarter.

(c) Report the audit concentrations (in µg Pb/filter or strip) and the corresponding measured concentrations (in µg Pb/filter or strip) to AQS using AQS unit code 077. The percent differences between the concentrations are used to calculate analytical accuracy as described in section 4.2.6 of this appendix.

3.4.7 *Pb PEP Procedures for monitoring sites other than non-source NCore.* The PEP is an independent assessment used to estimate total measurement system bias. These evaluations will be performed under the NPEP described in section 2.4 of this appendix or a comparable program. Each year, one performance evaluation audit must be performed at one Pb site in each primary quality assurance organization that has less than or equal to five sites and two audits at PQAOs with greater than five sites. Non-source oriented NCore sites are not counted. In addition, each year, four collocated samples from PQAOs with less than or equal to five sites and six collocated samples at PQAOs with greater than five sites must be sent to an independent laboratory, the same laboratory as the performance evaluation audit, for analysis. Siting of this PEP monitor should be consistent with section 3.4.5.4. However, any horizontal distance greater than 4 meters and any vertical distance greater than 1 meter must be reported to the EPA regional PEP coordinator. The calculations for evaluating bias between the primary monitor and the performance evaluation monitor for Pb are described in section 4.2.4 of this appendix.

4. Calculations for Data Quality Assessment

(a) Calculations of measurement uncertainty are carried out by the EPA according to the following procedures. The PQAOs must report the data to AQS for all measurement quality checks as specified in this appendix even though they may elect to perform some or all of the calculations in this section on their own.

(b) The EPA will provide annual assessments of data quality aggregated by site and PQAO for SO_2, NO_2, O_3 and CO and by PQAO for PM_{10}, $PM_{2.5}$, and Pb.

(c) At low concentrations, agreement between the measurements of collocated quality control samplers, expressed as relative percent difference or percent difference, may be relatively poor. For this reason, collocated measurement pairs are selected for use in the precision and bias calculations only when both measurements are equal to or above the following limits:

(1) Pb: 0.002 µg/m³ (Methods approved after 3/04/2010, with exception of manual equivalent method EQLA–0813–803).

(2) Pb: 0.02 µg/m³ (Methods approved before 3/04/2010, and manual equivalent method EQLA–0813–803).

(3) PM_{10}(Hi-Vol): 15 µg/m³.

(4) PM_{10}(Lo-Vol): 3 µg/m³.

(5) $PM_{2.5}$: 3 µg/m³.

4.1 *Statistics for the Assessment of QC Checks for SO_2, NO_2, O_3 and CO.*

4.1.1 *Percent Difference.* Many of the measurement quality checks start with a comparison of an audit concentration or value (flow rate) to the concentration/value measured by the monitor and use percent difference as the comparison statistic as described in equation 1 of this section. For each single point check, calculate the percent difference, d_i, as follows:

$$d_i = \frac{meas - audit}{audit} \cdot 100$$

Equation 1

where, *meas* is the concentration indicated by the PQAO's instrument and *audit* is the audit concentration of the standard used in the QC check being measured.

4.1.2 *Precision Estimate.* The precision estimate is used to assess the one-point QC checks for SO_2, NO_2, O_3, or CO described in section 3.1.1 of this appendix. The precision estimator is the coefficient of variation upper bound and is calculated using equation 2 of this section:

Equation 2

$$CV = \sqrt{\frac{n \cdot \sum_{i=1}^{n} d_i^2 - \left(\sum_{i=1}^{n} d_i\right)^2}{n(n-1)}} \cdot \sqrt{\frac{n-1}{\chi^2_{0.1,n-1}}}$$

where, n is the number of single point checks being aggregated; $X^2_{0.1,n-1}$ is the 10th percentile of a chi-squared distribution with n-1 degrees of freedom.

4.1.3 *Bias Estimate.* The bias estimate is calculated using the one-point QC checks for SO_2, NO_2, O_3, or CO described in section 3.1.1 of this appendix. The bias estimator is an upper bound on the mean absolute value of the percent differences as described in equation 3 of this section:

Equation 3

$$|bias| = AB + t_{0.95,n-1} \cdot \frac{AS}{\sqrt{n}}$$

where, n is the number of single point checks being aggregated; $t_{0.95,-1}$ is the 95th quantile of a t-distribution with n-1 degrees of freedom; the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4 of this section:

Equation 4

$$AB = \frac{1}{n} \cdot \sum_{i=1}^{n} |d_i|$$

and the quantity *AS* is the standard deviation of the absolute value of the d_i's and is calculated using equation 5 of this section:

Equation 5

$$AS = \sqrt{\frac{n \cdot \sum_{i=1}^{n} |d_i|^2 - \left(\sum_{i=1}^{n} |d_i|\right)^2}{n(n-1)}}$$

4.1.3.1 *Assigning a sign (positive/negative) to the bias estimate.* Since the bias statistic as calculated in equation 3 of this appendix uses absolute values, it does not have a tendency (negative or positive bias) associated with it. A sign will be designated by rank ordering the percent differences of the QC check samples from a given site for a particular assessment interval.

4.1.3.2 Calculate the 25th and 75th percentiles of the percent differences for each site. The absolute bias upper bound should be flagged as positive if both percentiles are positive and negative if both percentiles are negative. The absolute bias upper bound would not be flagged if the 25th and 75th percentiles are of different signs.

4.2 *Statistics for the Assessment of PM_{10}, $PM_{2.5}$, and Pb.*

4.2.1 *Collocated Quality Control Sampler Precision Estimate for PM_{10}, $PM_{2.5}$ and Pb.* Precision is estimated via duplicate measurements from collocated samplers. It is recommended that the precision be aggregated at the PQAO level quarterly, annually, and at the 3-year level. The data pair would only be considered valid if both concentrations are greater than or equal to the minimum values specified in section 4(c) of this appendix. For each collocated data pair, calculate the relative percent difference, d_i, using equation 6 of this appendix:

Equation 6

$$d_i = \frac{X_i - Y_i}{(X_i + Y_i)/2} \cdot 100$$

where, X_i is the concentration from the primary sampler and Y_i is the concentration value from the audit sampler. The coefficient of variation upper bound is calculated using equation 7 of this appendix:

Equation 7

$$CV = \sqrt{\frac{n \cdot \sum_{i=1}^{n} d_i^2 - \left(\sum_{i=1}^{n} d_i\right)^2}{2n(n-1)}} \cdot \sqrt{\frac{n-1}{X^2_{0.1,n-1}}}$$

where, n is the number of valid data pairs being aggregated, and $X^2_{0.1,n-1}$ is the 10th percentile of a chi-squared distribution with n-1 degrees of freedom. The factor of 2 in the denominator adjusts for the fact that each d_i is calculated from two values with error.

4.2.2 *One-Point Flow Rate Verification Bias Estimate for PM_{10}, $PM_{2.5}$ and Pb.* For each one-point flow rate verification, calculate the percent difference in volume using equation 1 of this appendix where *meas* is the value indicated by the sampler's volume measurement and *audit* is the actual volume indicated by the auditing flow meter. The absolute volume bias upper bound is then calculated using equation 3, where n is the number of flow rate audits being aggregated; $t_{0.95,n-1}$ is the 95th quantile of a t-distribution with n-1 degrees of freedom, the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4 of this appendix, and the quantity *AS* in equation 3 of this appendix is the standard deviation of the absolute values if the d_i's and is calculated using equation 5 of this appendix.

4.2.3 *Semi-Annual Flow Rate Audit Bias Estimate for PM_{10}, $PM_{2.5}$ and Pb.* Use the same procedure described in section 4.2.2 for the evaluation of flow rate audits.

4.2.4 *Performance Evaluation Programs Bias Estimate for Pb.* The Pb bias estimate is calculated using the paired routine and the PEP monitor as described in section 3.4.7. Use the same procedures as described in section 4.1.3 of this appendix.

4.2.5 *Performance Evaluation Programs Bias Estimate for $PM_{2.5}$.* The bias estimate is calculated using the PEP audits described in section 4.1.3 of this appendix. The bias estimator is based on the mean percent differences (Equation 1). The mean percent difference, *D*, is calculated by Equation 8 below.

Equation 8

$$D = \frac{1}{n_j} \cdot \sum_{i=1}^{n_j} d_i$$

where, n_j is the number of pairs and d_1, d_2,...d_{nj} are the biases for each pair to be averaged.

4.2.6 Pb *Analysis Audit Bias Estimate.* The bias estimate is calculated using the analysis audit data described in section 3.4.6. Use the same bias estimate procedure as described in section 4.1.3 of this appendix.

5. Reporting Requirements

5.1 *Reporting Requirements.* For each pollutant, prepare a list of all monitoring sites and their AQS site identification codes in each PQAO and submit the list to the appropriate EPA regional office, with a copy to AQS. Whenever there is a change in this list of monitoring sites in a PQAO, report this change to the EPA regional office and to AQS.

5.1.1 *Quarterly Reports.* For each quarter, each PQAO shall report to AQS directly (or via the appropriate EPA regional office for organizations not direct users of AQS) the results of all valid measurement quality checks it has carried out during the quarter. The quarterly reports must be submitted consistent with the data reporting requirements specified for air quality data as set forth in 40 CFR 58.16. The EPA strongly encourages early submission of the quality assurance data in order to assist the PQAOs ability to control and evaluate the quality of the ambient air data.

5.1.2 *Annual Reports.*

5.1.2.1 When the PQAO has certified relevant data for the calendar year, the EPA will calculate and report the measurement uncertainty for the entire calendar year.

6.0 References

(1) American National Standard—Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs. ANSI/ASQC E4–2004. February 2004. Available from American Society for Quality Control, 611 East Wisconsin Avenue, Milwaukee, WI 53202.

(2) EPA Requirements for Quality Management Plans. EPA QA/R–2. EPA/240/B–01/002. March 2001, Reissue May 2006. Office of Environmental Information, Washington DC 20460. *http://www.epa.gov/quality/qs-docs/r2-final.pdf.*

(3) EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations. EPA QA/R–5. EPA/240/B–01/003. March 2001, Reissue May 2006. Office of Environmental Information, Washington DC 20460. *http://www.epa.gov/quality/qs-docs/r5-final.pdf.*

(4) EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards. EPA–600/R–12/531. May, 2012. Available from U.S. Environmental Protection Agency, National Risk Management Research Laboratory, Research Triangle Park NC 27711. *http://www.epa.gov/nrmrl/appcd/mmd/db-traceability-protocol.html.*

(5) Guidance for the Data Quality Objectives Process. EPA QA/G–4. EPA/240/B–06/001. February, 2006. Office of Environmental Information, Washington DC 20460. *http://www.epa.gov/quality/qs-docs/g4-final.pdf.*

(6) List of Designated Reference and Equivalent Methods. Available from U.S. Environmental Protection Agency, National Exposure Research Laboratory,

Human Exposure and Atmospheric Sciences Division, MD–D205–03, Research Triangle Park, NC 27711. *http://www.epa.gov/ttn/amtic/criteria.html.*

(7) Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–454/B–13–004 U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, October, 2013. *http://www.epa.gov/ttn/amtic/qapollutant.html.*

(8) Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979. *http://www.epa.gov/ttn/amtic/cpreldoc.html.*

(9) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume 1–A Field Guide to Environmental Quality Assurance. EPA–600/R–94/038a. April 1994. Available from U.S. Environmental Protection Agency, ORD Publications Office, Center for Environmental Research Information (CERI), 26 W. Martin Luther King Drive, Cincinnati, OH 45268. *http://www.epa.gov/ttn/amtic/qabook.html.*

(10) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Ambient Air Quality Monitoring Program Quality System Development. EPA–454/B–13–003. *http://www.epa.gov/ttn/amtic/qabook.html.*

(11) National Performance Evaluation Program Standard Operating Procedures. *http://www.epa.gov/ttn/amtic/npapsop.html.*

TABLE A–1 OF APPENDIX A TO PART 58—MINIMUM DATA ASSESSMENT REQUIREMENTS FOR NAAQS RELATED CRITERIA POLLUTANT MONITORS

Method	Assessment method	Coverage	Minimum frequency	Parameters reported	AQS assessment type
Gaseous Methods (CO, NO_2, SO_2, O_3)					
1-Point QC for SO_2, NO_2, O_3, CO	Response check at concentration 0.005–0.08 ppm SO_2, NO_2, O_3, and 0.5 and 5 ppm CO.	Each analyzer ...	Once per 2 weeks.	Audit concentration [1] and measured concentration [2].	1-Point QC.
Annual performance evaluation for SO_2, NO_2, O_3, CO.	See section 3.1.2 of this appendix	Each analyzer ...	Once per year ...	Audit concentration [1] and measured concentration [2] for each level.	Annual PE.
NPAP for SO_2, NO_2, O_3, CO	Independent Audit	20% of sites each year.	Once per year ...	Audit concentration [1] and measured concentration [2] for each level.	NPAP.
Particulate Methods					
Continuous [4] method-collocated quality control sampling $PM_{2.5}$.	Collocated samplers	15%	1-in-12 days	Primary sampler concentration and duplicate sampler concentration.[3]	No Transaction reported as raw data.
Manual method-collocated quality control sampling PM_{10}, $PM_{2.5}$, Pb–TSP, Pb–PM_{10}.	Collocated samplers	15%	1-in-12 days	Primary sampler concentration and duplicate sampler concentration.[3]	No Transaction reported as raw data.
Flow rate verification PM_{10} (low Vol) $PM_{2.5}$, Pb-PM_{10}.	Check of sampler flow rate	Each sampler	Once every month.	Audit flow rate and measured flow rate indicated by the sampler.	Flow Rate Verification.
Flow rate verification PM_{10} (High-Vol), Pb-TSP.	Check of sampler flow rate	Each sampler	Once every quarter.	Audit flow rate and measured flow rate indicated by the sampler.	Flow Rate Verification.
Semi-annual flow rate audit PM_{10}, TSP, $PM_{10\text{-}2.5}$, $PM_{2.5}$, Pb-TSP, Pb-PM_{10}..	Check of sampler flow rate using independent standard.	Each sampler	Once every 6 months.	Audit flow rate and measured flow rate indicated by the sampler.	Semi Annual Flow Rate Audit.
Pb analysis audits Pb-TSP, Pb-PM_{10}.	Check of analytical system with Pb audit strips/filters.	Analytical	Once each quarter.	Measured value and audit value (µg Pb/filter) using AQS unit code 077.	Pb Analysis Audits.
Performance Evaluation Program $PM_{2.5}$.	Collocated samplers	(1) 5 valid audits for primary QA orgs, with <=5 sites. (2) 8 valid audits for primary QA orgs, with >5 sites. (3) All samplers in 6 years.	Distributed over all 4 quarters.	Primary sampler concentration and performance evaluation sampler concentration.	PEP.
Performance Evaluation Program Pb-TSP, Pb-PM_{10}.	Collocated samplers	(1) 1 valid audit and 4 collocated samples for primary QA orgs, with <=5 sites. (2) 2 valid audits and 6 collocated samples for primary QA orgs with >5 sites.	Distributed over all 4 quarters.	Primary sampler concentration and performance evaluation sampler concentration. Primary sampler concentration and duplicate sampler concentration.	PEP.

[1] Effective concentration for open path analyzers.
[2] Corrected concentration, if applicable for open path analyzers.
[3] Both primary and collocated sampler values are reported as raw data.
[4] $PM_{2.5}$ is the only particulate criteria pollutant requiring collocation of continuous and manual primary monitors.

TABLE A–2 OF APPENDIX A TO PART 58—SUMMARY OF $PM_{2.5}$ NUMBER AND TYPE OF COLLOCATION (15% COLLOCATION REQUIREMENT) REQUIRED USING AN EXAMPLE OF A PQAO THAT HAS 54 PRIMARY MONITORS (54 SITES) WITH ONE FEDERAL REFERENCE METHOD TYPE AND THREE TYPES OF APPROVED FEDERAL EQUIVALENT METHODS

Primary sampler method designation	Total number of monitors	Total number of collocated	Number of collocated with FRM	Number of collocated with same method designation as primary
FRM	20	3	3	3
FEM (A)	20	3	2	1
FEM (B)	2	1	1	0
FEM (C)	12	2	1	1

■ 10. Add Appendix B to part 58 to read as follows:

Appendix B to Part 58—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring

1. General Information
2. Quality System Requirements
3. Measurement Quality Check Requirements
4. Calculations for Data Quality Assessments
5. Reporting Requirements
6. References

1. General Information

1.1 *Applicability.*

(a) This appendix specifies the minimum quality assurance requirements for the control and assessment of the quality of the ambient air monitoring data submitted to a PSD reviewing authority or the EPA by an organization operating an air monitoring station, or network of stations, operated in order to comply with Part 51 New Source Review—Prevention of Significant Deterioration (PSD). Such organizations are encouraged to develop and maintain quality assurance programs more extensive than the required minimum. Additional guidance for the requirements reflected in this appendix can be found in the ''Quality Assurance Handbook for Air Pollution Measurement Systems,'' Volume II (Ambient Air) and ''Quality Assurance Handbook for Air Pollution Measurement Systems,'' Volume IV (Meteorological Measurements) and at a national level in references 1, 2, and 3 of this appendix.

(b) It is not assumed that data generated for PSD under this appendix will be used in making NAAQS decisions. However, if all the requirements in this appendix are followed (including the NPEP programs) and reported to AQS, with review and concurrence from the EPA region, data may be used for NAAQS decisions. With the exception of the NPEP programs (NPAP, $PM_{2.5}$ PEP, Pb–PEP) for which implementation is at the discretion of the PSD reviewing authority, all other quality assurance and quality control requirements found in the appendix must be met.

1.2 *PSD Primary Quality Assurance Organization (PQAO).* A PSD PQAO is defined as a monitoring organization or a coordinated aggregation of such organizations that is responsible for a set of stations within one reviewing authority that monitors the same pollutant and for which data quality assessments will be pooled. Each criteria pollutant/monitor must be associated with only one PSD PQAO.

1.2.1 Each PSD PQAO shall be defined such that measurement uncertainty among all stations in the organization can be expected to be reasonably homogeneous, as a result of common factors. A PSD PQAO must be associated with only one PSD reviewing authority. Common factors that should be considered in defining PSD PQAOs include:

(a) Operation by a common team of field operators according to a common set of procedures;

(b) Use of a common QAPP and/or standard operating procedures;

(c) Common calibration facilities and standards;

(d) Oversight by a common quality assurance organization; and

(e) Support by a common management organization or laboratory.

1.2.2 PSD monitoring organizations having difficulty describing its PQAO or in assigning specific monitors to a PSD PQAO should consult with the reviewing authority. Any consolidation of PSD PQAOs shall be subject to final approval by the PSD reviewing authority.

1.2.3 Each PSD PQAO is required to implement a quality system that provides sufficient information to assess the quality of the monitoring data. The quality system must, at a minimum, include the specific requirements described in this appendix. Failure to conduct or pass a required check or procedure, or a series of required checks or procedures, does not by itself invalidate data for regulatory decision making. Rather, PSD PQAOs and the PSD reviewing authority shall use the checks and procedures required in this appendix in combination with other data quality information, reports, and similar documentation that demonstrate overall compliance with parts 51, 52 and 58 of this chapter. Accordingly, the PSD reviewing authority shall use a ''weight of evidence'' approach when determining the suitability of data for regulatory decisions. The PSD reviewing authority reserves the authority to use or not use monitoring data submitted by a PSD monitoring organization when making regulatory decisions based on the PSD reviewing authority's assessment of the quality of the data. Generally, consensus built validation templates or validation criteria already approved in quality assurance project plans (QAPPs) should be used as the basis for the weight of evidence approach.

1.3 *Definitions.*

(a) *Measurement Uncertainty.* A term used to describe deviations from a true concentration or estimate that are related to the measurement process and not to spatial or temporal population attributes of the air being measured.

(b) *Precision.* A measurement of mutual agreement among individual measurements of the same property usually under prescribed similar conditions, expressed generally in terms of the standard deviation.

(c) *Bias.* The systematic or persistent distortion of a measurement process which causes errors in one direction.

(d) *Accuracy.* The degree of agreement between an observed value and an accepted reference value. Accuracy includes a combination of random error (imprecision) and systematic error (bias) components which are due to sampling and analytical operations.

(e) *Completeness.* A measure of the amount of valid data obtained from a measurement system compared to the amount that was expected to be obtained under correct, normal conditions.

(f) *Detectability.* The low critical range value of a characteristic that a method specific procedure can reliably discern.

1.4 *Measurement Quality Check Reporting.* The measurement quality checks described in section 3 of this appendix, are required to be submitted to the PSD reviewing authority within the same time frame as routinely-collected ambient concentration data as described in 40 CFR 58.16. The PSD reviewing authority may as well require that the measurement quality check data be reported to AQS.

1.5 *Assessments and Reports.* Periodic assessments and documentation of data quality are required to be reported to the PSD reviewing authority. To provide national uniformity in this assessment and reporting of data quality for all networks, specific assessment and reporting procedures are prescribed in detail in sections 3, 4, and 5 of this appendix.

2. Quality System Requirements

A quality system (reference 1 of this appendix) is the means by which an organization manages the quality of the monitoring information it produces in a

systematic, organized manner. It provides a framework for planning, implementing, assessing and reporting work performed by an organization and for carrying out required quality assurance and quality control activities.

2.1 *Quality Assurance Project Plans.* All PSD PQAOs must develop a quality system that is described and approved in quality assurance project plans (QAPP) to ensure that the monitoring results:

(a) Meet a well-defined need, use, or purpose (reference 5 of this appendix);

(b) Provide data of adequate quality for the intended monitoring objectives;

(c) Satisfy stakeholder expectations;

(d) Comply with applicable standards specifications;

(e) Comply with statutory (and other legal) requirements; and

(f) Assure quality assurance and quality control adequacy and independence.

2.1.1 The QAPP is a formal document that describes these activities in sufficient detail and is supported by standard operating procedures. The QAPP must describe how the organization intends to control measurement uncertainty to an appropriate level in order to achieve the objectives for which the data are collected. The QAPP must be documented in accordance with EPA requirements (reference 3 of this appendix).

2.1.2 The PSD PQAO's quality system must have adequate resources both in personnel and funding to plan, implement, assess and report on the achievement of the requirements of this appendix and it's approved QAPP.

2.1.3 Incorporation of quality management plan (QMP) elements into the QAPP. The QMP describes the quality system in terms of the organizational structure, functional responsibilities of management and staff, lines of authority, and required interfaces for those planning, implementing, assessing and reporting activities involving environmental data operations (EDO). The PSD PQAOs may combine pertinent elements of the QMP into the QAPP rather than requiring the submission of both QMP and QAPP documents separately, with prior approval of the PSD reviewing authority. Additional guidance on QMPs can be found in reference 2 of this appendix.

2.2 Independence of Quality Assurance Management. The PSD PQAO must provide for a quality assurance management function for its PSD data collection operation, that aspect of the overall management system of the organization that determines and implements the quality policy defined in a PSD PQAO's QAPP. Quality management includes strategic planning, allocation of resources and other systematic planning activities (e.g., planning, implementation, assessing and reporting) pertaining to the quality system. The quality assurance management function must have sufficient technical expertise and management authority to conduct independent oversight and assure the implementation of the organization's quality system relative to the ambient air quality monitoring program and should be organizationally independent of environmental data generation activities.

2.3. *Data Quality Performance Requirements.*

2.3.1 *Data Quality Objectives (DQOs).* The DQOs, or the results of other systematic planning processes, are statements that define the appropriate type of data to collect and specify the tolerable levels of potential decision errors that will be used as a basis for establishing the quality and quantity of data needed to support air monitoring objectives (reference 5 of the appendix). The DQOs have been developed by the EPA to support attainment decisions for comparison to national ambient air quality standards (NAAQS). The reviewing authority and the PSD monitoring organization will be jointly responsible for determining whether adherence to the EPA developed NAAQS DQOs specified in appendix A of this part are appropriate or if DQOs from a project-specific systematic planning process are necessary.

2.3.1.1 *Measurement Uncertainty for Automated and Manual $PM_{2.5}$ Methods.* The goal for acceptable measurement uncertainty for precision is defined as an upper 90 percent confidence limit for the coefficient of variation (CV) of 10 percent and plus or minus 10 percent for total bias.

2.3.1.2 *Measurement Uncertainty for Automated Ozone Methods.* The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the CV of 7 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 7 percent.

2.3.1.3 *Measurement Uncertainty for Pb Methods.* The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the CV of 20 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

2.3.1.4 *Measurement Uncertainty for NO_2.* The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the CV of 15 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

2.3.1.5 *Measurement Uncertainty for SO_2.* The goal for acceptable measurement uncertainty for precision is defined as an upper 90 percent confidence limit for the CV of 10 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 10 percent.

2.4 *National Performance Evaluation Program.* Organizations operating PSD monitoring networks are required to implement the EPA's national performance evaluation program (NPEP) if the data will be used for NAAQS decisions and at the discretion of the PSD reviewing authority if PSD data is not used for NAAQS decisions. The NPEP includes the National Performance Audit Program (NPAP), the $PM_{2.5}$ Performance Evaluation Program ($PM_{2.5}$-PEP) and the Pb Performance Evaluation Program (Pb-PEP). The PSD QAPP shall provide for the implementation of NPEP including the provision of adequate resources for such audit programs. Contact the PSD reviewing authority to determine the best procedure for implementing the audits which may include an audit by the PSD reviewing authority, a contractor certified for the activity, or through self-implementation which is described in sections below. A determination of which entity will be performing this audit program should be made as early as possible and during the QAPP development process. The PSD PQAOs, including contractors that plan to implement these programs on behalf of PSD PQAOs, that plan to implement these programs (self-implement) rather than use the federal programs, must meet the adequacy requirements found in the appropriate sections that follow, as well as meet the definition of independent assessment that follows.

2.4.1 *Independent Assessment.* An assessment performed by a qualified individual, group, or organization that is not part of the organization directly performing and accountable for the work being assessed. This auditing organization must not be involved with the generation of the routinely-collected ambient air monitoring data. An organization can conduct the performance evaluation (PE) if it can meet this definition and has a management structure that, at a minimum, will allow for the separation of its routine sampling personnel from its auditing personnel by two levels of management. In addition, the sample analysis of audit filters must be performed by a laboratory facility and laboratory equipment separate from the facilities used for routine sample analysis. Field and laboratory personnel will be required to meet the performance evaluation field and laboratory training and certification requirements. The PSD PQAO will be required to participate in the centralized field and laboratory standards certification and comparison processes to establish comparability to federally implemented programs.

2.5 *Technical Systems Audit Program.* The PSD reviewing authority or the EPA, may conduct system audits of the ambient air monitoring programs or organizations operating PSD networks. The PSD monitoring organizations shall consult with the PSD reviewing authority to verify the schedule of any such technical systems audit. Systems audit programs are described in reference 10 of this appendix.

2.6 *Gaseous and Flow Rate Audit Standards.*

2.6.1 Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentrations for carbon monoxide (CO), sulfur dioxide (SO_2), nitrogen oxide (NO), and nitrogen dioxide (NO_2) must be traceable to either a National Institute of Standards and Technology (NIST) Traceable Reference Material (NTRM) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS), certified in accordance with one of the procedures given in reference 4 of this appendix. Vendors advertising certification with the procedures provided in reference 4 of this appendix and distributing gases as ''EPA Protocol Gas'' must participate in the EPA Protocol Gas Verification Program or not use ''EPA'' in any form of advertising. The PSD PQAOs must provide information to the PSD reviewing authority on the gas vendors they use (or will use) for the duration of the PSD monitoring project. This information can be provided in the QAPP or monitoring plan, but must be updated if there is a change in the producer used.

2.6.2 Test concentrations for ozone (O_3) must be obtained in accordance with the ultraviolet photometric calibration procedure specified in appendix D to part 50, and by means of a certified NIST-traceable O_3 transfer standard. Consult references 7 and 8 of this appendix for guidance on transfer standards for O_3.

2.6.3 Flow rate measurements must be made by a flow measuring instrument that is NIST-traceable to an authoritative volume or other applicable standard. Guidance for certifying some types of flow-meters is provided in reference 10 of this appendix.

2.7 *Primary Requirements and Guidance.* Requirements and guidance documents for developing the quality system are contained in references 1 through 11 of this appendix, which also contain many suggested procedures, checks, and control specifications. Reference 10 describes specific guidance for the development of a quality system for data collected for comparison to the NAAQS. Many specific quality control checks and specifications for methods are included in the respective reference methods described in part 50 or in the respective equivalent method descriptions available from the EPA (reference 6 of this appendix). Similarly, quality control procedures related to specifically designated reference and equivalent method monitors are contained in the respective operation or instruction manuals associated with those monitors. For PSD monitoring, the use of reference and equivalent method monitors are required.

3. Measurement Quality Check Requirements

This section provides the requirements for PSD PQAOs to perform the measurement quality checks that can be used to assess data quality. Data from these checks are required to be submitted to the PSD reviewing authority within the same time frame as routinely-collected ambient concentration data as described in 40 CFR 58.16. Table B–1 of this appendix provides a summary of the types and frequency of the measurement quality checks that are described in this section. Reporting these results to AQS may be required by the PSD reviewing authority.

3.1 *Gaseous monitors of SO_2, NO_2, O_3, and CO.*

3.1.1 *One-Point Quality Control (QC) Check for SO_2, NO_2, O_3, and CO.* (a) A one-point QC check must be performed at least once every 2 weeks on each automated monitor used to measure SO_2, NO_2, O_3 and CO. With the advent of automated calibration systems, more frequent checking is strongly encouraged and may be required by the PSD reviewing authority. See Reference 10 of this appendix for guidance on the review procedure. The QC check is made by challenging the monitor with a QC check gas of known concentration (effective concentration for open path monitors) between the prescribed range of 0.005 and 0.08 parts per million (ppm) for SO_2, NO_2, and O_3, and between the prescribed range of 0.5 and 5 ppm for CO monitors. The QC check gas concentration selected within the prescribed range must be related to the mean or median of the ambient air concentrations normally measured at sites within the PSD monitoring network in order to appropriately reflect the precision and bias at these routine concentration ranges. If the mean or median concentrations at the sites are below or above the prescribed range, select the lowest or highest concentration in the range. An additional QC check point is encouraged for those organizations that may have occasional high values or would like to confirm the monitors' linearity at the higher end of the operational range.

(b) Point analyzers must operate in their normal sampling mode during the QC check and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The QC check must be conducted before any calibration or adjustment to the monitor.

(c) Open-path monitors are tested by inserting a test cell containing a QC check gas concentration into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and as appropriate, reflecting devices should be used during the test and the normal monitoring configuration of the instrument should be altered as little as possible to accommodate the test cell for the test. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentration of the QC check gas in the test cell must be selected to produce an effective concentration in the range specified earlier in this section. Generally, the QC test concentration measurement will be the sum of the atmospheric pollutant concentration and the QC test concentration. As such, the result must be corrected to remove the atmospheric concentration contribution. The corrected concentration is obtained by subtracting the average of the atmospheric concentrations measured by the open path instrument under test immediately before and immediately after the QC test from the QC check gas concentration measurement. If the difference between these before and after measurements is greater than 20 percent of the effective concentration of the test gas, discard the test result and repeat the test. If possible, open path monitors should be tested during periods when the atmospheric pollutant concentrations are relatively low and steady.

(d) Report the audit concentration of the QC gas and the corresponding measured concentration indicated by the monitor. The percent differences between these concentrations are used to assess the precision and bias of the monitoring data as described in sections 4.1.2 (precision) and 4.1.3 (bias) of this appendix.

3.1.2 *Quarterly performance evaluation for SO_2, NO_2, O_3, or CO.* Evaluate each primary monitor each calendar quarter during which monitors are operated or a least once (if operated for less than one quarter). The quarterly performance evaluation (quarterly PE) must be performed by a qualified individual, group, or organization that is not part of the organization directly performing and accountable for the work being assessed. The person or entity performing the quarterly PE must not be involved with the generation of the routinely-collected ambient air monitoring data. A PSD monitoring organization can conduct the quarterly PE itself if it can meet this definition and has a management structure that, at a minimum, will allow for the separation of its routine sampling personnel from its auditing personnel by two levels of management. The quarterly PE also requires a set of equipment and standards independent from those used for routine calibrations or zero, span or precision checks. The PE personnel will be required to meet PE training and certification requirements.

3.1.2.1 The evaluation is made by challenging the monitor with audit gas standards of known concentration from at least three audit levels. Two of the audit levels selected will represent a range of 10–80 percent of the typical ambient air concentrations either measured by the monitor or in the PQAOs network of monitors. The third point should be at the NAAQS level or above the highest anticipated routine hourly concentration, whichever is greater. An additional 4th level is encouraged for those PSD organizations that would like to confirm the monitor's linearity at the higher end of the operational range. In rare circumstances, there may be sites measuring concentrations above audit level 10. These sites should be identified to the PSD reviewing authority.

Audit level	Concentration range, ppm			
	O_3	SO_2	NO_2	CO
1	0.004–0.0059	0.0003–0.0029	0.0003–0.0029	0.020–0.059
2	0.006–0.019	0.0030–0.0049	0.0030–0.0049	0.060–0.199
3	0.020–0.039	0.0050–0.0079	0.0050–0.0079	0.200–0.899
4	0.040–0.069	0.0080–0.0199	0.0080–0.0199	0.900–2.999
5	0.070–0.089	0.0200–0.0499	0.0200–0.0499	3.000–7.999
6	0.090–0.119	0.0500–0.0999	0.0500–0.0999	8.000–15.999
7	0.120–0.139	0.1000–0.1499	0.1000–0.2999	16.000–30.999
8	0.140–0.169	0.1500–0.2599	0.3000–0.4999	31.000–39.999

Audit level	Concentration range, ppm			
	O_3	SO_2	NO_2	CO
9	0.170–0.189	0.2600–0.7999	0.5000–0.7999	40.000–49.999
10	0.190–0.259	0.8000–1.000	0.8000–1.000	50.000–60.000

3.1.2.2 The NO_2 audit techniques may vary depending on the ambient monitoring method. For chemiluminescence-type NO_2 analyzers, gas phase titration (GPT) techniques should be based on the EPA guidance documents and monitoring agency experience. The NO_2 gas standards may be more appropriate than GPT for direct NO_2 methods that do not employ converters. Care should be taken to ensure the stability of such gas standards prior to use.

3.1.2.3 The standards from which audit gas test concentrations are obtained must meet the specifications of section 2.6.1 of this appendix.

3.1.2.4 For point analyzers, the evaluation shall be carried out by allowing the monitor to analyze the audit gas test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable.

3.1.2.5 Open-path monitors are evaluated by inserting a test cell containing the various audit gas concentrations into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and, as appropriate, reflecting devices should be used during the evaluation, and the normal monitoring configuration of the instrument should be modified as little as possible to accommodate the test cell for the evaluation. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentrations of the audit gas in the test cell must be selected to produce effective concentrations in the evaluation level ranges specified in this section of this appendix. Generally, each evaluation concentration measurement result will be the sum of the atmospheric pollutant concentration and the evaluation test concentration. As such, the result must be corrected to remove the atmospheric concentration contribution. The corrected concentration is obtained by subtracting the average of the atmospheric concentrations measured by the open-path instrument under test immediately before and immediately after the evaluation test (or preferably before and after each evaluation concentration level) from the evaluation concentration measurement. If the difference between the before and after measurements is greater than 20 percent of the effective concentration of the test gas standard, discard the test result for that concentration level and repeat the test for that level. If possible, open path monitors should be evaluated during periods when the atmospheric pollutant concentrations are relatively low and steady. Also, if the open-path instrument is not installed in a permanent manner, the monitoring path length must be reverified to be within plus or minus 3 percent to validate the evaluation, since the monitoring path length is critical to the determination of the effective concentration.

3.1.2.6 Report both the evaluation concentrations (effective concentrations for open-path monitors) of the audit gases and the corresponding measured concentration (corrected concentrations, if applicable, for open-path monitors) indicated or produced by the monitor being tested. The percent differences between these concentrations are used to assess the quality of the monitoring data as described in section 4.1.1 of this appendix.

3.1.3 *National Performance Evaluation Program (NPAP).*

As stated in sections 1.1 and 2.4, PSD monitoring networks may be subject to the NPEP, which includes the NPAP. The NPAP is a performance evaluation which is a type of audit where quantitative data are collected independently in order to evaluate the proficiency of an analyst, monitoring instrument and laboratory. The NPAP should not be confused with the quarterly PE program described in section 3.1.2. The PSD organizations shall consult with the PSD reviewing authority or the EPA regarding whether the implementation of NPAP is required and the implementation options available. Details of the EPA NPAP can be found in reference 11 of this appendix. The program requirements include:

3.1.3.1 Performing audits on 100 percent of monitors and sites each year including monitors and sites that may be operated for less than 1 year. The reviewing authority has the authority to require more frequent audits at sites they consider to be high priority.

3.1.3.2 Developing a delivery system that will allow for the audit concentration gasses to be introduced at the probe inlet where logistically feasible.

3.1.3.3 Using audit gases that are verified against the National Institute for Standards and Technology (NIST) standard reference methods or special review procedures and validated annually for CO, SO_2 and NO_2, and at the beginning of each quarter of audits for O_3.

3.1.3.4 The PSD PQAO may elect to self-implement NPAP. In these cases, the PSD reviewing authority will work with those PSD PQAOs to establish training and other technical requirements to establish comparability to federally implemented programs. In addition to meeting the requirements in sections 3.1.1.3 through 3.1.3.3, the PSD PQAO must:

(a) Ensure that the PSD audit system is equivalent to the EPA NPAP audit system and is an entirely separate set of equipment and standards from the equipment used for quarterly performance evaluations. If this system does not generate and analyze the audit concentrations, as the EPA NPAP system does, its equivalence to the EPA NPAP system must be proven to be as accurate under a full range of appropriate and varying conditions as described in section 3.1.3.6.

(b) Perform a whole system check by having the PSD audit system tested at an independent and qualified EPA lab, or equivalent.

(c) Evaluate the system with the EPA NPAP program through collocated auditing at an acceptable number of sites each year (at least one for a PSD network of five or less sites; at least two for a network with more than five sites).

(d) Incorporate the NPAP into the PSD PQAO's QAPP.

(e) Be subject to review by independent, EPA-trained personnel.

(f) Participate in initial and update training/certification sessions.

3.2 $PM_{2.5}$.

3.2.1 *Flow Rate Verification for $PM_{2.5}$.* A one-point flow rate verification check must be performed at least once every month (each verification minimally separated by 14 days) on each monitor used to measure $PM_{2.5}$. The verification is made by checking the operational flow rate of the monitor. If the verification is made in conjunction with a flow rate adjustment, it must be made prior to such flow rate adjustment. For the standard procedure, use a flow rate transfer standard certified in accordance with section 2.6 of this appendix to check the monitor's normal flow rate. Care should be used in selecting and using the flow rate measurement device such that it does not alter the normal operating flow rate of the monitor. Flow rate verification results are to be reported to the PSD reviewing authority quarterly as described in section 5.1. Reporting these results to AQS is encouraged. The percent differences between the audit and measured flow rates are used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix (using flow rates in lieu of concentrations).

3.2.2 *Semi-Annual Flow Rate Audit for $PM_{2.5}$.* Every 6 months, audit the flow rate of the $PM_{2.5}$ particulate monitors. For short-term monitoring operations (those less than 1 year), the flow rate audits must occur at start up, at the midpoint, and near the completion of the monitoring project. The audit must be conducted by a trained technician other than the routine site operator. The audit is made by measuring the monitor's normal operating flow rate using a flow rate transfer standard certified in accordance with section 2.6 of this appendix. The flow rate standard used for auditing must not be the same flow rate standard used for verifications or to calibrate the monitor. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate or volume standard.

Care must be taken in auditing the flow rate to be certain that the flow measurement device does not alter the normal operating flow rate of the monitor. Report the audit flow rate of the transfer standard and the corresponding flow rate measured by the monitor. The percent differences between these flow rates are used to evaluate monitor performance.

3.2.3 *Collocated Sampling Procedures for $PM_{2.5}$.* A PSD PQAO must have at least one collocated monitor for each PSD monitoring network.

3.2.3.1 For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the QC monitor. There can be only one primary monitor at a monitoring site for a given time period.

(a) If the primary monitor is a FRM, then the quality control monitor must be a FRM of the same method designation.

(b) If the primary monitor is a FEM, then the quality control monitor must be a FRM unless the PSD PQAO submits a waiver for this requirement, provides a specific reason why a FRM cannot be implemented, and the waiver is approved by the PSD reviewing authority. If the waiver is approved, then the quality control monitor must be the same method designation as the primary FEM monitor.

3.2.3.2 In addition, the collocated monitors should be deployed according to the following protocol:

(a) The collocated quality control monitor(s) should be deployed at sites with the highest predicted daily $PM_{2.5}$ concentrations in the network. If the highest $PM_{2.5}$ concentration site is impractical for collocation purposes, alternative sites approved by the PSD reviewing authority may be selected. If additional collocated sites are necessary, the PSD PQAO and the reviewing authority should determine the appropriate location(s) based on data needs.

(b) The two collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. A waiver allowing up to 10 meters horizontal distance and up to 3 meters vertical distance (inlet to inlet) between a primary and collocated quality control monitor may be approved by the PSD reviewing authority for sites at a neighborhood or larger scale of representation. This waiver may be approved during the QAPP review and approval process. Calibration, sampling, and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

(c) Sample the collocated quality control monitor on a 6-day schedule for sites not requiring daily monitoring and on a 3-day schedule for any site requiring daily monitoring. Report the measurements from both primary and collocated quality control monitors at each collocated sampling site. The calculations for evaluating precision between the two collocated monitors are described in section 4.2.1 of this appendix.

3.2.4 *$PM_{2.5}$ Performance Evaluation Program (PEP) Procedures.* As stated in sections 1.1 and 2.4 of this appendix, PSD monitoring networks may be subject to the NPEP, which includes the $PM_{2.5}$ PEP. The PSD monitoring organizations shall consult with the PSD reviewing authority or the EPA regarding whether the implementation of $PM_{2.5}$ PEP is required and the implementation options available for the $PM_{2.5}$ PEP. For PSD PQAOs with less than or equal to five monitoring sites, five valid performance evaluation audits must be collected and reported each year. For PSD PQAOs with greater than five monitoring sites, eight valid performance evaluation audits must be collected and reported each year. Additionally, within the five or eight required audits, each type of method designation (FRM/FEM designation) used as a primary monitor in the PSD network shall be audited. For a PE to be valid, both the primary monitor and PEP audit measurements must meet quality control requirements and be above 3 $\mu g/m^3$ or a predefined lower concentration level determined by a systematic planning process and approved by the PSD reviewing authority. Due to the relatively short-term nature of most PSD monitoring, the likelihood of measuring low concentrations in many areas attaining the $PM_{2.5}$ standard and the time required to weigh filters collected in PEs, a PSD monitoring organization's QAPP may contain a provision to waive the 3 $\mu g/m^3$ threshold for validity of PEs conducted in the last quarter of monitoring, subject to approval by the PSD reviewing authority.

3.3 *PM_{10}.*

3.3.1 *Flow Rate Verification for PM_{10}.* A one-point flow rate verification check must be performed at least once every month (each verification minimally seperated by 14 days) on each monitor used to measure PM_{10}. The verification is made by checking the operational flow rate of the monitor. If the verification is made in conjunction with a flow rate adjustment, it must be made prior to such flow rate adjustment. For the standard procedure, use a flow rate transfer standard certified in accordance with section 2.6 of this appendix to check the monitor's normal flow rate. Care should be taken in selecting and using the flow rate measurement device such that it does not alter the normal operating flow rate of the monitor. The percent differences between the audit and measured flow rates are used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix (using flow rates in lieu of concentrations).

3.3.2 *Semi-Annual Flow Rate Audit for PM_{10}.* Every 6 months, audit the flow rate of the PM_{10} particulate monitors. For short-term monitoring operations (those less than 1 year), the flow rate audits must occur at start up, at the midpoint, and near the completion of the monitoring project. Where possible, the EPA strongly encourages more frequent auditing. The audit must be conducted by a trained technician other than the routine site operator. The audit is made by measuring the monitor's normal operating flow rate using a flow rate transfer standard certified in accordance with section 2.6 of this appendix. The flow rate standard used for auditing must not be the same flow rate standard used for verifications or to calibrate the monitor. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate or volume standard. Care must be taken in auditing the flow rate to be certain that the flow measurement device does not alter the normal operating flow rate of the monitor. Report the audit flow rate of the transfer standard and the corresponding flow rate measured by the monitor. The percent differences between these flow rates are used to evaluate monitor performance

3.3.3 *Collocated Sampling Procedures for Manual PM_{10}.* A PSD PQAO must have at least one collocated monitor for each PSD monitoring network.

3.3.3.1 For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the quality control monitor.

3.3.3.2 In addition, the collocated monitors should be deployed according to the following protocol:

(a) The collocated quality control monitor(s) should be deployed at sites with the highest predicted daily PM_{10} concentrations in the network. If the highest PM_{10} concentration site is impractical for collocation purposes, alternative sites approved by the PSD reviewing authority may be selected.

(b) The two collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. A waiver allowing up to 10 meters horizontal distance and up to 3 meters vertical distance (inlet to inlet) between a primary and collocated sampler may be approved by the PSD reviewing authority for sites at a neighborhood or larger scale of representation. This waiver may be approved during the QAPP review and approval process. Calibration, sampling, and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

(c) Sample the collocated quality control monitor on a 6-day schedule or 3-day schedule for any site requiring daily monitoring. Report the measurements from both primary and collocated quality control monitors at each collocated sampling site. The calculations for evaluating precision between the two collocated monitors are described in section 4.2.1 of this appendix.

(d) In determining the number of collocated sites required for PM_{10}, PSD monitoring networks for Pb-PM_{10} should be treated independently from networks for particulate matter (PM), even though the separate networks may share one or more common samplers. However, a single quality control monitor that meets the collocation requirements for Pb-PM_{10} and PM_{10} may serve as a collocated quality control monitor for both networks. Extreme care must be taken if using the filter from a quality control monitor for both PM_{10} and Pb analysis. PM_{10} filter weighing should occur prior to any Pb analysis.

3.4 *Pb.*

3.4.1 *Flow Rate Verification for Pb.* A one-point flow rate verification check must be performed at least once every month (each verification minimally separated by 14 days) on each monitor used to measure Pb. The verification is made by checking the operational flow rate of the monitor. If the verification is made in conjunction with a flow rate adjustment, it must be made prior to such flow rate adjustment. Use a flow rate transfer standard certified in accordance with section 2.6 of this appendix to check the monitor's normal flow rate. Care should be taken in selecting and using the flow rate measurement device such that it does not alter the normal operating flow rate of the monitor. The percent differences between the audit and measured flow rates are used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix (using flow rates in lieu of concentrations).

3.4.2 *Semi-Annual Flow Rate Audit for Pb.* Every 6 months, audit the flow rate of the Pb particulate monitors. For short-term monitoring operations (those less than 1 year), the flow rate audits must occur at start up, at the midpoint, and near the completion of the monitoring project. Where possible, the EPA strongly encourages more frequent auditing. The audit must be conducted by a trained technician other than the routine site operator. The audit is made by measuring the monitor's normal operating flow rate using a flow rate transfer standard certified in accordance with section 2.6 of this appendix. The flow rate standard used for auditing must not be the same flow rate standard used to in verifications or to calibrate the monitor. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate or volume standard. Great care must be taken in auditing the flow rate to be certain that the flow measurement device does not alter the normal operating flow rate of the monitor. Report the audit flow rate of the transfer standard and the corresponding flow rate measured by the monitor. The percent differences between these flow rates are used to evaluate monitor performance.

3.4.3 *Collocated Sampling for Pb.* A PSD PQAO must have at least one collocated monitor for each PSD monitoring network.

3.4.3.1 For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the quality control monitor.

3.4.3.2 In addition, the collocated monitors should be deployed according to the following protocol:

(a) The collocated quality control monitor(s) should be deployed at sites with the highest predicted daily Pb concentrations in the network. If the highest Pb concentration site is impractical for collocation purposes, alternative sites approved by the PSD reviewing authority may be selected.

(b) The two collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. A waiver allowing up to 10 meters horizontal distance and up to 3 meters vertical distance (inlet to inlet) between a primary and collocated sampler may be approved by the reviewing authority for sites at a neighborhood or larger scale of representation. This waiver may be approved during the QAPP review and approval process. Calibration, sampling, and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

(c) Sample the collocated quality control monitor on a 6-day schedule if daily monitoring is not required or 3-day schedule for any site requiring daily monitoring. Report the measurements from both primary and collocated quality control monitors at each collocated sampling site. The calculations for evaluating precision between the two collocated monitors are described in section 4.2.1 of this appendix.

(d) In determining the number of collocated sites required for Pb-PM_{10}, PSD monitoring networks for PM_{10} should be treated independently from networks for Pb-PM_{10}, even though the separate networks may share one or more common samplers. However, a single quality control monitor that meets the collocation requirements for Pb-PM_{10} and PM_{10} may serve as a collocated quality control monitor for both networks. Extreme care must be taken if using a using the filter from a quality control monitor for both PM_{10} and Pb analysis. The PM_{10} filter weighing should occur prior to any Pb analysis.

3.4.4 *Pb Analysis Audits.* Each calendar quarter, audit the Pb reference or equivalent method analytical procedure using filters containing a known quantity of Pb. These audit filters are prepared by depositing a Pb standard on unexposed filters and allowing them to dry thoroughly. The audit samples must be prepared using batches of reagents different from those used to calibrate the Pb analytical equipment being audited. Prepare audit samples in the following concentration ranges:

Range	Equivalent ambient Pb concentration, µg/m³
1	30–100% of Pb NAAQS.
2	200–300% of Pb NAAQS.

(a) Audit samples must be extracted using the same extraction procedure used for exposed filters.

(b) Analyze three audit samples in each of the two ranges each quarter samples are analyzed. The audit sample analyses shall be distributed as much as possible over the entire calendar quarter.

(c) Report the audit concentrations (in µg Pb/filter or strip) and the corresponding measured concentrations (in µg Pb/filter or strip) using AQS unit code 077 (if reporting to AQS). The percent differences between the concentrations are used to calculate analytical accuracy as described in section 4.2.5 of this appendix.

3.4.5 *Pb Performance Evaluation Program (PEP) Procedures.* As stated in sections 1.1 and 2.4, PSD monitoring networks may be subject to the NPEP, which includes the Pb Performance Evaluation Program. PSD monitoring organizations shall consult with the PSD reviewing authority or the EPA regarding whether the implementation of Pb-PEP is required and the implementation options available for the Pb-PEP. The PEP is an independent assessment used to estimate total measurement system bias. Each year, one PE audit must be performed at one Pb site in each PSD PQAO network that has less than or equal to five sites and two audits for PSD PQAO networks with greater than five sites. In addition, each year, four collocated samples from PSD PQAO networks with less than or equal to five sites and six collocated samples from PSD PQAO networks with greater than five sites must be sent to an independent laboratory for analysis. The calculations for evaluating bias between the primary monitor and the PE monitor for Pb are described in section 4.2.4 of this appendix.

4. Calculations for Data Quality Assessment

(a) Calculations of measurement uncertainty are carried out by PSD PQAO according to the following procedures. The PSD PQAOs should report the data for all appropriate measurement quality checks as specified in this appendix even though they may elect to perform some or all of the calculations in this section on their own.

(b) At low concentrations, agreement between the measurements of collocated samplers, expressed as relative percent difference or percent difference, may be relatively poor. For this reason, collocated measurement pairs will be selected for use in the precision and bias calculations only when both measurements are equal to or above the following limits:

(1) Pb: 0.002 µg/m³ (Methods approved after 3/04/2010, with exception of manual equivalent method EQLA–0813–803).

(2) Pb: 0.02 µg/m³ (Methods approved before 3/04/2010, and manual equivalent method EQLA–0813–803).

(3) PM_{10} (Hi-Vol): 15 µg/m³.

(4) PM_{10} (Lo-Vol): 3 µg/m³.

(5) $PM_{2.5}$: 3 µg/m³.

The $PM_{2.5}$ 3 µg/m³ limit for the $PM_{2.5}$-PEP may be superseded by mutual agreement between the PSD PQAO and the PSD reviewing authority as specified in section 3.2.4 of the appendix and detailed in the approved QAPP.

4.1 *Statistics for the Assessment of QC Checks for SO_2, NO_2, O_3 and CO.*

4.1.1 *Percent Difference.* Many of the measurement quality checks start with a comparison of an audit concentration or value (flow-rate) to the concentration/value measured by the monitor and use percent difference as the comparison statistic as described in equation 1 of this section. For each single point check, calculate the percent difference, d_i, as follows:

Equation 1

$$d_i = \frac{meas - audit}{audit} \cdot 100$$

where, *meas* is the concentration indicated by the PQAO's instrument and *audit* is the audit concentration of the standard used in the QC check being measured.

4.1.2 *Precision Estimate.* The precision estimate is used to assess the one-point QC checks for SO_2, NO_2, O_3, or CO described in section 3.1.1 of this appendix. The precision estimator is the coefficient of variation upper bound and is calculated using equation 2 of this section:

Equation 2

$$CV = \sqrt{\frac{n \cdot \sum_{i=1}^{n} d_i^2 - \left(\sum_{i=1}^{n} d_i\right)^2}{n(n-1)}} \cdot \sqrt{\frac{n-1}{\chi^2_{0.1,n-1}}}$$

where, n is the number of single point checks being aggregated; $X^2_{0.1,n-1}$ is the 10th percentile of a chi-squared distribution with n–1 degrees of freedom.

4.1.3 *Bias Estimate.* The bias estimate is calculated using the one-point QC checks for SO_2, NO_2, O_3, or CO described in section 3.1.1 of this appendix. The bias estimator is an upper bound on the mean absolute value of the percent differences as described in equation 3 of this section:

Equation 3

$$|bias| = AB + t_{0.95,n-1} \cdot \frac{AS}{\sqrt{n}}$$

where, n is the number of single point checks being aggregated; $t_{0.95,n-1}$ is the 95th quantile of a t-distribution with n-1 degrees of freedom; the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4 of this section:

Equation 4

$$AB = \frac{1}{n} \cdot \sum_{i=1}^{n} |d_i|$$

and the quantity *AS* is the standard deviation of the absolute value of the d_i's and is calculated using equation 5 of this section:

Equation 5

$$AS = \sqrt{\frac{n \cdot \sum_{i=1}^{n} |d_i|^2 - \left(\sum_{i=1}^{n} |d_i|\right)^2}{n(n-1)}}$$

4.1.3.1 *Assigning a sign (positive/negative) to the bias estimate.* Since the bias statistic as calculated in equation 3 of this appendix uses absolute values, it does not have a tendency (negative or positive bias) associated with it. A sign will be designated by rank ordering the percent differences of the QC check samples from a given site for a particular assessment interval.

4.1.3.2 Calculate the 25th and 75th percentiles of the percent differences for each site. The absolute bias upper bound should be flagged as positive if both percentiles are positive and negative if both percentiles are negative. The absolute bias upper bound would not be flagged if the 25th and 75th percentiles are of different signs.

4.2 *Statistics for the Assessment of PM_{10}, $PM_{2.5}$, and Pb.*

4.2.1 *Collocated Quality Control Sampler Precision Estimate for PM_{10}, $PM_{2.5}$ and Pb.* Precision is estimated via duplicate measurements from collocated samplers. It is recommended that the precision be aggregated at the PQAO level quarterly, annually, and at the 3-year level. The data pair would only be considered valid if both concentrations are greater than or equal to the minimum values specified in section 4(c) of this appendix. For each collocated data pair, calculate the relative percent difference, d_i, using equation 6 of this appendix:

Equation 6

$$d_i = \frac{X_i - Y_i}{(X_i + Y_i)/2} \cdot 100$$

where, X_i is the concentration from the primary sampler and Y_i is the concentration value from the audit sampler. The coefficient of variation upper bound is calculated using equation 7 of this appendix:

Equation 7

$$CV = \sqrt{\frac{n \cdot \sum_{i=1}^{n} d_i^2 - \left(\sum_{i=1}^{n} d_i\right)^2}{2n(n-1)}} \cdot \sqrt{\frac{n-1}{X^2_{0.1,n-1}}}$$

where, n is the number of valid data pairs being aggregated, and $X^2_{0.1,n-1}$ is the 10th percentile of a chi-squared distribution with n–1 degrees of freedom. The factor of 2 in the denominator adjusts for the fact that each d_i is calculated from two values with error.

4.2.2 *One-Point Flow Rate Verification Bias Estimate for PM_{10}, $PM_{2.5}$ and Pb.* For each one-point flow rate verification, calculate the percent difference in volume using equation 1 of this appendix where *meas* is the value indicated by the sampler's volume measurement and *audit* is the actual volume indicated by the auditing flow meter. The absolute volume bias upper bound is then calculated using equation 3, where n is the number of flow rate audits being aggregated; $t_{0.95,n-1}$ is the 95th quantile of a t-distribution with n-1 degrees of freedom, the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4 of this appendix, and the quantity *AS* in equation 3 of this appendix is the standard deviation of the absolute values if the d_i's and is calculated using equation 5 of this appendix.

4.2.3 *Semi-Annual Flow Rate Audit Bias Estimate for PM_{10}, $PM_{2.5}$ and Pb.* Use the same procedure described in section 4.2.2 for the evaluation of flow rate audits.

4.2.4 *Performance Evaluation Programs Bias Estimate for Pb.* The Pb bias estimate is calculated using the paired routine and the

PEP monitor as described in section 3.4.5. Use the same procedures as described in section 4.1.3 of this appendix.

4.2.5 *Performance Evaluation Programs Bias Estimate for $PM_{2.5}$.* The bias estimate is calculated using the PEP audits described in section 4.1.3 of this appendix. The bias estimator is based on the mean percent differences (Equation 1). The mean percent difference, *D*, is calculated by Equation 8 below.

Equation 8

$$D = \frac{1}{n_j} \cdot \sum_{i=1}^{n_j} d_i$$

where, n_j is the number of pairs and $d_1, d_2, \ldots d_{nj}$ are the biases for each pair to be averaged.

4.2.6 *Pb Analysis Audit Bias Estimate.* The bias estimate is calculated using the analysis audit data described in section 3.4.4. Use the same bias estimate procedure as described in section 4.1.3 of this appendix.

5. Reporting Requirements

5.1 *Quarterly Reports.* For each quarter, each PSD PQAO shall report to the PSD reviewing authority (and AQS if required by the PSD reviewing authority) the results of all valid measurement quality checks it has carried out during the quarter. The quarterly reports must be submitted consistent with the data reporting requirements specified for air quality data as set forth in 40 CFR 58.16 and pertain to PSD monitoring.

6.0 References

(1) American National Standard—Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs. ANSI/ASQC E4–2004. February 2004. Available from American Society for Quality Control, 611 East Wisconsin Avenue, Milwaukee, WI 53202.

(2) EPA Requirements for Quality Management Plans. EPA QA/R–2. EPA/240/B–01/002. March 2001, Reissue May 2006. Office of Environmental Information, Washington, DC 20460. *http://www.epa.gov/quality/qs-docs/r2-final.pdf.*

(3) EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations. EPA QA/R–5. EPA/240/B–01/003. March 2001, Reissue May 2006. Office of Environmental Information, Washington, DC 20460. *http://www.epa.gov/quality/qs-docs/r5-final.pdf.*

(4) EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards. EPA–600/R–12/531. May, 2012. Available from U.S. Environmental Protection Agency, National Risk Management Research Laboratory, Research Triangle Park, NC 27711. *http://www.epa.gov/nrmrl/appcd/mmd/db-traceability-protocol.html.*

(5) Guidance for the Data Quality Objectives Process. EPA QA/G–4. EPA/240/B–06/001. February, 2006. Office of Environmental Information, Washington, DC 20460. *http://www.epa.gov/quality/qs-docs/g4-final.pdf.*

(6) List of Designated Reference and Equivalent Methods. Available from U.S. Environmental Protection Agency, National Exposure Research Laboratory, Human Exposure and Atmospheric Sciences Division, MD–D205–03, Research Triangle Park, NC 27711. *http://www.epa.gov/ttn/amtic/criteria.html.*

(7) Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–454/B–13–004 U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, October, 2013. *http://www.epa.gov/ttn/amtic/qapollutant.html.*

(8) Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979. *http://www.epa.gov/ttn/amtic/cpreldoc.html.*

(9) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume 1—A Field Guide to Environmental Quality Assurance. EPA–600/R–94/038a. April 1994. Available from U.S. Environmental Protection Agency, ORD Publications Office, Center for Environmental Research Information (CERI), 26 W. Martin Luther King Drive, Cincinnati, OH 45268. *http://www.epa.gov/ttn/amtic/qabook.html.*

(10) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Ambient Air Quality Monitoring Program Quality System Development. EPA–454/B–13–003. *http://www.epa.gov/ttn/amtic/qabook.html.*

(11) National Performance Evaluation Program Standard Operating Procedures. *http://www.epa.gov/ttn/amtic/npapsop.html.*

TABLE B–1—MINIMUM DATA ASSESSMENT REQUIREMENTS FOR NAAQS RELATED CRITERIA POLLUTANT PSD MONITORS

Method	Assessment method	Coverage	Minimum frequency	Parameters reported	AQS assessment type
Gaseous Methods (CO, NO_2, SO_2, O_3)					
1-Point QC for SO_2, NO_2, O_3, CO.	Response check at concentration 0.005–0.08 ppm SO_2, NO_2, O_3, & 0.5 and 5 ppm CO.	Each analyzer	Once per 2 weeks	Audit concentration [1] and measured concentration [2].	1-Point QC.
Quarterly performance evaluation for SO_2, NO_2, O_3, CO.	See section 3.1.2 of this appendix.	Each analyzer	Once per quarter	Audit concentration [1] and measured concentration [2] for each level.	Annual PE.
NPAP for SO_2, NO_2, O_3, CO [3].	Independent Audit	Each primary monitor	Once per year	Audit concentration [1] and measured concentration [2] for each level.	NPAP.
Particulate Methods					
Collocated sampling PM_{10}, $PM_{2.5}$, Pb.	Collocated samplers	1 per PSD Network per pollutant.	Every 6 days or every 3 days if daily monitoring required.	Primary sampler concentration and duplicate sampler concentration [4].	No Transaction reported as raw data.
Flow rate verification PM_{10}, $PM_{2.5}$, Pb	Check of sampler flow rate.	Each sampler	Once every month	Audit flow rate and measured flow rate indicated by the sampler.	Flow Rate Verification.
Semi-annual flow rate audit. PM_{10}, $PM_{2.5}$, Pb	Check of sampler flow rate using independent standard.	Each sampler	Once every 6 months or beginning, middle and end of monitoring.	Audit flow rate and measured flow rate indicated by the sampler.	Semi Annual Flow Rate Audit.

TABLE B–1—MINIMUM DATA ASSESSMENT REQUIREMENTS FOR NAAQS RELATED CRITERIA POLLUTANT PSD MONITORS—Continued

Method	Assessment method	Coverage	Minimum frequency	Parameters reported	AQS assessment type
Pb analysis audits Pb-TSP, Pb-PM_{10}	Check of analytical system with Pb audit strips/filters.	Analytical	Each quarter	Measured value and audit value (ug Pb/filter) using AQS unit code 077 for parameters: 14129—Pb (TSP) LC FRM/FEM. 85129—Pb (TSP) LC Non-FRM/FEM.	Pb Analysis Audits.
Performance Evaluation Program $PM_{2.5}$ [3].	Collocated samplers	(1) 5 valid audits for PQAOs with <= 5 sites. (2) 8 valid audits for PQAOs with > 5 sites. (3) All samplers in 6 years.	Over all 4 quarters	Primary sampler concentration and performance evaluation sampler concentration.	PEP.
Performance Evaluation Program. Pb [3]	Collocated samplers	(1) 1 valid audit and 4 collocated samples for PQAOs, with <=5 sites. (2) 2 valid audits and 6 collocated samples for PQAOs with > 5 sites.	Over all 4 quarters	Primary sampler concentration and performance evaluation sampler concentration. Primary sampler concentration and duplicate sampler concentration.	PEP.

[1] Effective concentration for open path analyzers.
[2] Corrected concentration, if applicable for open path analyzers.
[3] NPAP, $PM_{2.5}$ PEP and Pb-PEP must be implemented if data is used for NAAQS decisions otherwise implementation is at PSD reviewing authority discretion.
[4] Both primary and collocated sampler values are reported as raw data.

■ 11. In Appendix D to part 58, revise paragraph 3(b), remove and reserve paragraph 4.5(b), and revise paragraph 4.5(c) to read as follows:

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

3. * * *

(b) The NCore sites must measure, at a minimum, $PM_{2.5}$ particle mass using continuous and integrated/filter-based samplers, speciated $PM_{2.5}$, $PM_{10-2.5}$ particle mass, O_3, SO_2, CO, NO/NO_Y, wind speed, wind direction, relative humidity, and ambient temperature.

(1) Although the measurement of NO_y is required in support of a number of monitoring objectives, available commercial instruments may indicate little difference in their measurement of NO_y compared to the conventional measurement of NO_X, particularly in areas with relatively fresh sources of nitrogen emissions. Therefore, in areas with negligible expected difference between NO_y and NO_X measured concentrations, the Administrator may allow for waivers that permit NO_X monitoring to be substituted for the required NO_y monitoring at applicable NCore sites.

(2) The EPA recognizes that, in some cases, the physical location of the NCore site may not be suitable for representative meteorological measurements due to the site's physical surroundings. It is also possible that nearby meteorological measurements may be able to fulfill this data need. In these cases, the requirement for meteorological monitoring can be waived by the Administrator.

* * * * *

4.5 * * *

(b) [Reserved]

(c) The EPA Regional Administrator may require additional monitoring beyond the minimum monitoring requirements contained in paragraph 4.5(a) of this appendix where the likelihood of Pb air quality violations is significant or where the emissions density, topography, or population locations are complex and varied. EPA Regional Administrators may require additional monitoring at locations including, but not limited to, those near existing additional industrial sources of Pb, recently closed industrial sources of Pb, airports where piston-engine aircraft emit Pb, and other sources of re-entrained Pb dust.

* * * * *

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bluecrest Alaska Operating LLC Drilling Activities in Lower Cook Inlet, 2015; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD429

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bluecrest Alaska Operating LLC Drilling Activities in Lower Cook Inlet, 2015

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Bluecrest Alaska Operating, LLC (Bluecrest) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting an offshore exploratory drilling program in lower Cook Inlet, AK, during the 2015 open water season. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Bluecrest to incidentally take, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than October 14, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Nachman@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application, NMFS' Draft Environmental Assessment (EA), and a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On June 30, 2014, NMFS received an IHA application from Bluecrest for the taking of marine mammals incidental to an offshore exploratory drilling program in lower Cook Inlet, AK, during the 2015 open water season (typically mid-April through October). Although Bluecrest's application indicates that the drilling program could begin as early as fall 2014, subsequent communications from Bluecrest note that drilling will not begin before April 1, 2015. NMFS determined that the application was adequate and complete on July 16, 2014.

Bluecrest proposes to drill one exploratory well at Cosmopolitan State #B–1 site during the 2015 open-water season, which is typically from April through October. Depending on the results, Bluecrest will evaluate future (2016–2018) potential oil and/or gas activities at both the Cosmopolitan State #A–1 and #B–1 locations. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Driving of the conductor pipe; exploratory drilling; towing of the jack-up drill rig; and vertical seismic profiling (VSP). Take, by Level B harassment only, of six marine mammal species is anticipated to result from the specified activity.

Description of the Specified Activity

Overview

Bluecrest proposes to conduct exploratory drilling operations at one well site in lower Cook Inlet during the 2015 open water (ice-free) season (i.e., April through October), using the *Endeavour-Spirit of Independence* (*Endeavour*) jack-up drill rig or the *Spartan 151* jack-up drill rig, depending on availability. The rig will be towed to the drilling site by ocean-going tugs. The activities of relevance to this IHA request include: Mobilization and demobilization of the drill rig to and from the well location at the start and end of the season; driving of the conductor pipe; exploratory drilling; and VSP seismic operations. Bluecrest proposes to utilize both helicopters and vessels to conduct resupply, crew change, and other logistics during the exploratory drilling program.

Dates and Duration

The 2015 exploratory drilling program (which is the subject of this IHA request) would occur during the 2015 open water season (approximately April 15 through October 31). Bluecrest estimates that the drilling period could extend up to 90 days, including up to 15 days of well testing. During this time period, conductor pipe driving would only occur for a period of 1 to 3 days (although actual sound generation would occur only intermittently during this time period), and VSP seismic

operations would only occur for a period of less than 1 to 2 days. Mobilization and demobilization rig tows are estimated to take less than 24 hours. This IHA (if issued) would be effective for 1 year, beginning on or around April 1, 2015.

Specified Geographic Region

Bluecrest's proposed program would occur at Cosmopolitan State #B–1 (originally Cosmopolitan #2) in lower Cook Inlet, AK. The exact well location is latitude 59°52′13.887″ N., 151°52′17.225″ W. in water depth of 61 ft. The exact location of Bluecrest's well site can be seen in Figure 1 in the IHA application.

Detailed Description of Activities

1. Drill Rig Mobilization and Towing

Bluecrest proposes to conduct the exploratory drilling program using the *Endeavour,* which is an independent leg, cantilevered jack-up drill rig of the *Marathon LeTourneau* Class 116–C and is capable of drilling up to 25,000 ft in water depths from 15–300 ft. Additional specifications can be found in Appendix A of the IHA application. If the *Endeavour* is unavailable, Bluecrest would utilize the *Spartan 151* to conduct the exploratory drilling program. The *Spartan 151* is a 150 H class indepent leg, cantilevered jack-up drill rig, with a drilling capability of 25,000 ft but can operate in maximum water depths up to only 150 ft. The rig will be towed by ocean-going tugs licensed to operate in Cook Inlet. While under tow, the rig operations will be monitored by Bluecrest and the drilling contractor management, both aboard the rig and onshore.

As of July 2014, the *Endeavour* is moored at Port Graham where it is undergoing maintenance and winterization. The intention is to move the drill rig to the Cosmopolitan State #B–1 well site in April 2015, a distance of about 31 mi. If the *Spartan 151* is used it will likely come from a well site location in upper Cook Inlet approximately 62 mi north of Cosmopolitan State #B–1. Tows from either location would likely be accomplished within a 24-hour period.

The rig will be wet-towed by two or three ocean-going tugs licensed to operate in Cook Inlet. Tugs generate their loudest sounds while towing due to propeller cavitation. While these continuous sounds have been measured at up to 171 dB re 1 μPa-m (rms) at 1-meter source (broadband), they are generally emitted at dominant frequencies of less than 5 kHz (Miles *et al.,* 1987; Richardson *et al.,* 1995a, Simmonds *et al.,* 2004). The distance to the 120-dB isopleth, assuming a 171 dB source, is 1,715 feet (523 meters) using Collins *et al.*'s (2007) 171–18.4 Log(R)—0.00188 R spreading model developed from Cook Inlet. For the most part, the dominant noise frequencies from propeller cavitation are significantly lower than the dominant hearing frequencies for pinnipeds and toothed whales, including beluga whales (Wartzok and Ketten, 1999).

2. Conductor Pipe Driving

A conductor pipe is a relatively short, large-diameter pipe driven into the sediment prior to the drilling of oil wells. This section of tubing serves to support the initial sedimentary part of the well, preventing the looser surface layer from collapsing and obstructing the wellbore. The pipe also facilitates the return of cuttings from the drill head. Conductor pipes are usually installed using drilling, pile driving, or a combination of these techniques. In offshore wells, the conductor pipe is also used as a foundation for the wellhead. Bluecrest proposes to drive approximately 200 ft (60 m) below mudline of 30-inch conductor pipe at Cosmopolitan State #B–1 prior to drilling using a Delmar D62–22 impact hammer. This hammer has impact weight of 13,640 pounds (6,200 kg) and reaches a maximum impact energy of 165,215 foot-pounds (224 kilonewton-meters) at a drop height of 12 ft (3.6 m).

Blackwell (2005) measured the noise produced by a Delmar D62–22 driving 36-inch steel pipe in upper Cook Inlet and found sound pressure levels (SPLs) to exceed 190 dB re 1μPa-m (rms) at about 200 ft (60 m), 180 dB re 1μPa-m (rms) at about 820 ft (250 m), and 160 dB re 1μPa-m (rms) at just less than 1.2 mi (1.9 km). Illingworth and Rodkin (2014) measured the hammer noise operating from the *Endeavour* in 2013 and found SPLs to exceed 190 dB re 1μPa-m (rms) at about 180 ft (55 m), 180 dB re 1μPa-m (rms) at about 560 ft (170 m), and 160 dB re 1μPa-m (rms) at 1 mi (1.6 km). The conductor pipe driving event is expected to last 1 to 3 days, although actual sound generation (pounding) would occur only intermittently during this period.

3. Exploratory Drilling and Standard Operation

The jack-up drilling rig *Endeavour*'s drilling platform and other noise-generating equipment is located above the sea's surface, and there is very little surface contact with the water compared to drill ships and semi-submersible drill rigs; therefore, lattice-legged jack-up drill rigs are relatively quiet (Richardson *et al.,* 1995a; Spence *et al.,* 2007).

The *Spartan 151,* the only other jack-up drilling rig operating in the Cook Inlet, was hydro-acoustically measured by Marine Acoustics, Inc. (2011) while operating in 2011. The survey results showed that continuous noise levels exceeding 120 dB re 1μPa extended out only 164 ft (50 m), and that this sound was largely associated with the diesel engines used as hotel power generators.

The *Endeavour* was hydro-acoustically tested during drilling activities by Illingworth and Rodkin (2014) in May 2013 while the rig was operating at Cosmopolitan #A–1. The results from the sound source verification indicated that sound generated from drilling or generators were below ambient sound levels. The generators used on the *Endeavour* are mounted on pedestals specifically to reduce sound transfer through the infrastructure, and they are enclosed in an insulated engine room, which may have reduced further underwater sound transmission to levels below those generated by the *Spartan 151.* Also, as mentioned above, the lattice legs limit transfer of noise generated from the drilling table to the water.

The sound source verification revealed that the submersed deep-well pumps that charge the fire-suppression system and cool the generators (in a closed water system) generate sound levels exceeding 120 dB re 1μPa out a distance of approximately 984 ft (300 m). It was not clear at the time of measurements whether the sound was a direct result of the pumps or was from the systems discharge water falling approximately 40 ft (12 m) from the deck. Thus, after the falling water was enclosed in pipe extending below the water surface in an effort to reduce sound levels, the pump noise levels were re-measured in June 2013 (Illingworth and Rodkin, 2014) with results indicating that piping the falling water had a slight effect on reducing underwater sound levels; nevertheless, the 120-dB radius still extended out to 853 ft (260 m) in certain directions. Thus, neither drilling operations nor running generators on the *Endeavour* drill rig generate underwater sound levels exceeding 120 dB re 1μPa. However, the *Endeavour*'s submersed deep-well pumps generate continuous sound exceeding 120 dB re 1μPa to a maximum distance of 853 ft (260 m). Deep well pumps were not identified as a sound source by Marine Acoustics, Inc. (2011) during their acoustical testing of the *Spartan 151.*

4. Vertical Seismic Profiling

Once a well is drilled, accurate follow-up seismic data can be collected by placing a receiver at known depths in the borehole and shooting a seismic airgun at the surface near the borehole. These gathered data not only provide high resolution images of the geological layers penetrated by the borehole but can be used to accurately correlate (or correct) the original surface seismic data. The procedure is known as VSP.

Bluecrest intends to conduct VSP operations at the end of drilling the well using an array of airguns with total volumes of between 600 and 880 cubic inches (in^3). The VSP operation is expected to last less than 1 or 2 days. Assuming a 1-meter source level of 227 dB re 1μPa (based on manufacturer's specifications) for an 880 in^3 array and using Collins *et al.*'s (2007) transmission loss model for Cook Inlet (227–18.4 Log(R)—0.00188), the 190 dB radius from the source was estimated at 330 ft (100 m), the 180 dB radius at 1,090 ft (332 m), and the 160 dB radius at 1.53 mi (2.46 km).

Illingworth and Rodkin (2014) measured the underwater sound levels associated with the July 2013 VSP operation using a 750 in^3 array and found sound levels exceeding 160 dB re 1 μPa (rms) extended out 1.54 mi (2.47 km), virtually identical to the modeled distance. The measured radius to 190 dB was 394 ft (120 m) and to 180 dB was 787 ft (240 m).

5. Helicopter and Supply Vessel Support

Helicopter logistics for project operations will include transportation for personnel, groceries, and supplies. Helicopter support will consist of a twin turbine Bell 212 (or equivalent) helicopter certified for instrument flight rules land and over water operations. Helicopter crews and support personnel will be housed in existing Kenai area facilities. The helicopter will be based at the Kenai Airport to support rig crew changes and cargo handling. Fueling will take place at these facilities. No helicopter refueling will take place on the rig.

Helicopter flights to and from the rig are expected to average two per day. Flight routes will follow a direct route to and from the rig location, and flight heights will be maintained 1,000 to 1,500 feet above ground level to avoid take of marine mammals (Richardson *et al.,* 1995a). At these altitudes, there are not expected to be impacts from sound generation on marine mammals. The aircraft will be dedicated to the drilling operation and will be available for service 24 hours per day. A replacement aircraft will be available when major maintenance items are scheduled.

Major supplies will be staged on-shore at the Kenai OSK Dock. Required supplies and equipment will be moved from the staging area by contracted supply vessels and loaded aboard the rig when the rig is established on a drilling location. Major supplies will include fuel, drilling water, mud materials, cement, casing, and well service equipment. Supply vessels also will be outfitted with fire-fighting systems as part of fire prevention and control as required by Cook Inlet Spill Prevention and Response, Inc. The specific supply vessels have not been identified; however, typical offshore drilling support work vessels are of steel construction with strengthened hulls to give the capability of working in extreme conditions. Additional information about logistics and fuel and waste management can be found in Section 1.2 of Bluecrest's IHA application.

Description of Marine Mammals in the Area of the Specified Activity

Several marine mammal species occur in lower Cook Inlet. The marine mammal species under NMFS's jurisdiction include: Beluga whale (*Delphinapterus leucas*); harbor porpoise (*Phocoena phocoena*); killer whale (*Orcinus orca*); gray whale (*Eschrichtius robustus*); minke whale (*Balaenoptera acutorostrata*); Dall's porpoise (*Phocoenoides dalli*); humpback whale (*Megaptera novaeangliae*); harbor seal (*Phoca vitulina richardsi*); and Steller sea lion (*Eumetopias jubatus*).

Data collected during marine mammal monitoring at Cosmopolitan State #A–1 during summer 2013 recorded 104 harbor porpoise, 72 harbor seals, 32 minke whales, 19 Dall's porpoise, 12 gray whales, and two killer whales between May and August (112 days of monitoring). Based on their seasonal patterns, gray whales are not likely to be encountered during spring but could be encountered in low numbers at other times of year. Minke whales have been considered migratory in Alaska (Allen and Angliss, 2014) but have recently been observed off Cape Starichkof and Anchor Point year-round. The remaining species could be encountered year-round. Humpback whales are common in the very southern part of Cook Inlet and typically do not venture north of Kachemak Bay (B. Mahoney, NMFS, pers. comm., August 2014), which is south of the proposed Cosmopolitan drilling site. Therefore, it is unlikely that humpback whales would be encountered during the proposed project.

Of these marine mammal species, Cook Inlet beluga whales, humpback whales, and the western distinct population segment (DPS) of Steller sea lions are listed as endangered under the Endangered Species Act (ESA). The eastern DPS of Steller sea lions was recently removed from the endangered species list (78 FR 66139, November 4, 2013) but currently retains its status as ''depleted'' under the MMPA along with the western DPS, Cook Inlet beluga whales, and humpback whales.

Despite these designations, Cook Inlet beluga whales and the western DPS of Steller sea lions have not made significant progress towards recovery. Data indicate that the Cook Inlet population of beluga whales has been decreasing at a rate of 0.6 percent annually between 2002 and 2012 (Allen and Angliss, 2014). One review of the status of the population indicated that there is an 80% chance that the population will decline further (Hobbs and Shelden, 2008).

Regional variation in trends in Steller sea lion pup counts in 2000–2012 is similar to that of non-pup counts (Johnson and Fritz, 2014). Overall, there is strong evidence that pup counts in the western stock in Alaska increased (1.45 percent annually). Between 2004 and 2008, Alaska western non-pup counts increased only 3%: Eastern Gulf of Alaska (Prince William Sound area) counts were higher and Kenai Peninsula through Kiska Island counts were stable, but western Aleutian counts continued to decline. Johnson and Fritz (2014) analyzed western Steller sea lion population trends in Alaska and noted that there was strong evidence that non-pup counts in the western stock in Alaska increased between 2000 and 2012 (average rate of 1.67 percent annually). However, there continues to be considerable regional variability in recent trends across the range in Alaska, with strong evidence of a positive trend east of Samalga Pass and strong evidence of a decreasing trend to the west (Allen and Angliss, 2014).

The Central North Pacific humpback whale stock, consisting of winter/spring populations of the Hawaiian Islands which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands (Baker *et al.,* 1990; Perry *et al.,* 1990; Calambokidis *et al.,* 1997), has increased over the past two decades. Different studies and sampling techniques in Hawaii and Alaska have indicated growth rates ranging from 4.9–10 percent per year in the 1980s, 1990s, and early 2000s (Mobley *et al.,* 2001;

Mizroch *et al.,* 2004; Zerbini *et al.,* 2006; Calambokidis *et al.,* 2008). It is also clear that the abundance has increased in Southeast Alaska, though a trend for the Southeast Alaska portion of this stock cannot be estimated from the data because of differences in methods and areas covered (Allen and Angliss, 2013). On June 26, 2014, NMFS published a notice if the **Federal Register** requesting comments on a petition to designate the Central North Pacific humpback whale stock as a DPS and to delist the DPS from the ESA (79 FR 36281).

Pursuant to the ESA, critical habitat has been designated for Cook Inlet beluga whales and Steller sea lions. The proposed drilling program does not fall within critical habitat designated in Cook Inlet for beluga whales or within critical habitat designated for Steller sea lions. The Cosmopolitan State unit is nearly 100 miles south of beluga whale Critical Habitat Area 1 and approximately 27 miles south of Critical Habitat Area 2. It is also located about 25 miles north of the isolated patch of Critical Habitat Area 2 found in Kachemak Bay. Area 2 is based on dispersed fall and winter feeding and transit areas in waters where whales typically appear in smaller densities or deeper waters (76 FR 20180, April 11, 2011). No critical habitat has been designated for humpback whales.

Bluecrest did not request take of beluga and humpback whales or Steller sea lions. Informal consultation pursuant to section 7 of the ESA was conducted for this project. The U.S. Army Corps of Engineers determined (and NMFS concurred) that the activity is not likely to adversely affect listed species or critical habitat based upon the nature of the activities and specific mitigation measures to ensure that take of these species or adverse habitat impacts are unlikely. This is discussed further in the ''Proposed Mitigation'' section later in this document.

Sea otters also occur in Cook Inlet. However, sea otters are managed by the U.S. Fish and Wildlife Service and are therefore not considered further in this proposed IHA notice. Information summaries for the species for which take is requested is provided next.

Cetaceans

1. Killer Whales

Two different killer whale stocks inhabit the Cook Inlet region of Alaska: the Alaska resident stock and the Gulf of Alaska, Aleutian Islands, Bering Sea transient stock (Allen and Angliss, 2014). The Alaska resident stock occurs from Southeast Alaska to the Bering Sea (Allen and Angliss, 2014) and feeds exclusively on fish, while transient killer whales feed primarily on marine mammals (Saulitis *et al.,* 2000). Killer whales are occasionally observed in lower Cook Inlet, especially near Homer and Port Graham (Shelden *et al.,* 2003; Rugh *et al.,* 2005). A concentration of sightings near Homer and inside Kachemak Bay may represent high killer whale use or high observer-effort given most records are from a whale-watching venture based in Homer. During aerial surveys conducted between 1993 and 2004, killer whales were only observed on three flights, all in the Kachemak Bay and English Bay area (Rugh *et al.,* 2005).

2. Harbor Porpoise

The most recent estimated density for harbor porpoises in Cook Inlet is 7.2 per 1,000 km^2 (Dahlheim *et al.,* 2000) indicating that only a small number use Cook Inlet. Harbor porpoise have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh *et al.,* 2005). Harbor porpoises are found primarily in coastal waters less than 328 ft deep (Hobbs and Waite, 2010) where they feed primarily on Pacific herring, other schooling fish, and cephalopods. Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October, except for a recent survey that recorded higher than usual numbers (Prevel Ramos *et al.,* 2008). In addition, recent passive acoustic research in Cook Inlet by the Alaska Department of Fish and Game and the National Marine Mammal Laboratory have indicated that harbor porpoises occur more frequently than previously thought, particularly in the West Foreland area in the spring (NMML, 2011); however overall numbers are still unknown at this time. Also, harbor porpoises were the most frequently sighted marine mammal species during monitoring in 2013 at the Cosmopolitan State #A–1 well.

3. Gray Whale

The gray whale is a large baleen whale known to have one of the longest migrations of any mammal. This whale can be found all along the shallow coastal waters of the North Pacific Ocean. The Eastern North Pacific stock, which includes those whales that travel along the coast of Alaska, was delisted from the ESA in 1994 after a distinction was made between the western and eastern populations (59 FR 31094, June 16, 1994). The most recent estimate of abundance for the Eastern North Pacific stock of gray whales is 19,126, based on the 2006/2007 southbound survey (Laake *et al.,* 2009).

Although observations of gray whales are rare within Cook Inlet, marine mammal observers noted individual gray whales on nine occasions in upper Cook Inlet in 2012 while conducting marine mammal monitoring for seismic survey activities under an IHA NMFS issued to Apache Alaska Corporation: Four times in May; twice in June; and three times in July (Apache, 2013). Annual surveys conducted by NMFS in Cook Inlet since 1993 have resulted in a total of five gray whale sightings (Rugh *et al.,* 2005). Although Cook Inlet is not believed to comprise either essential feeding or social ground, there may be some encounters in lower Cook Inlet. Small numbers of summering gray whales have been noted by fishermen near Kachemak Bay and north of Anchor Point. Further, summer gray whales were recorded a dozen times offshore of Cape Starichkof by observers monitoring Bluecrest's Cosmopolitan #A–1 drilling program between May and August 2013.

4. Minke Whale

Minke whales are the smallest of the rorqual group of baleen whales. There are no population estimates for the North Pacific, although estimates have been made for some portions of Alaska. Zerbini *et al.* (2006) estimated the coastal population between Kenai Fjords and the Aleutian Islands at 1,233 animals. During Cook Inlet-wide aerial surveys conducted from 1993 to 2004, minke whales were encountered only twice (1998, 1999), both times off Anchor Point 16 mi northwest of Homer. A minke whale was also reported off Cape Starichkof in 2011 (A. Holmes, pers. comm.) and 2013 (E. Fernandez and C. Hesselbach, pers. comm.), suggesting this location is regularly used by minke whales, including during the winter. There are no records north of Cape Starichkof.

5. Dall's Porpoise

Dall's porpoise are widely distributed throughout the North Pacific Ocean including Alaska, although they are not found in upper Cook Inlet and the shallower waters of the Bering, Chukchi, and Beaufort Seas (Allen and Angliss, 2014). The Alaskan population has been estimated at 83,400 animals (Allen and Angliss, 2014), making it one of the more common cetaceans in the state. Dall's porpoise have been observed in lower Cook Inlet, including Kachemak Bay and near Anchor Point (Glenn Johnson, pers. comm.), but sightings there are rare. There is only the remote chance that Dall's porpoise might be observed during Bluecrest's proposed drilling program.

Pinnipeds

1. Harbor Seals

Harbor seals inhabit the coastal and estuarine waters of Cook Inlet and are one of the more common marine mammal species in Alaskan waters. Harbor seals are non-migratory; their movements are associated with tides, weather, season, food availability, and reproduction. The major haulout sites for harbor seals are located in lower Cook Inlet, and their presence in the upper inlet coincides with seasonal runs of prey species. For example, harbor seals are commonly observed along the Susitna River and other tributaries along upper Cook Inlet during the eulachon and salmon migrations (NMFS, 2003). During aerial surveys of upper Cook Inlet in 2001, 2002, and 2003, harbor seals were observed 24 to 96 km (15 to 60 mi) south-southwest of Anchorage at the Chickaloon, Little Susitna, Susitna, Ivan, McArthur, and Beluga Rivers (Rugh *et al.,* 2005). Montgomery *et al.* (2007) recorded over 200 haulout sites in lower Cook Inlet alone. Montgomery *et al.* (2007) also found seals elsewhere in Cook Inlet to move in response to local steelhead and salmon runs. However, aerial surveys conducted in June 2013 for the proposed Susitna Dam project noted nearly 700 harbor seals in the Susitna Delta region (Alaska Energy Authority, 2013). Harbor seals may be encountered during Bluecrest's lower Cook Inlet proposed drilling program.

Summary

As mentioned previously, take of marine mammals listed under the ESA is unlikely to occur because of mitigation measures to ensure no take of those species. Bluecrest's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2013 SAR is available on the Internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_final.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., driving of the conductor pipe; exploratory drilling; towing of the jack-up drill rig; and VSP) have been observed to or are thought to impact marine mammals. This section may include a discussion of known effects that do not rise to the level of take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). The discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take. This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented or how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

The likely or possible impacts of the proposed drilling program in lower Cook Inlet on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel. Petroleum development and associated activities introduce sound into the marine environment. Impacts to marine mammals are expected to primarily be acoustic in nature. Potential acoustic effects on marine mammals relate to sound produced by drilling activity, conductor pipe driving, and rig towing, as well as the VSP airgun array.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, six marine mammal species (five cetacean and one phocid pinniped) may occur in the exploratory drilling area of Bluecrest's lower Cook Inlet project. Of the five cetacean species likely to occur in the proposed project area and for which take is requested, two are classified as low-frequency cetaceans (i.e., minke and gray whales), one is classified as a mid-frequency cetacean (i.e., killer whale), and two are classified as high-frequency cetaceans (i.e., harbor and Dall's porpoises) (Southall *et al.,* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

1. Tolerance

Numerous studies have shown that underwater sounds from industry activities are often readily detectable by marine mammals in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers away often show no apparent response to industry activities of various types (Miller *et al.,* 2005; Bain and Williams, 2006). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the

hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound such as airgun pulses or vessels under some conditions, at other times mammals of all three types have shown no overt reactions (e.g., Malme *et al.,* 1986; Richardson *et al.,* 1995a; Madsen and Mohl, 2000; Croll *et al.,* 2001; Jacobs and Terhune, 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (i.e., active versus silent). The airgun arrays used in the Weir (2008) study were much larger than the array proposed for use during the limited VSP (total discharge volumes of 600 to 880 in^3 for 1 to 2 days). In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995a) found that vessel noise does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995a) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels.

2. Masking

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Masking occurs when anthropogenic sounds and signals (that the animal utilizes) overlap at both spectral and temporal scales. The sounds generated by the proposed equipment for the exploratory drilling program will consist of low frequency sources (most under 500 Hz). Lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking near the jack-up rig during exploratory drilling operations, as the species most likely to be found in the vicinity are mid- to high-frequency cetaceans or pinnipeds and not low-frequency cetaceans. Additionally, masking is not expected to be a concern from airgun usage due to the brief duration of use (less than a day to up to 2 days) and the low-frequency sounds that are produced by the airguns. However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.,* 2006), although the intensity of the sound is greatly reduced.

This could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.,* 2009) and cause increased stress levels (e.g., Foote *et al.,* 2004; Holt *et al.,* 2009); however, only low numbers of baleen whales are expected to occur within the proposed action area. Marine mammals are thought to sometimes be able to compensate for masking by adjusting their acoustic behavior by shifting call frequencies, and/or increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark, 2010). The North Atlantic right whales (Eubalaena glacialis) exposed to high shipping noise increase call frequency (Parks *et al.,* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller el al., 2000). Additionally, beluga whales have been known to change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.,* 1985; Lesage *et al.,* 1999; Scheifele *et al.,* 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.,* 1995a). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.,* 1986; Dubrovskiy, 1990; Bain *et al.,* 1993; Bain and Dahlheim, 1994). Toothed whales, and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.,* 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.,* 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.,* 1993, 1999; Terhune, 1999; Foote *et al.,* 2004; Parks *et al.,* 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.,* 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.,* 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

3. Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (in both nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways; Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in (but is not limited to) no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification have the potential to be biologically significant if the change affects growth, survival, or reproduction.

Detailed studies regarding responses to anthropogenic sound have been conducted on humpback, gray, and bowhead whales and ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, small toothed whales, and sea otters. The following sub-sections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the different sensitivities of marine mammal species to sound.

Baleen Whales—Richardson *et al.* (1995b) reported changes in surfacing and respiration behavior and the occurrence of turns during surfacing in bowhead whales exposed to playback of underwater sound from drilling activities. These behavioral effects were localized and occurred at distances up to 1.2–2.5 mi (2–4 km).

Richardson *et al.* (2008) reported a slight change in the distribution of bowhead whale calls in response to operational sounds on BP's Northstar Island. The southern edge of the call distribution ranged from 0.47 to 1.46 mi (0.76 to 2.35 km) farther offshore, apparently in response to industrial sound levels. This result however, was only achieved after intensive statistical analyses, and it is not clear that this represented a biologically significant effect.

Richardson *et al.* (1995a) and Moore and Clarke (2002) reviewed a few studies that observed responses of gray whales to aircraft. Cow-calf pairs were quite sensitive to a turboprop survey flown at 1,000 ft (305 m) altitude on the Alaskan summering grounds. In that survey, adults were seen swimming over the calf, or the calf swam under the adult (Ljungblad *et al.,* 1983, cited in Richardson *et al.,* 1995a and Moore and Clarke, 2002). However, when the same aircraft circled for more than 10 minutes at 1,050 ft (320 m) altitude over a group of mating gray whales, no reactions were observed (Ljungblad *et al.,* 1987, cited in Moore and Clarke, 2002). Malme *et al.* (1984, cited in Richardson *et al.,* 1995a and Moore and Clarke, 2002) conducted playback experiments on migrating gray whales. They exposed the animals to underwater noise recorded from a Bell 212 helicopter (estimated altitude = 328 ft [100 m]), at an average of three simulated passes per minute. The authors observed that whales changed their swimming course and sometimes slowed down in response to the playback sound but proceeded to migrate past the transducer. Migrating gray whales did not react overtly to a Bell 212 helicopter at greater than 1,394 ft (425 m) altitude, occasionally reacted when the helicopter was at 1,000–1,198 ft (305–365 m), and usually reacted when it was below 825 ft (250 m; Southwest Research Associates, 1988, cited in Richardson *et al.,* 1995a and Moore and Clarke, 2002). Reactions noted in that study included abrupt turns or dives or both. Green *et al.* (1992, cited in Richardson *et al.,* 1995a) observed that migrating gray whales rarely exhibited noticeable reactions to a straight-line overflight by a Twin Otter at 197 ft (60 m) altitude. Overflights are likely to have little or no disturbance effects on baleen whales. Any disturbance that may occur would likely be temporary and localized.

Southall *et al.* (2007, Appendix C) reviewed a number of papers describing the responses of marine mammals to non-pulsed sound, such as that produced during exploratory drilling operations. In general, little or no response was observed in animals exposed at received levels from 90–120 dB re 1 μPa (rms). Probability of avoidance and other behavioral effects increased when received levels were from 120–160 dB re 1 μPa (rms). Some of the relevant reviews contained in Southall *et al.* (2007) are summarized next.

Baker *et al.* (1982) reported some avoidance by humpback whales to vessel noise when received levels were 110–120 dB (rms) and clear avoidance at 120–140 dB (sound measurements were not provided by Baker but were based

on measurements of identical vessels by Miles and Malme, 1983).

Malme *et al.* (1983, 1984) used playbacks of sounds from helicopter overflight and drilling rigs and platforms to study behavioral effects on migrating gray whales. Received levels exceeding 120 dB induced avoidance reactions. Malme *et al.* (1984) calculated 10%, 50%, and 90% probabilities of gray whale avoidance reactions at received levels of 110, 120, and 130 dB, respectively. Malme *et al.* (1986) observed the behavior of feeding gray whales during four experimental playbacks of drilling sounds (50 to 315 Hz; 21- min overall duration and 10% duty cycle; source levels of 156–162 dB). In two cases for received levels of 100–110 dB, no behavioral reaction was observed. However, avoidance behavior was observed in two cases where received levels were 110–120 dB.

Richardson *et al.* (1990) performed 12 playback experiments in which bowhead whales in the Alaskan Arctic were exposed to drilling sounds. Whales generally did not respond to exposures in the 100 to 130 dB range, although there was some indication of minor behavioral changes in several instances.

McCauley *et al.* (1996) reported several cases of humpback whales responding to vessels in Hervey Bay, Australia. Results indicated clear avoidance at received levels between 118 to 124 dB in three cases for which response and received levels were observed/measured.

Palka and Hammond (2001) analyzed line transect census data in which the orientation and distance off transect line were reported for large numbers of minke whales. The authors developed a method to account for effects of animal movement in response to sighting platforms. Minor changes in locomotion speed, direction, and/or diving profile were reported at ranges from 1,847 to 2,352 ft (563 to 717 m) at received levels of 110 to 120 dB.

Biassoni *et al.* (2000) and Miller *et al.* (2000) reported behavioral observations for humpback whales exposed to a low-frequency sonar stimulus (160- to 330-Hz frequency band; 42-s tonal signal repeated every 6 min; source levels 170 to 200 dB) during playback experiments. Exposure to measured received levels ranging from 120 to 150 dB resulted in variability in humpback singing behavior. Croll *et al.* (2001) investigated responses of foraging fin and blue whales to the same low frequency active sonar stimulus off southern California. Playbacks and control intervals with no transmission were used to investigate behavior and distribution on time scales of several weeks and spatial scales of tens of kilometers. The general conclusion was that whales remained feeding within a region for which 12 to 30 percent of exposures exceeded 140 dB.

Frankel and Clark (1998) conducted playback experiments with wintering humpback whales using a single speaker producing a low-frequency ''M-sequence'' (sine wave with multiple-phase reversals) signal in the 60 to 90 Hz band with output of 172 dB at 1 m. For 11 playbacks, exposures were between 120 and 130 dB re 1 μPa (rms) and included sufficient information regarding individual responses. During eight of the trials, there were no measurable differences in tracks or bearings relative to control conditions, whereas on three occasions, whales either moved slightly away from (n=1) or towards (n=2) the playback speaker during exposure. The presence of the source vessel itself had a greater effect than did the M-sequence playback.

Finally, Nowacek *et al.* (2004) used controlled exposures to demonstrate behavioral reactions of northern right whales to various non-pulse sounds. Playback stimuli included ship noise, social sounds of conspecifics, and a complex, 18-min ''alert'' sound consisting of repetitions of three different artificial signals. Ten whales were tagged with calibrated instruments that measured received sound characteristics and concurrent animal movements in three dimensions. Five out of six exposed whales reacted strongly to alert signals at measured received levels between 130 and 150 dB (i.e., ceased foraging and swam rapidly to the surface). Two of these individuals were not exposed to ship noise, and the other four were exposed to both stimuli. These whales reacted mildly to conspecific signals. Seven whales, including the four exposed to the alert stimulus, had no measurable response to either ship sounds or actual vessel noise.

Baleen whale responses to pulsed sound (e.g., seismic airguns) have been studied more thoroughly than responses to continuous sound (e.g., drill rigs). Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much greater distances (Miller *et al.,* 2005). However, baleen whales exposed to strong noise pulses often react by deviating from their normal migration route (Richardson *et al.,* 1999). Migrating gray and bowhead whales were observed avoiding the sound source by displacing their migration route to varying degrees but within the natural boundaries of the migration corridors (Schick and Urban, 2000; Richardson *et al.,* 1999; Malme *et al.,* 1983). Baleen whale responses to pulsed sound however may depend on the type of activity in which the whales are engaged. Some evidence suggests that feeding bowhead whales may be more tolerant of underwater sound than migrating bowheads (Miller *et al.,* 2005; Lyons *et al.,* 2009; Christie *et al.,* 2010).

Results of studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 2.8–9 mi (4.5–14.5 km) from the source. For the much smaller airgun array used during the VSP survey (total discharge volume between 600 and 880 in^3), the distance to a received level of 160 dB re 1 μPa rms is estimated to be 1.53 mi (2.47 km). Baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and recent studies have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re 1 μPa rms.

Malme *et al.* (1986, 1988) studied the responses of feeding eastern gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50% of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10% of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast and on observations of the distribution of feeding Western Pacific gray whales off Sakhalin Island, Russia, during a seismic survey (Yazvenko *et al.,* 2007).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. While it is not certain whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years, certain species have continued to use areas

ensonified by airguns and have continued to increase in number despite successive years of anthropogenic activity in the area. Gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (Appendix A in Malme *et al.,* 1984). In any event, the brief exposures to sound pulses from the proposed airgun source (the airguns will only be fired for a few hours at a time over the course of 1 to 2 days) are highly unlikely to result in prolonged effects.

Toothed Whales—Most toothed whales have the greatest hearing sensitivity at frequencies much higher than that of baleen whales and may be less responsive to low-frequency sound commonly associated with oil and gas industry exploratory drilling activities. Richardson *et al.* (1995b) reported that beluga whales did not show any apparent reaction to playback of underwater drilling sounds at distances greater than 656–1,312 ft (200–400 m). Reactions included slowing down, milling, or reversal of course after which the whales continued past the projector, sometimes within 164–328 ft (50–100 m). The authors concluded (based on a small sample size) that the playback of drilling sounds had no biologically significant effects on migration routes of beluga whales migrating through pack ice and along the seaward side of the nearshore lead east of Point Barrow in spring.

At least six of 17 groups of beluga whales appeared to alter their migration path in response to underwater playbacks of icebreaker sound (Richardson *et al.,* 1995b). Received levels from the icebreaker playback were estimated at 78–84 dB in the 1/3-octave band centered at 5,000 Hz, or 8–14 dB above ambient. If beluga whales reacted to an actual icebreaker at received levels of 80 dB, reactions would be expected to occur at distances on the order of 6.2 mi (10 km). Finley *et al.* (1990) also reported beluga avoidance of icebreaker activities in the Canadian High Arctic at distances of 22–31 mi (35–50 km). In addition to avoidance, changes in dive behavior and pod integrity were also noted. However, no icebreakers will be used during this proposed program.

Patenaude *et al.* (2002) reported changes in beluga whale diving and respiration behavior, and some whales veered away when a helicopter passed at ≤820 ft (250 m) lateral distance at altitudes up to 492 ft (150 m). However, some belugas showed no reaction to the helicopter. Belugas appeared to show less response to fixed-wing aircraft than to helicopter overflights.

In reviewing responses of cetaceans with best hearing in mid-frequency ranges, which includes toothed whales, Southall *et al.* (2007) reported that combined field and laboratory data for mid-frequency cetaceans exposed to non-pulse sounds did not lead to a clear conclusion about received levels coincident with various behavioral responses. In some settings, individuals in the field showed profound (significant) behavioral responses to exposures from 90–120 dB, while others failed to exhibit such responses for exposure to received levels from 120–150 dB. Contextual variables other than exposure received level, and probable species differences, are the likely reasons for this variability. Context, including the fact that captive subjects were often directly reinforced with food for tolerating noise exposure, may also explain why there was great disparity in results from field and laboratory conditions—exposures in captive settings generally exceeded 170 dB before inducing behavioral responses. A summary of some of the relevant material reviewed by Southall *et al.* (2007) is next.

Buckstaff (2004) reported elevated dolphin whistle rates with received levels from oncoming vessels in the 110 to 120 dB range in Sarasota Bay, Florida. These hearing thresholds were apparently lower than those reported by a researcher listening with towed hydrophones. Morisaka *et al.* (2005) compared whistles from three populations of Indo-Pacific bottlenose dolphins. One population was exposed to vessel noise with spectrum levels of approximately 85 dB/Hz in the 1- to 22-kHz band (broadband received levels approximately 128 dB) as opposed to approximately 65 dB/Hz in the same band (broadband received levels approximately 108 dB) for the other two sites. Dolphin whistles in the noisier environment had lower fundamental frequencies and less frequency modulation, suggesting a shift in sound parameters as a result of increased ambient noise.

Morton and Symonds (2002) used census data on killer whales in British Columbia to evaluate avoidance of non-pulse acoustic harassment devices (AHDs). Avoidance ranges were about 2.5 mi (4 km). Also, there was a dramatic reduction in the number of days ''resident'' killer whales were sighted during AHD-active periods compared to pre- and post-exposure periods and a nearby control site.

Monteiro-Neto *et al.* (2004) studied avoidance responses of tucuxi (Sotalia fluviatilis), a freshwater dolphin, to Dukane® Netmark acoustic deterrent devices. In a total of 30 exposure trials, approximately five groups each demonstrated significant avoidance compared to 20 pinger off and 55 no-pinger control trials over two quadrats of about 0.19 mi^2 (0.5 km^2). Estimated exposure received levels were approximately 115 dB.

Awbrey and Stewart (1983) played back semi-submersible drillship sounds (source level: 163 dB) to belugas in Alaska. They reported avoidance reactions at 984 and 4,921 ft (300 and 1,500 m) and approach by groups at a distance of 2.2 mi (3.5 km; received levels were approximately 110 to 145 dB over these ranges assuming a 15 log R transmission loss). Similarly, Richardson *et al.* (1990) played back drilling platform sounds (source level: 163 dB) to belugas in Alaska. They conducted aerial observations of eight individuals among approximately 100 spread over an area several hundred meters to several kilometers from the sound source and found no obvious reactions. Moderate changes in movement were noted for three groups swimming within 656 ft (200 m) of the sound projector.

Two studies deal with issues related to changes in marine mammal vocal behavior as a function of variable background noise levels. Foote *et al.* (2004) found increases in the duration of killer whale calls over the period 1977 to 2003, during which time vessel traffic in Puget Sound, and particularly whale-watching boats around the animals, increased dramatically. Scheifele *et al.* (2005) demonstrated that belugas in the St. Lawrence River increased the levels of their vocalizations as a function of the background noise level (the ''Lombard Effect'').

Several researchers conducting laboratory experiments on hearing and the effects of non-pulse sounds on hearing in mid-frequency cetaceans have reported concurrent behavioral responses. Nachtigall *et al.* (2003) reported that noise exposures up to 179 dB and 55-min duration affected the trained behaviors of a bottlenose dolphin participating in a temporary threshold shift (TTS) experiment. Finneran and Schlundt (2004) provided a detailed, comprehensive analysis of the behavioral responses of belugas and bottlenose dolphins to 1-s tones (received levels 160 to 202 dB) in the context of TTS experiments. Romano *et al.* (2004) investigated the physiological responses of a bottlenose dolphin and a beluga exposed to these tonal exposures and demonstrated a decrease in blood

cortisol levels during a series of exposures between 130 and 201 dB. Collectively, the laboratory observations suggested the onset of a behavioral response at higher received levels than did field studies. The differences were likely related to the very different conditions and contextual variables between untrained, free-ranging individuals vs. laboratory subjects that were rewarded with food for tolerating noise exposure.

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but, in general, there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003). The beluga may be a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 6.2–12.4 mi (10–20 km) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 6.2–12.4 mi (10–20 km) (Miller *et al.,* 2005).

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.,* 2004). Killer whales were found to be significantly farther from large airgun arrays during periods of shooting compared with periods of no shooting. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water.

Captive bottlenose dolphins and beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2002, 2005). However, the animals tolerated high received levels of sound (p–p level >200 dB re 1 μPa) before exhibiting aversive behaviors.

Pinnipeds—Pinnipeds generally seem to be less responsive to exposure to industrial sound than most cetaceans. Pinniped responses to underwater sound from some types of industrial activities such as seismic exploration appear to be temporary and localized (Harris *et al.,* 2001; Reiser *et al.,* 2009).

Southall *et al.* (2007) reviewed literature describing responses of pinnipeds to non-pulsed sound and reported that the limited data suggest exposures between approximately 90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds exposed to non-pulse sounds in water; no data exist regarding exposures at higher levels. It is important to note that among these studies, there are some apparent differences in responses between field and laboratory conditions. In contrast to the mid-frequency odontocetes, captive pinnipeds responded more strongly at lower levels than did animals in the field. Again, contextual issues are the likely cause of this difference.

Jacobs and Terhune (2002) observed harbor seal reactions to AHDs (source level in this study was 172 dB) deployed around aquaculture sites. Seals were generally unresponsive to sounds from the AHDs. During two specific events, individuals came within 141 and 144 ft (43 and 44 m) of active AHDs and failed to demonstrate any measurable behavioral response; estimated received levels based on the measures given were approximately 120 to 130 dB.

Costa *et al.* (2003) measured received noise levels from an Acoustic Thermometry of Ocean Climate (ATOC) program sound source off northern California using acoustic data loggers placed on translocated elephant seals. Subjects were captured on land, transported to sea, instrumented with archival acoustic tags, and released such that their transit would lead them near an active ATOC source (at 939-m depth; 75-Hz signal with 37.5-Hz bandwidth; 195 dB maximum source level, ramped up from 165 dB over 20 min) on their return to a haul-out site. Received exposure levels of the ATOC source for experimental subjects averaged 128 dB (range 118 to 137) in the 60- to 90-Hz band. None of the instrumented animals terminated dives or radically altered behavior upon exposure, but some statistically significant changes in diving parameters were documented in nine individuals. Translocated northern elephant seals exposed to this particular non-pulse source began to demonstrate subtle behavioral changes at exposure to received levels of approximately 120 to 140 dB.

Kastelein *et al.* (2006) exposed nine captive harbor seals in an approximately 82 x 98 ft (25 x 30 m) enclosure to non-pulse sounds used in underwater data communication systems (similar to acoustic modems). Test signals were frequency modulated tones, sweeps, and bands of noise with fundamental frequencies between 8 and 16 kHz; 128 to 130 [± 3] dB source levels; 1- to 2-s duration [60–80 percent duty cycle]; or 100 percent duty cycle. They recorded seal positions and the mean number of individual surfacing behaviors during control periods (no exposure), before exposure, and in 15-min experimental sessions (n = 7 exposures for each sound type). Seals generally swam away from each source at received levels of approximately 107 dB, avoiding it by approximately 16 ft (5 m), although they did not haul out of the water or change surfacing behavior. Seal reactions did not appear to wane over repeated exposure (i.e., there was no obvious habituation), and the colony of seals generally returned to baseline conditions following exposure. The seals were not reinforced with food for remaining in the sound field.

Potential effects to pinnipeds from aircraft activity could involve both acoustic and non-acoustic effects. It is uncertain if the seals react to the sound of the helicopter or to its physical presence flying overhead. Typical reactions of hauled out pinnipeds to aircraft that have been observed include looking up at the aircraft, moving on the ice or land, entering a breathing hole or crack in the ice, or entering the water. Ice seals hauled out on the ice have been observed diving into the water when approached by a low-flying aircraft or helicopter (Burns and Harbo, 1972, cited in Richardson *et al.,* 1995a; Burns and Frost, 1979, cited in Richardson *et al.,* 1995a). Richardson *et al.* (1995a) note that responses can vary based on differences in aircraft type, altitude, and flight pattern.

Blackwell *et al.* (2004a) observed 12 ringed seals during low-altitude overflights of a Bell 212 helicopter at Northstar in June and July 2000 (9 observations took place concurrent with pipe-driving activities). One seal showed no reaction to the aircraft while the remaining 11 (92%) reacted, either by looking at the helicopter (n = 10) or by departing from their basking site (n = 1). Blackwell *et al.* (2004a) concluded that none of the reactions to helicopters were strong or long lasting, and that seals near Northstar in June and July 2000 probably had habituated to

industrial sounds and visible activities that had occurred often during the preceding winter and spring. There have been few systematic studies of pinniped reactions to aircraft overflights, and most of the available data concern pinnipeds hauled out on land or ice rather than pinnipeds in the water (Richardson *et al.,* 1995a; Born *et al.,* 1999).

Reactions of harbor seals to the simulated sound of a 2-megawatt wind power generator were measured by Koschinski *et al.* (2003). Harbor seals surfaced significantly further away from the sound source when it was active and did not approach the sound source as closely. The device used in that study produced sounds in the frequency range of 30 to 800 Hz, with peak source levels of 128 dB at 1 m at the 80- and 160-Hz frequencies.

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.,* 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.,* 1995a). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.,* 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations.

4. Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is complete recovery), can occur in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). However, in the case of the proposed exploratory drilling program, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing

sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed exploratory drilling program in Cook Inlet. However, several of the sound sources do not even emit sound levels at levels high enough to potentially even cause TTS.

5. Non-Auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (e.g., elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (i.e., goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the effects of sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. Marine mammals might experience stress responses at received levels lower than those

necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS. The source level of the jack-up rig is not loud enough to induce PTS or likely even TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses. Additionally, no beaked whale species occur in the proposed project area.

In general, very little is known about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, which are not proposed for use during this program. For the most part, only low-level continuous sounds would be produced during the exploratory drilling program. In addition, marine mammals that show behavioral avoidance of industry activities, including belugas and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects.

6. Stranding and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays. Additionally, the airguns used during VSP are used for short periods of time. The continuous sounds produced by the drill rig are also far less energetic.

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in Cook Inlet. Beluga whale strandings in Cook Inlet are not uncommon; however, these events often coincide with extreme tidal fluctuations (''spring tides'') or killer whale sightings (Shelden *et al.,* 2003). For example, in August 2012, a group of Cook Inlet beluga whales stranded in the mud flats of Turnagain Arm during low tide and were able to swim free with the flood tide. NMFS does not expect any marine mammals will incur serious injury or mortality in Cook Inlet or strand as a result of the proposed exploratory drilling program.

Vessel Impacts

Vessel activity and noise associated with vessel activity will temporarily increase in the action area during Bluecrest's exploratory drilling program as a result of the operation of a jack-up drill rig and the use of tow and other support vessels. While under tow, the rig and the tow vessels move at slow speeds (2–4 knots). The support barges supplying pipe to the drill rig can typically run at 7–8 knots but may move slower inside Cook Inlet. Based on this information, NMFS does not anticipate and does not propose to authorize take from vessel strikes.

Odontocetes, such as beluga whales, killer whales, and harbor porpoises, often show tolerance to vessel activity; however, they may react at long distances if they are confined by ice, shallow water, or were previously harassed by vessels (Richardson *et al.,* 1995a). Beluga whale response to vessel noise varies greatly from tolerance to extreme sensitivity depending on the activity of the whale and previous experience with vessels (Richardson *et al.,* 1995a). Reactions to vessels depends on whale activities and experience, habitat, boat type, and boat behavior (Richardson *et al.,* 1995a) and may include behavioral responses, such as altered headings or avoidance (Blane and Jaakson, 1994; Erbe and Farmer, 2000); fast swimming; changes in vocalizations (Lesage *et al.,* 1999; Scheifele *et al.,* 2005); and changes in dive, surfacing, and respiration patterns.

There are few data published on pinniped responses to vessel activity, and most of the information is anecdotal (Richardson *et al.,* 1995a). Generally, sea lions in water show tolerance to close and frequently approaching vessels and sometimes show interest in fishing vessels. They are less tolerant when hauled out on land; however, they rarely react unless the vessel approaches within 100–200 m (330–660 ft; reviewed in Richardson *et al.,* 1995a).

Oil Spill and Discharge Impacts

As noted above, the specified activity involves the drilling of an exploratory well and associated activities in lower Cook Inlet during the 2015 open water season. The primary stressors to marine mammals that are reasonably expected to occur will be acoustic in nature. The likelihood of a large or very large oil spill occurring during Bluecrest's proposed exploratory drilling program is remote. Offshore oil spill records in Cook Inlet during 1994–2011 show three spills during oil exploration (ADNR Division of Oil and Gas, 2011 unpub. data): Two oil spills at the UNOCAL Dillion Platform in June 2011 (two gallons) and December 2001 (three gallons); and one oil spill at the UNOCAL Monopod Platform in January 2002 (one gallon). During this same time period, 71 spills occurred offshore in Cook Inlet during oil production. Most spills ranged from 0.0011 to 1 gallon (42 spills), and only three spills were larger than 200 gallons: 210 Gallons in July 2001 at the Cook Inlet Energy Stewart facility; 250 gallons in February 1998 at the King Salmon platform; and 504 gallons in October 1999 at the UNOCAL Dillion platform. All 71 crude oil spills from the offshore platforms, both exploration and production, totaled less than 2,140 gallons. Based on historical data, most oil spills have been small. Moreover, during more than 60 years of oil and gas exploration and development in Cook Inlet, there has not been a single oil well blowout, making it difficult to assign a specific risk factor to the possibility of such an event in Cook Inlet. However, the probability of such an event is thought to be of extremely low probability.

Bluecrest will have various measures and protocols in place that will be implemented to prevent oil releases from the wellbore. Bluecrest has planned formal routine rig maintenance and surveillance checks, as well as normal inspection and equipment checks to be conducted on the jack-up rig daily. The following steps will be in place to prevent oil from entering the water:

- Required inspections will follow standard operating procedures.
- Personnel working on the rig will be directed to report any unusual conditions to appropriate personnel.

• Oily equipment will be regularly wiped down with oil absorbent pads to collect free oil. Drips and small spillage from equipment will be controlled through use of drip pans and oil absorbent drop clothes.

• Oil absorbent materials used to contain oil spills or seeps will be collected and disposed of in sealed plastic bags or metal drums and closed containers.

• The platform surfaces will be kept clean of waste materials and loose debris on a daily basis.

• Remedial actions will be taken when visual inspections indicate deterioration of equipment (tanks) and/or their control systems.

• Following remedial work, and as appropriate, tests will be conducted to determine that the systems function correctly.

Drilling and completion fluids provide primary well control during drilling, work over, or completion operations. These fluids are designed to exert hydrostatic pressure on the wellbore that exceeds the pore pressures within the subsurface formations. This prevents undesired fluid flow into the wellbore. Surface mounted blowout preventer (BOP) equipment provides secondary well control. In the event that primary well control is lost, this surface equipment is used to contain the influx of formation fluid and then safely circulate it out of the wellbore.

The BOP is a large, specialized valve used to seal, control, and monitor oil and gas wells. BOPs come in variety of styles, sizes, and pressure ratings. For Cook Inlet, the BOP equipment used by Bluecrest will consist of:

• Three BOPs pressure safety levels of: 1) 5,000 pounds per square inch (psi) 2) 10,000 psi, and 3) 15,000 psi;

• A minimum of three 35 cm (13⅝ in), 10,000 psi WP ram type preventers;

• One 35 cm (13⅝ in) annular preventer;

• Choke and kill lines that provide circulating paths from/to the choke manifold;

• A two choke manifold that allows for safe circulation of well influxes out of the well bore; and

• A hydraulic control system with accumulator backup closing.

The wellhead, associated valves, and control systems provide blowout prevention during well production. These systems provide several layers of redundancy to ensure pressure containment is maintained. Well control planning is performed in accordance with Alaska Oil and Gas Conservation Commission (AOGCC) and the Department of the Interior's Bureau of Safety and Environment Enforcement (BSEE) regulations. The operator's policies and recommended practices are, at a minimum, equivalent to BSEE regulations. BOP test drills are performed on a frequent basis to ensure the well will be shut in quickly and properly. BOP testing procedures will meet American Petroleum Institute Recommended Practice No. 53 and AOGCC specifications. The BOP tests will be conducted with a nonfreezing fluid when the ambient temperature around the BOP stack is below 0 °C (32 °F). Tests will be conducted at least weekly and before drilling out the shoe of each casing string. The AOGCC will be contacted before each test is conducted, and will be onsite during BOP tests unless an inspection waiver is approved.

Bluecrest developed an Oil Discharge Prevention and Contingency Plan (ODPCP) and has submitted it for approval to Alaska's Department of Environmental Conservation (ADEC). NMFS reviewed the previous ODPCP covering the Cosmopolitan drilling program (prepared by Buccaneer Alaska Operations LLC) during the ESA consultation process for Cosmopolitan leases and found that with implementation of the safety features mentioned above that the risk of an oil spill was discountable.

Despite concluding that the risk of serious injury or mortality from an oil spill in this case is extremely remote because the likelihood of a large or very large oil spill occurring as a result of this proposed exploratory drilling program, NMFS has nonetheless evaluated the potential effects of an oil spill on marine mammals. While an oil spill is not a component of Bluecrest's specified activity for which NMFS is proposing to authorize take, nor is an oil spill likely, potential impacts on marine mammals from an oil spill (in the unlikely event that one occurs) are discussed in more detail next.

1. Potential Effects of Oil on Cetaceans

The specific effects an oil spill would have on cetaceans are not well known. Exposure to spilled oil could lead to skin irritation, baleen fouling (which might reduce feeding efficiency), respiratory distress from inhalation of hydrocarbon vapors, consumption of some contaminated prey items, and temporary displacement from contaminated feeding areas. Geraci and St. Aubin (1990) summarize effects of oil on marine mammals. The number of cetaceans that might be contacted by a spill would depend on the size, timing, and duration of the spill and where the oil is in relation to the animals. Whales may not avoid oil spills, and some have been observed feeding within oil slicks (Goodale *et al.,* 1981).

There is no direct evidence that oil spills, including the much studied Santa Barbara Channel and Exxon Valdez spills, have caused any deaths of cetaceans (Geraci, 1990; Brownell, 1971; Harvey and Dahlheim, 1994). It is suspected that some individually identified killer whales that disappeared from Prince William Sound during the time of the Exxon Valdez spill were casualties of that spill. However, no clear cause and effect relationship between the spill and the disappearance could be established (Dahlheim and Matkin, 1994). The AT–1 pod of transient killer whales that sometimes inhabits Prince William Sound has continued to decline after the Exxon Valdez oil spill (EVOS). Matkin *et al.* (2008) tracked the AB resident pod and the AT–1 transient group of killer whales from 1984 to 2005. The results of their photographic surveillance indicate a much higher than usual mortality rate for both populations the year following the spill (33% for AB Pod and 41% for AT–1 Group) and lower than average rates of increase in the 16 years after the spill (annual increase of about 1.6% for AB Pod compared to an annual increase of about 3.2% for other Alaska killer whale pods). In killer whale pods, mortality rates are usually higher for non-reproductive animals and very low for reproductive animals and adolescents (Olesiuk *et al.,* 1990, 2005; Matkin *et al.,* 2005). No effects on humpback whales in Prince William Sound were evident after the EVOS (von Ziegesar *et al.,* 1994). There was some temporary displacement of humpback whales out of Prince William Sound, but this could have been caused by oil contamination, boat and aircraft disturbance, displacement of food sources, or other causes.

Migrating gray whales were apparently not greatly affected by the Santa Barbara spill of 1969. There appeared to be no relationship between the spill and mortality of marine mammals. The higher than usual counts of dead marine mammals recorded after the spill represented increased survey effort and therefore cannot be conclusively linked to the spill itself (Brownell, 1971; Geraci, 1990). The conclusion was that whales were either able to detect the oil and avoid it or were unaffected by it (Geraci, 1990).

Schwake *et al.* (2013) studied two populations of common bottlenose dolphins in the Gulf of Mexico following the Deepwater Horizon oil spill to evaluate sublethal effects. They conducted health assessments in

Barataria Bay, Louisiana, an area that received heavy and prolonged oiling and in a reference site, Sarasota Bay, Florida, where oil was not observed. Several disease conditions were noted for the Barataria Bay dolphins, including hypoadrenocorticism, pulmonary abnormalities, and tooth loss (Schwake *et al.,* 2013). Even though several of the observed health effects are consistent with exposure to petroleum hydrocarbons because the researchers did not have prespill health data for the Barataria Bay dolphins, they could not rule out that other pre-existing environmental stressors made this population particularly vulnerable to effects from the oil spill (Schwake *et al.,* 2013).

Whales rely on a layer of blubber for insulation, so oil would have little if any effect on thermoregulation by whales. Effects of oiling on cetacean skin appear to be minor and of little significance to the animal's health (Geraci, 1990). Histological data and ultrastructural studies by Geraci and St. Aubin (1990) showed that exposures of skin to crude oil for up to 45 minutes in four species of toothed whales had no effect. They switched to gasoline and applied the sponge up to 75 minutes. This produced transient damage to epidermal cells in whales. Subtle changes were evident only at the cell level. In each case, the skin damage healed within a week. They concluded that a cetacean's skin is an effective barrier to the noxious substances in petroleum. These substances normally damage skin by getting between cells and dissolving protective lipids. In cetacean skin, however, tight intercellular bridges, vital surface cells, and the extraordinary thickness of the epidermis impeded the damage. The authors could not detect a change in lipid concentration between and within cells after exposing skin from a white-sided dolphin to gasoline for 16 hours in vitro.

Whales could ingest oil if their food is contaminated, or oil could also be absorbed through the respiratory tract. Some of the ingested oil is voided in vomit or feces but some is absorbed and could cause toxic effects (Geraci, 1990). When returned to clean water, contaminated animals can depurate this internal oil (Engelhardt, 1978, 1982). Oil ingestion can decrease food assimilation of prey eaten (St. Aubin, 1988). Cetaceans may swallow some oil-contaminated prey, but it likely would be only a small part of their food. It is not known if whales would leave a feeding area where prey was abundant following a spill. Some zooplankton eaten by baleen whales consume oil particles, and bioaccumulation can result. Tissue studies by Geraci and St. Aubin (1990) revealed low levels of naphthalene in the livers and blubber of baleen whales. This result suggests that prey have low concentrations in their tissues, or that baleen whales may be able to metabolize and excrete certain petroleum hydrocarbons. However, baleen whale species are uncommon in the location of Bluecrest's proposed well site. Baleen whales are more likely to be encountered in the lower Inlet during rig towing, far away from the drill sites. Whales exposed to an oil spill are unlikely to ingest enough oil to cause serious internal damage (Geraci and St. Aubin, 1980, 1982), and this kind of damage has not been reported (Geraci, 1990).

Some cetaceans can detect oil and sometimes avoid it, but others enter and swim through slicks without apparent effects (Geraci, 1990; Harvey and Dahlheim, 1994). Bottlenose dolphins in the Gulf of Mexico apparently could detect and avoid slicks and mousse but did not avoid light sheens on the surface (Smultea and Wursig, 1995). After the Regal Sword spill in 1979, various species of baleen and toothed whales were observed swimming and feeding in areas containing spilled oil southeast of Cape Cod, MA (Goodale *et al.,* 1981). For months following EVOS, there were numerous observations of gray whales, harbor porpoises, Dall's porpoises, and killer whales swimming through light-to-heavy crude-oil sheens (Harvey and Dalheim, 1994, cited in Matkin *et al.,* 2008). However, if some of the animals avoid an area because of the oil, then the effects of the oiling would be less severe on those individuals.

2. Potential Effects of Oil on Pinnipeds

Externally oiled phocid seals often survive and become clean, but heavily oiled seal pups and adults may die, depending on the extent of oiling and characteristics of the oil. Adult seals may suffer some temporary adverse effects, such as eye and skin irritation, with possible infection (MMS, 1996). Such effects may increase stress, which could contribute to the death of some individuals. There is a likelihood that newborn seal pups, if contacted by oil, would die from oiling through loss of insulation and resulting hypothermia.

Reports of the effects of oil spills have shown that some mortality of seals may have occurred as a result of oil fouling; however, large scale mortality had not been observed prior to the EVOS (St. Aubin, 1990). Effects of oil on marine mammals were not well studied at most spills because of lack of baseline data and/or the brevity of the post-spill surveys. The largest documented impact of a spill, prior to EVOS, was on young seals in January in the Gulf of St. Lawrence (St. Aubin, 1990). Brownell and Le Boeuf (1971) found no marked effects of oil from the Santa Barbara oil spill on California sea lions or on the mortality rates of newborn pups.

Intensive and long-term studies were conducted after the EVOS in Alaska. There may have been a long-term decline of 36% in numbers of molting harbor seals at oiled haul-out sites in Prince William Sound following EVOS (Frost *et al.,* 1994a). However, in a reanalysis of those data and additional years of surveys, along with an examination of assumptions and biases associated with the original data, Hoover-Miller *et al.* (2001) concluded that the EVOS effect had been overestimated. The decline in attendance at some oiled sites was more likely a continuation of the general decline in harbor seal abundance in Prince William Sound documented since 1984 (Frost *et al.,* 1999) rather than a result of EVOS. The results from Hoover-Miller *et al.* (2001) indicate that the effects of EVOS were largely indistinguishable from natural decline by 1992. However, while Frost *et al.* (2004) concluded that there was no evidence that seals were displaced from oiled sites, they did find that aerial counts indicated 26% fewer pups were produced at oiled locations in 1989 than would have been expected without the oil spill. Harbor seal pup mortality at oiled beaches was 23% to 26%, which may have been higher than natural mortality, although no baseline data for pup mortality existed prior to EVOS (Frost *et al.,* 1994a). There was no conclusive evidence of spill effects on Steller sea lions (Calkins *et al.,* 1994). Oil did not persist on sea lions themselves (as it did on harbor seals), nor did it persist on sea lion haul-out sites and rookeries (Calkins *et al.,* 1994). Sea lion rookeries and haul out sites, unlike those used by harbor seals, have steep sides and are subject to high wave energy (Calkins *et al.,* 1994).

Adult seals rely on a layer of blubber for insulation, and oiling of the external surface does not appear to have adverse thermoregulatory effects (Kooyman *et al.,* 1976, 1977; St. Aubin, 1990). Contact with oil on the external surfaces can potentially cause increased stress and irritation of the eyes of ringed seals (Geraci and Smith, 1976; St. Aubin, 1990). These effects seemed to be temporary and reversible, but continued exposure of eyes to oil could cause permanent damage (St. Aubin, 1990). Corneal ulcers and abrasions, conjunctivitis, and swollen nictitating

membranes were observed in captive ringed seals placed in crude oil-covered water (Geraci and Smith, 1976) and in seals in the Antarctic after an oil spill (Lillie, 1954).

Marine mammals can ingest oil if their food is contaminated. Oil can also be absorbed through the respiratory tract (Geraci and Smith, 1976; Engelhardt *et al.,* 1977). Some of the ingested oil is voided in vomit or feces but some is absorbed and could cause toxic effects (Engelhardt, 1981). When returned to clean water, contaminated animals can depurate this internal oil (Engelhardt, 1978, 1982, 1985). In addition, seals exposed to an oil spill are unlikely to ingest enough oil to cause serious internal damage (Geraci and St. Aubin, 1980, 1982).

Although seals may have the capability to detect and avoid oil, they apparently do so only to a limited extent (St. Aubin, 1990). Seals may abandon the area of an oil spill because of human disturbance associated with cleanup efforts, but they are most likely to remain in the area of the spill. One notable behavioral reaction to oiling is that oiled seals are reluctant to enter the water, even when intense cleanup activities are conducted nearby (St. Aubin, 1990; Frost *et al.,* 1994b, 2004).

Seals that are under natural stress, such as lack of food or a heavy infestation by parasites, could potentially die because of the additional stress of oiling (Geraci and Smith, 1976; St. Aubin, 1990; Spraker *et al.,* 1994). Female seals that are nursing young would be under natural stress, as would molting seals. In both cases, the seals would have reduced food stores and may be less resistant to effects of oil than seals that are not under some type of natural stress. Seals that are not under natural stress (e.g., fasting, molting) would be more likely to survive oiling. In general, seals do not exhibit large behavioral or physiological reactions to limited surface oiling or incidental exposure to contaminated food or vapors (St. Aubin, 1990; Williams *et al.,* 1994). Effects could be severe if seals surface in heavy oil slicks in leads or if oil accumulates near haul-out sites (St. Aubin, 1990).

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by the exploratory drilling program (i.e. the drill rig and the airguns). However, other potential impacts are also possible to the surrounding habitat from physical disturbance, discharges, and an oil spill (should one occur). This section describes the potential impacts to marine mammal habitat from the specified activity, including impacts on fish and invertebrates species typically preyed upon by marine mammals in the area.

Common Marine Mammal Prey in the Proposed Drilling Area

Fish are the primary prey species for marine mammals in Cook Inlet. Beluga whales feed on a variety of fish, shrimp, squid, and octopus (Burns and Seaman, 1986). Common prey species in Knik Arm include salmon, eulachon and cod. Harbor seals feed on fish such as pollock, cod, capelin, eulachon, Pacific herring, and salmon, as well as a variety of benthic species, including crabs, shrimp, and cephalopods. Harbor seals are also opportunistic feeders with their diet varying with season and location. The preferred diet of the harbor seal in the Gulf of Alaska consists of pollock, octopus, capelin, eulachon, and Pacific herring (Calkins, 1989). Other prey species include cod, flat fishes, shrimp, salmon, and squid (Hoover, 1988). Harbor porpoises feed primarily on Pacific herring, cod, whiting (hake), pollock, squid, and octopus (Leatherwood *et al.,* 1982). In the Cook Inlet area, harbor porpoise feed on squid and a variety of small schooling fish, which would likely include Pacific herring and eulachon (Bowen and Siniff, 1999; NMFS, unpublished data). Killer whales feed on either fish or other marine mammals depending on genetic type (resident versus transient respectively). Killer whales in Knik Arm are typically the transient type (Shelden *et al.,* 2003) and feed on beluga whales and other marine mammals, such as harbor seal and harbor porpoise. The Steller sea lion diet consists of a variety of fishes (capelin, cod, herring, mackerel, pollock, rockfish, salmon, sand lance, etc.), bivalves, squid, octopus, and gastropods.

Potential Impacts From Seafloor Disturbance on Marine Mammal Habitat

There is a possibility of seafloor disturbance or increased turbidity in the vicinity of the drill sites. Seafloor disturbance could occur with bottom founding of the drill rig legs and anchoring system. These activities could lead to direct effects on bottom fauna, through either displacement or mortality. Increase in suspended sediments from seafloor disturbance also has the potential to indirectly affect bottom fauna and fish. The amount and duration of disturbed or turbid conditions will depend on sediment material.

The potential direct habitat impact by the Bluecrest drilling operation is limited to the actual drill-rig footprint defined as the area occupied and enclosed by the drill-rig legs. The jack-up rig will temporarily disturb one offshore location in lower Cook Inlet, where the well is proposed to be drilled. Bottom disturbance would occur in the area where the three legs of the rig would be set down and where the actual well would be drilled. The jack-up drill rig footprint would occupy three steel piles at 14 m (46 ft) diameter. The well casing would be a 76 cm (30 in) diameter pipe extending from the seafloor to the rig floor. The casing would only be in place during drilling activities at each potential well location. The total area of disturbance was calculated as 0.54 acres during the land use permitting process. The collective 2-acre footprint of the wells represents a very small fraction of the 7,300 square mile Cook Inlet surface area. Potential damage to the Cook Inlet benthic community will be limited to the actual surface area of the three spud cans (1,585 square feet each or 4,755 square feet total) that form the ''foot'' of each leg. Given the high tidal energy at the well site locations, drilling footprints are not expected to support benthic communities equivalent to shallow lower energy sites found in nearshore waters where harbor seals mostly feed. The presence of the drill rig is not expected to result in direct loss of marine mammal habitat.

Potential Impacts From Sound Generation

With regard to fish as a prey source for odontocetes and seals, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

Fish produce sounds that are associated with behaviors that include territoriality, mate search, courtship, and aggression. It has also been speculated that sound production may provide the means for long distance communication and communication under poor underwater visibility conditions (Zelick *et al.,* 1999), although the fact that fish communicate at low-frequency sound levels where the masking effects of ambient noise are naturally highest suggests that very long

distance communication would rarely be possible. Fish have evolved a diversity of sound generating organs and acoustic signals of various temporal and spectral contents. Fish sounds vary in structure, depending on the mechanism used to produce them (Hawkins, 1993). Generally, fish sounds are predominantly composed of low frequencies (less than 3 kHz).

Since objects in the water scatter sound, fish are able to detect these objects through monitoring the ambient noise. Therefore, fish are probably able to detect prey, predators, conspecifics, and physical features by listening to environmental sounds (Hawkins, 1981). There are two sensory systems that enable fish to monitor the vibration-based information of their surroundings. The two sensory systems, the inner ear and the lateral line, constitute the acoustico-lateralis system.

Although the hearing sensitivities of very few fish species have been studied to date, it is becoming obvious that the intra- and inter-specific variability is considerable (Coombs, 1981). Nedwell *et al.* (2004) compiled and published available fish audiogram information. A noninvasive electrophysiological recording method known as auditory brainstem response is now commonly used in the production of fish audiograms (Yan, 2004). Generally, most fish have their best hearing in the low-frequency range (i.e., less than 1 kHz). Even though some fish are able to detect sounds in the ultrasonic frequency range, the thresholds at these higher frequencies tend to be considerably higher than those at the lower end of the auditory frequency range.

Literature relating to the impacts of sound on marine fish species can be divided into the following categories: (1) Pathological effects; (2) physiological effects; and (3) behavioral effects. Pathological effects include lethal and sub-lethal physical damage to fish; physiological effects include primary and secondary stress responses; and behavioral effects include changes in exhibited behaviors of fish. Behavioral changes might be a direct reaction to a detected sound or a result of the anthropogenic sound masking natural sounds that the fish normally detect and to which they respond. The three types of effects are often interrelated in complex ways. For example, some physiological and behavioral effects could potentially lead to the ultimate pathological effect of mortality. Hastings and Popper (2005) reviewed what is known about the effects of sound on fishes and identified studies needed to address areas of uncertainty relative to measurement of sound and the responses of fishes. Popper *et al.* (2003/2004) also published a paper that reviews the effects of anthropogenic sound on the behavior and physiology of fishes.

Potential effects of exposure to continuous sound on marine fish include TTS, physical damage to the ear region, physiological stress responses, and behavioral responses such as startle response, alarm response, avoidance, and perhaps lack of response due to masking of acoustic cues. Most of these effects appear to be either temporary or intermittent and therefore probably do not significantly impact the fish at a population level. The studies that resulted in physical damage to the fish ears used noise exposure levels and durations that were far more extreme than would be encountered under conditions similar to those expected during Bluecrest's proposed exploratory drilling activities.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.,* 1981), such as the type of sound that will be produced by the drillship, and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.,* 1983; Ona, 1988; Ona and Godo, 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.,* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.,* 1995a). (Based on models, the 160 dB radius for the jack-up rig would extend approximately 33 ft [10 m]; therefore, fish would need to be in close proximity to the drill rig for the noise to be audible). In calm weather, ambient noise levels in audible parts of the spectrum lie between 60 dB to 100 dB.

Bluecrest also proposes to conduct VSP surveys with an airgun array for a short period of time during the drilling season (only a few hours over 1–2 days over the course of the entire proposed drilling program). Airguns produce impulsive sounds as opposed to continuous sounds at the source. Short, sharp sounds can cause overt or subtle changes in fish behavior. Chapman and Hawkins (1969) tested the reactions of whiting (hake) in the field to an airgun. When the airgun was fired, the fish dove from 82 to 180 ft (25 to 55 m) depth and formed a compact layer. The whiting dove when received sound levels were higher than 178 dB re 1 μPa (Pearson *et al.,* 1992).

Pearson *et al.* (1992) conducted a controlled experiment to determine effects of strong noise pulses on several species of rockfish off the California coast. They used an airgun with a source level of 223 dB re 1 μPa. They noted:

- Startle responses at received levels of 200–205 dB re 1 μPa and above for two sensitive species, but not for two other species exposed to levels up to 207 dB;
- Alarm responses at 177–180 dB for the two sensitive species, and at 186 to 199 dB for other species;
- An overall threshold for the above behavioral response at about 180 dB;
- An extrapolated threshold of about 161 dB for subtle changes in the behavior of rockfish; and
- A return to pre-exposure behaviors within the 20–60 minute exposure period.

In summary, fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa may cause subtle changes in behavior. Pulses at levels of 180 dB may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Skalski *et al.,* 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the strong sound source may again elicit disturbance responses from the same fish. Underwater sound levels from the drill rig and other vessels produce sounds lower than the response threshold reported by Pearson *et al.* (1992), and are not likely to result in major effects to fish near the proposed drill site.

Based on a sound level of approximately 140 dB, there may be some avoidance by fish of the area near

the jack-up while drilling, around the rig under tow, and around other support and supply vessels when underway. Any reactions by fish to these sounds will last only minutes (Mitson and Knudsen, 2003; Ona *et al.,* 2007) longer than the vessel is operating at that location or the drill rig is drilling. Any potential reactions by fish would be limited to a relatively small area within about 33 ft (10 m) of the drill rig during drilling. Avoidance by some fish or fish species could occur within portions of this area.

The lease areas do not support major populations of cod, Pollock, and sole, although all four salmon species and smelt may migrate through the area to spawning rivers in upper Cook Inlet (Shields and Dupuis, 2012). Residency time for the migrating finfish in the vicinity of an operating platform would be short-term, limiting fish exposure to noise associated with the proposed drilling program.

Some of the fish species found in Cook Inlet are prey sources for odontocetes and pinnipeds. A reaction by fish to sounds produced by Bluecrest's proposed operations would only be relevant to marine mammals if it caused concentrations of fish to vacate the area. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the sound source, if any would occur at all due to the low energy sounds produced by the majority of equipment proposed for use. Impacts on fish behavior are predicted to be inconsequential. Thus, feeding odontocetes and pinnipeds would not be adversely affected by this minimal loss or scattering, if any, which is not expected to result in reduced prey abundance. The proposed drilling area is not a common feeding area for baleen whales.

Potential Impacts From Drilling Discharges

The drill rig *Endeavour* will operate under the Alaska Pollutant Discharge Elimination System (APDES) general permit AKG–31–5021 for wastewater discharges (ADEC, 2012). This permit authorizes discharges from oil and gas extraction facilities engaged in exploration under the Offshore and Coastal Subcategories of the Oil and Gas Extraction Point Source Category (40 CFR part 435). Twelve effluents are authorized for discharge into Cook Inlet once ADEC discharge limits have been met. The authorized discharges include: drilling fluids and drill cuttings, deck drainage, sanitary waste, domestic waste, blowout preventer fluid, boiler blow down, fire control system test water, uncontaminated ballast water, bilge water, excess cement slurry, mud cuttings cement at sea floor, and completion fluids. Areas prohibited from discharge in the Cook Inlet are 10-meter (33-foot) isobaths, 5-meter (16-foot) isobaths, and other geographic area restrictions (AKG–31–5021.I.C.). The *Endeavour* is also authorized under EPA's Vessel General Permit for deck wash down and runoff, gray water, and gray water mixed with sewage discharges. The effluent limits and related requirements for these discharges in the Vessel General Permit are to minimize or eliminate to the extent achievable using control measures (best management practices) (EPA, 2011).

Drilling wastes include drilling fluids, known as mud, rock cuttings, and formation waters. Drilling wastes (non-hydrocarbon) will be discharged to the Cook Inlet under the approved APDES general permit. Drilling wastes (hydrocarbon) will be delivered to an onshore permitted location for disposal. During drilling, the onsite tool pusher/driller and qualified mud engineers will direct and maintain desired mud properties, and maintain the quantities of basic mud materials on site as dictated by good oilfield practice. Bluecrest will follow best management practices to ensure that a sufficient inventory of barite and lost circulation materials are maintained on the drilling vessel to minimize the possibility of a well upset and the likelihood of a release of pollutants to Cook Inlet waters. These materials can be re-supplied, if required, using the supply vessel. Because adverse weather could prevent immediate re-supply, sufficient materials will be available on board to completely rebuild the total circulating volume. Bluecrest will conduct an Environmental Monitoring Study of relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal and up to a least one year after drilling operations cease in accordance with the APDES general permit for discharges of drilling muds and cuttings.

Non-drilling wastewater includes deck drainage, sanitary waste, domestic waste, blowout preventer fluid, boiler blow down, fire control test water, bilge water, non-contact cooling water, and uncontaminated ballast water. Non-drilling wastewater will be discharged into Cook Inlet under the approved APDES general permit or delivered to an onshore permitted location for disposal. Mud cuttings will be constantly tested. No hydrocarboned muds will be permitted to be discharged into Cook Inlet. They will be hauled offsite. Solid waste (e.g., packaging, domestic trash) will be classified, segregated, and labeled as general, universal, and Resource Conservation and Recovery Act exempt or non-exempt waste. It will be stored in containers at designated accumulation areas. Then, it will be packaged and palletized for transport to an approved on-shore disposal facility. No hazardous wastes should not be generated as a result of this project. However, if any hazardous wastes were generated, it would be temporarily stored in an onboard satellite accumulation area and then transported offsite for disposal at an approved facility.

With oil and gas platforms presently operating in Cook Inlet, there is concern for continuous exposure to potentially toxic heavy metals and metalloids (i.e., mercury, lead, cadmium, copper, zinc, and arsenic) that are associated with oil and gas development and production. These elements occur naturally in the earth's crust and the oceans but many also have anthropogenic origins from local sources of pollution or from contamination from atmospheric distribution.

Discharging drill cuttings or other liquid waste streams generated by the drilling vessel could potentially affect marine mammal habitat. Toxins could persist in the water column, which could have an impact on marine mammal prey species. However, despite a considerable amount of investment in research on exposures of marine mammals to organochlorines or other toxins, there have been no marine mammal deaths in the wild that can be conclusively linked to the direct exposure to such substances (O'Shea, 1999).

Drilling muds and cuttings discharged to the seafloor can lead to localized increased turbidity and increase in background concentrations of barium and occasionally other metals in sediments and may affect lower trophic organisms. Drilling muds are composed primarily of bentonite (clay), and the toxicity is therefore low. Heavy metals in the mud may be absorbed by benthic organisms, but studies have shown that heavy metals do not bio-magnify in marine food webs (Neff *et al.,* 1989). Effects on benthic communities are nearly always restricted to a zone within about 328 to 492 ft (100 to 150 m) of the discharge, where cuttings accumulations are greatest. Discharges and drill cuttings could impact fish by displacing them from the affected area.

Levels of heavy metals and other elements (cadmium, mercury, selenium, vanadium, and silver) were generally

lower in the livers of Cook Inlet beluga whales than those of other beluga whale stocks, while copper was higher (Becker *et al.,* 2001). Hepatic methyl mercury levels were similar to those reported for other beluga whales (Geraci and St. Aubin, 1990). The relatively high hepatic concentration of silver found in the eastern Chukchi Sea and Beaufort Sea stocks of belugas was also found in the Cook Inlet animals, suggesting a species-specific phenomenon. However, because of the limited discharges no water quality impacts are anticipated that would negatively affect habitat for Cook Inlet marine mammals.

Potential Impacts From Drill Rig Presence

The horizontal dimensions of the *Endeavour* jack-up rig are 160 ft by 35 ft (48.8 m by 10.7 m), and the dimensions for the *Spartan 151* jack-up rig are nearly the same. The dimensions of the drill rig (less than one football field on either side) are not significant enough to cause a large-scale diversion from the animals' normal swim and migratory paths. Any deflection of marine mammal species due to the physical presence of the drill rig would be very minor. The drill rig's physical footprint is small relative to the size of the geographic region it will occupy and will likely not cause marine mammals to deflect greatly from their typical migratory route. Also, even if animals may deflect because of the presence of the drill rig, Cook Inlet is much larger in size than the length of the drill rig (many dozens of miles vs. less than one football field), and animals would have other means of passage around the drill rig. In sum, the physical presence of the drill rig is not likely to cause a significant deflection to migrating marine mammals.

Potential Impacts From an Oil Spill

Lower trophic organisms and fish species are primary food sources for marine mammals likely to be found in the proposed project vicinity. Any diminishment of feeding habitat during the summer months due to an oil spill or response could affect the energy balance of marine mammals. If oil found its way into upper Cook Inlet in the area of the Susitna and Little Susitna rivers during the summer months, a large portion of Cook Inlet beluga whale Area 1 critical habitat could be impacted. If an oil spill were to occur later in the season, it could become trapped in or under the ice or travel with the thinner ice pans.

Due to their wide distribution, large numbers, and rapid rate of regeneration, the recovery of marine invertebrate populations is expected to occur soon after the surface oil passes. Spill response activities are not likely to disturb the prey items of whales or seals sufficiently to cause more than minor effects. Spill response activities could cause marine mammals to avoid the disturbed habitat that is being cleaned. However, by causing avoidance, animals would avoid impacts from the oil itself. Additionally, the likelihood of an oil spill is expected to be very low, as discussed earlier in this document.

Based on the preceding discussion of potential types of impacts to marine mammal habitat, and taking into account the very low likelihood of a large or very large oil spill, overall, the proposed specified activity is not expected to cause significant impacts on habitats used by the marine mammal species in the proposed project area or on the food sources that they utilize.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). Later in this document in the ''Proposed Incidental Harassment Authorization'' section, NMFS lays out the proposed conditions for review, as they would appear in the final IHA (if issued).

The drill rig does not emit sound levels that would result in Level A harassment (injury), which NMFS typically requires applicants to prevent through mitigation (such as shutdowns). However, because take of beluga whales and Steller sea lions is not authorized, shutdown procedures will be undertaken to avoid all take of these species, including take by Level B harassment. For continuous sounds, such as those produced by drilling operations and rig tow, NMFS uses a received level of 120-dB (rms) to indicate the onset of Level B harassment. For impulse sounds, such as those produced by the airgun array during the VSP surveys or the impact hammer during conductor pipe driving, NMFS uses a received level of 160-dB (rms) to indicate the onset of Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms) for pinnipeds. Table 1 in this document outlines the various applicable radii for which different mitigation measures would apply.

TABLE 1—APPLICABLE MITIGATION AND SHUTDOWN RADII FOR BLUECREST'S PROPOSED LOWER COOK INLET EXPLORATORY DRILLING PROGRAM

	190 dB radius	180 dB radius	160 dB radius	120 dB radius
Impact hammer during conductor pipe driving	60 m (200 ft)	250 m (820 ft)	1.6 km (1 mi)	NA.
Airguns during VSP	120 m (394 ft)	240 m (787 ft)	2.5 km (1.55 mi)	NA.
Rig tow	NA	NA	NA	600 m (2,000 ft).
Deep well pumps on the jack-up rig	NA	NA	NA	260 m (853 ft).

Rig tow source levels do not exceed 171 dB (rms); Jack-up rig source levels without deep well pumps is below ambient sound levels; NA=Not applicable

Mitigation Measures Proposed by Bluecrest

For the proposed mitigation measures, Bluecrest listed the following protocols to be implemented during its exploratory drilling program in Cook Inlet.

1. Conductor Pipe Driving Measures

Protected species observers (PSOs) will observe from the drill rig during this 2–3 day portion of the proposed program out to the 160 dB (rms) radius of 1.6 km (1 mi). If marine mammal species for which take is not authorized enter this zone, then use of the impact hammer will cease. If cetaceans for which take is authorized enter within the 180 dB (rms) radius of 250 m (820 ft) or if pinnipeds for which take is authorized enter within the 190 dB (rms) radius of 60 m (200 ft), then use

of the impact hammer will cease. Following a shutdown of impact hammering activities, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

Bluecrest proposes to follow a ramp-up procedure during impact hammering activities. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then Bluecrest can initiate impact hammering using a ''soft start'' technique. Hammering will begin with an initial set of three strikes at 40 percent energy followed by a 1 min waiting period, then two subsequent three-strike sets. This ''soft-start'' procedure will be implemented anytime impact hammering has ceased for 30 minutes or more. Impact hammer ''soft-start'' will not be required if the hammering downtime is for less than 30 minutes and visual surveys are continued throughout the silent period and no marine mammals are observed in the applicable zones during that time. Monitoring will occur during all hammering sessions.

2. VSP Airgun Measures

PSOs will observe from the drill rig during this 1–2 day portion of the proposed program out to the 160 dB radius of 2.5 km (1.55 mi). If marine mammal species for which take is not authorized enter this zone, then use of the airguns will cease. If cetaceans for which take is authorized enter within the 180 dB (rms) radius of 240 m (787 ft) or if pinnipeds for which take is authorized enter within the 190 dB (rms) radius of 120 m (394 ft), then use of the airguns will cease. Following a shutdown of airgun operations, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

Bluecrest proposes to follow a ramp-up procedure during airgun operations. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then Bluecrest can initiate airgun operations using a ''ramp-up'' technique. Airgun operations will begin with the firing of a single airgun, which will be the smallest gun in the array in terms of energy output (dB) and volume (in^3). Operators will then continue ramp-up by gradually activating additional airguns over a period of at least 30 minutes (but not longer than 40 minutes) until the desired operating level of the airgun array is obtained. This ramp-up procedure will be implemented anytime airguns have not been fired for 30 minutes or more. Airgun ramp-up will not be required if the airguns have been off for less than 30 minutes and visual surveys are continued throughout the silent period and no marine mammals are observed in the applicable zones during that time. Monitoring will occur during all airgun usage.

3. Rig Tow and Drill Rig Operation

As mentioned previously, these activities do not generate sounds that result in injury. However, PSOs will be stationed on the helicopter platform (bow) of the drill rig (positioned about 100 ft above the waterline) to watch for marine mammals. With the exception of the operation of the deep-well pump on the jack-up rig, the other machinery generates sound levels below ambient. PSOs will observe from the drill rig during this portion of the proposed program out to the 120 dB radius of 260 m (853 ft). If marine mammal species for which take is not authorized enter this zone, then the deep well pumps will be turned off. The PSOs will operate from multiple stations on the rig, recognizing that the shutdown radius begins from the submersed pump housed inside the forward jack-up leg.

4. Oil Spill Plan

Bluecrest developed an Oil Discharge Prevention and Contingency Plan (ODPCP) and has submitted it for approval to Alaska's Department of Environmental Conservation (ADEC). NMFS reviewed the previous ODPCP covering the Cosmopolitan drilling program (prepared by Buccaneer Alaska Operations LLC) during the ESA consultation process for Cosmopolitan leases and found that with implementation of the safety features mentioned above that the risk of an oil spill was discountable. The new ODPCP must be approved before operations can commence.

5. Pollution Discharge Plan

When the drill rig is towed or otherwise floating it is classified as a vessel (like a barge). During those periods, it is covered under a form of National Pollutant Discharge Elimination System permit known as a Vessel General Permit. This permit remains federal and is a ''no discharge permit,'' which allows for the discharge of storm water and closed system fire suppression water but no other effluents.

When the legs are down, the drill rig becomes a facility. During those periods, it is covered under an approved APDES. Under the APDES, certain discharges are permitted. However, Bluecrest is not permitted to discharge gray water, black water, or hydrocarboned muds. They are all hauled off and not discharged.

Mitigation Measures Proposed by NMFS

During rig towing operations, speed will be reduced to 8 knots or less, as safety allows, at the approach of any whales or Steller sea lions within 2,000 ft (610 m) of the towing operations.

NMFS proposes that when Bluecrest utilizes helicopters for support operations that the helicopters must maintain an altitude of at least 1,000 ft (305 m), except during takeoffs, landings, or emergency situations.

Mitigation Conclusions

NMFS has carefully evaluated Bluecrest's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measures are expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the measures to minimize adverse impacts as planned; and
- The practicability of the measures for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of seismic airguns, impact hammers, drill rig deep well pumps, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of seismic airguns impact hammers, drill rig deep well pumps, or other activities expected to result in the take of marine mammals (this goal may contribute to 1,

above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of seismic airguns impact hammers, drill rig deep well pumps, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Bluecrest submitted information regarding marine mammal monitoring to be conducted during the proposed exploratory drilling program as part of the IHA application. That information can be found in Appendix 2 of the application. The monitoring measures may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures proposed by the applicant or prescribed by NMFS should accomplish one or more of the following top-level goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, i.e., presence, abundance, distribution, and/or density of species.

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (e.g. sound or visual stimuli), through better understanding of one or more of the following: The action itself and its environment (e.g. sound source characterization, propagation, and ambient noise levels); the affected species (e.g. life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (e.g. age class of exposed animals or known pupping, calving or feeding areas).

3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, e.g., at what distance or received level).

4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: The long-term fitness and survival of an individual; or the population, species, or stock (e.g. through effects on annual rates of recruitment or survival).

5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (e.g., through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

Proposed Monitoring Measures

1. Visual Monitoring

PSOs will be required to monitor the area for marine mammals aboard the drill rig during rig tow, exploratory drilling operations, conductor pipe driving, and VSP operations. Standard marine mammal observing field equipment will be used, including reticule binoculars, Big-eye binoculars, inclinometers, and range-finders. If conductor pipe driving or VSP operations occur at night, PSOs will be equipped with night scopes. At least one PSO will be on duty at all times when operations are occurring. Shifts shall not last more than 4 hours, and PSOs will not observe for more than 12 hours in a 24-hour period.

2. Sound Source Verification Monitoring

Sound source verification (SSV) measurements have already been conducted for the *Endeavour* and all other sound generating activities planned at the Cosmopolitan well site by Illingworth and Rodkin (2014). Hydroacoustical testing of the *Spartan 151* was also conducted by MAI (2011). No SSV measurements are planned at this time for the 2015 program.

Reporting Measures

1. 90-Day Technical Report

Daily field reports will be prepared that include daily activities, marine mammal monitoring efforts, and a record of the marine mammals and their behaviors and reactions observed that day. These daily reports will be used to help generate the 90-day technical report. A report will be due to NMFS no later than 90 days after the expiration of the IHA (if issued). The Technical Report will include the following:

- Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).
- Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare).
- Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
- Analyses of the effects of operations.

• Sighting rates of marine mammals (and other variables that could affect detectability), such as: (i) Initial sighting distances versus operational activity state; (ii) closest point of approach versus operational activity state; (iii) observed behaviors and types of movements versus operational activity state; (iv) numbers of sightings/individuals seen versus operational activity state; (v) distribution around the drill rig versus operational activity state; and (vi) estimates of take by Level B harassment based on presence in the Level B harassment zones.

2. Notification of Injured or Dead Marine Mammals

In the unanticipated event that Bluecrest's specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), Bluecrest would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, the Alaska Region Protected Resources Division, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

• Time, date, and location (latitude/longitude) of the incident;
• Name and type of vessel involved;
• Vessel's speed during and leading up to the incident;
• Description of the incident;
• Status of all sound source use in the 24 hours preceding the incident;
• Water depth;
• Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Bluecrest to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Bluecrest would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Bluecrest discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Bluecrest would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, the Alaska Region Protected Resources Division, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report would include the same information identified in the paragraph above. If the observed marine mammal is dead, activities would be able to continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described below must be implemented. NMFS would work with Bluecrest to determine whether modifications in the activities are appropriate.

In the event that Bluecrest discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., carcass with moderate to advanced decomposition, or scavenger damage), Bluecrest would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, the Alaska Region Protected Resources Division, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Bluecrest would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described below must be implemented. In this case, NMFS will notify Bluecrest when activities may resume.

3. Injured Marine Mammals

The following describe the specific actions Bluecrest must take if a live marine mammal stranding is reported in Cook Inlet coincident to, or within 72 hours of seismic activities involving the use of airguns. A live stranding event is defined as a marine mammal: (i) On a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in apparent need of medical attention; or (iii) in the waters under the jurisdiction of the United States (including navigable waters) but is unable to return to its natural habitat under its own power or without assistance.

The shutdown procedures described here are not related to the investigation of the cause of the stranding and their implementation is in no way intended to imply that Bluecrest's airgun operation is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that initially contributed to the stranding.

Should Bluecrest become aware of a live stranding event (from NMFS or another source), Bluecrest must immediately implement a shutdown of the airgun array. A shutdown must be implemented whenever the animal is within 5 km of the airgun array. Shutdown procedures will remain in effect until NMFS determines that, and advises Bluecrest that, all live animals involved in the stranding have left the area (either of their own volition or following herding by responders).

Within 48 hours of the notification of the live stranding event, Bluecrest must inform NMFS where and when they were operating airguns and at what discharge volumes. Bluecrest must appoint a contact who can be reached 24/7 for notification of live stranding events. Immediately upon notification of the live stranding event, this person must order the immediate shutdown of the airguns. These conditions are in addition to those noted above.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment of some species is anticipated as a result of the proposed drilling program. Anticipated impacts to marine mammals are associated with noise propagation from the sound sources (e.g., drill rig and tow, airguns, and impact hammer) used in the drilling program. Additional disturbance to marine mammals may result from visual disturbance of the drill rig or support

vessels. No take is expected to result from vessel strikes because of the slow speed of the vessels (2–4 knots while rig is under two; 7–8 knots of supply barges).

Bluecrest requests authorization to take six marine mammal species by Level B harassment. These six marine mammal species are: Gray whale; minke whale; killer whale; harbor porpoise; Dall's porpoise; and harbor seal. Take of Cook Inlet beluga whales is not requested, expected, or proposed to be authorized. In April 2013, NMFS Section 7 ESA biologists concurred that Buccaneer's proposed Cosmopolitan exploratory drilling program was not likely to adversely affect Cook Inlet beluga whales, beluga whale critical habitat, or Steller sea lions. Since the sale of the Cosmopolitan leases from Buccaneer to Bluecrest and the slight change in the program (e.g., drilling of one well instead of two), NMFS is currently reviewing a revised biological assessment to determine whether take of listed marine mammals is anticipated. Mitigation measures requiring shutdowns of activities before belugas and Steller sea lions enter the Level B harassment zones will be required in any issued IHA.

As noted previously in this document, for continuous sounds, such as those produced by drilling operations and rig tow, NMFS uses a received level of 120-dB (rms) to indicate the onset of Level B harassment. For impulse sounds, such as those produced by the airgun array during the VSP surveys or the impact hammer during conductor pipe driving, NMFS uses a received level of 160-dB (rms) to indicate the onset of Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms) for pinnipeds. Table 2 outlines the current acoustic criteria.

TABLE 2—CURRENT ACOUSTIC EXPOSURE CRITERIA USED BY NMFS

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous, noise)	120 dB re 1 microPa-m (rms).

Section 6 of Bluecrest's application contains a description of the methodology used by Bluecrest to estimate takes by harassment, including calculations for the 120 dB (rms) and 160 dB (rms) isopleths and marine mammal densities in the areas of operation (see **ADDRESSES**), which is also provided in the following sections. NMFS verified Bluecrest's methods, and used the density and sound isopleth measurements in estimating take. However, NMFS also include a duration factor in the estimates presented below, which is not included in Bluecrest's application.

The proposed take estimates presented in this section for harbor porpoise and harbor seal were calculated by multiplying summer density for the species (which constitutes the best available density information) by the area of ensonification for each type of activity by the total number of days that each activity would occur. For the other four species (minke, gray, and killer whales and Dall's porpoise), there are no available density estimates because of their low occurrence rates in Cook Inlet. Therefore, take requests for those species are based on opportunistic sightings data and typical group size for each species. Moreover, while the density and sound isopleth data helped to inform the decision for the proposed estimated take levels for harbor porpoises and harbor seals, NMFS also considered the information regarding marine mammal sightings during Bluecrest's 2013 Cosmopolitan #A–1 drilling program. Therefore, the proposed take estimates presented later in this document do not match those in Bluecrest's application. Additional detail is provided next.

Ensonified Areas

1. Rig Tow

The jack-up rig will be towed two times during 2015. The rig will be wet-towed by at least two ocean-going tugs licensed to operate in Cook Inlet. Tugs generate their loudest sounds while towing due to propeller cavitation. While these continuous sounds have been measured at up to 171 dB re 1 μPa-m (rms) at source (broadband), they are generally emitted at dominant frequencies of less than 5 kHz (Miles *et al.,* 1987; Richardson *et al.,* 1995a; Simmonds *et al.,* 2004).

For the most part, the dominant noise frequencies from propeller cavitation are less than the dominant hearing frequencies for pinnipeds and toothed whales. Because it is currently unknown which tug or tugs will be used to tow the rig, and there are few sound signatures for tugs in general, the potential area that could be ensonified by disturbance-level noise is calculated based on an assumed 171 dB re 1 μPa-m source. Using Collins *et al.'*s (2007) 171—18.4 Log(R)—0.00188 spreading model determine from hydroacoustic surveys in Cook Inlet, the distance to the 120 dB isopleth would be at 1,715 ft (523 m). The associated ZOI (area ensonified by noise greater than 120 dB) is, therefore, 212 acres (0.86 km^2).

2. Conductor Pipe Driving

The Delmar D62–22 diesel impact hammer proposed to be used by Bluecrest to drive the 30-inch conductor pipe was previously acoustically measured by Blackwell (2005) in upper Cook Inlet. She found that sound exceeding 190 dB Level A noise limits for pinnipeds extend to about 200 ft (60 m), and 180 dB Level A impacts to cetaceans to about 820 ft (250 m). Level B disturbance levels of 160 dB extended to just less than 1 mi (1.6 km). The associated ZOI (area ensonified by noise greater than 160 dB) is 3.1 mi^2 (8.3 km^2).

3. Deep-well Pumps (Jack-up rig)

Bluecrest proposes to use the jack-up drilling rig *Endeavour* for the Cook Inlet program. Because the drilling platform and other noise-generating equipment on a jack-up rig are located above the sea's surface, and there is very little surface contact with the water compared to drill ships and semisubmersible drill rigs, lattice-legged jack-up drill rigs are relatively quiet (Richardson *et al.,* 1995a; Spence *et al.,* 2007).

The *Spartan 151,* the only other jack-up drill rig currently operating in the Cook Inlet, was hydroacoustically measured by Marine Acoustics, Inc. (2011) in 2011. This jack-up rig would be used by Bluecrest if the *Endeavour* is not available. The survey results showed that continuous noise levels exceeding 120 dB re 1 μPa extended out only 50 m (164 ft), and that this noise was largely associated with the diesel engines used as hotel power generators, rather than the drilling table. Similar, or lesser, noise levels were expected to be

generated by the *Endeavour* because generators are mounted on pedestals specifically to reduce noise transfer through the infrastructure, and enclosed in an insulated engine room, with the intent of reducing underwater noise transmission to levels even lower than the *Spartan 151.* This was confirmed during an SSV test on the *Endeavour* by Illingworth and Rodkin (2014) in May 2013 where it was determined that the noise levels associated with drilling and operating generators are below ambient.

However, the SSV identified another sound source, the submersed deep-well pumps, which were emitting underwater noise exceeding 120 dB. In the initial testing (Illingworth and Rodkin, 2014), the noise from the pump and the associated falling (from deck level) water discharge was found to exceed 120 dB re 1 μPa at a distance just beyond 984 ft (300 m). After the falling water was piped as a mitigation measure to reduce noise levels, the pump noise was retested (Illingworth and Rodkin, 2014) with the results indicating that the primary deep-well pump, operating inside the bow leg, still exceeded 120 dB re 1 μPa at a maximum of 853 ft (260 m). For calculating potential incidental harassment take, the 853-ft (260-m) distance to the 120 dB isopleth will be used giving a ZOI of 52.5 acres (0.21 km^2).

4. VSP Airguns

Illingworth and Rodkin (2014) measured noise levels during VSP operations associated with post-drilling operations at the Cosmopolitan #A–1 site in lower Cook Inlet during July 2013. The results indicated that the 720 cubic inch airgun array used during the operation produced noise levels exceeding 160 dB re 1 μPa out to a distance of approximately 8,100 ft (2,470 m). Based on these results, the associated ZOI would be 7.4 mi^2 (19.2 km^2).

Marine Mammal Densities

Density estimates were derived for harbor porpoises and harbor seals as described next. Because of their low numbers, there are no available Cook Inlet density estimates for the other marine mammals that occasionally inhabit Cook Inlet near Anchor Point.

1. Harbor Porpoise

Hobbs and Waite (2010) calculated a Cook Inlet harbor porpoise density estimate of 0.013 per km^2 based on sightings recorded during a summer 1998 aerial survey targeting beluga whales. They derived the value by dividing estimated number of harbor porpoise inhabiting Cook Inlet (249) by the area of the entire inlet (18,948 km^2).

2. Harbor Seal

Boveng *et al.* (2003) estimated the harbor seal population that inhabits Cook Inlet at 5,268 seals based on summer/early fall surveys. Dividing that value by the area of the inlet (18,948 km^2) provides a Cook Inlet-wide density of 0.278 seals per km^2. It is presumed that harbor seal densities in lower Cook Inlet will remain the same throughout the open water season (until about November when winter ice conditions begin moving animals out of upper Cook Inlet).

Proposed Take Estimates

As noted previously in this document, the potential number of harbor porpoises and harbor seals that might be exposed to received continuous SPLs of ≥120 dB re 1 μPa (rms) and pulsed SPLs of ≥160 dB re 1 μPa (rms) was calculated by multiplying:

- The expected species density;
- the anticipated area to be ensonified by the 120 dB re 1 μPa (rms) SPL (rig tow and deep-well pumps) and 160 dB re 1 μPa (rms) SPL (VSP airgun operations and impact hammering); and
- the estimated total duration of each of the activities expressed in days (24 hrs).

To derive at an estimated total duration for each of the activities the following assumptions were made:

- The total duration for rig tow over the entire season would be 2 days.
- It is estimated to take up to 90 days to drill one well, including 15 days of well testing.
- The maximum total duration of impact hammering during conductor pipe driving would be 3 days (however, the hammer would not be used continuously over that time period).
- The total duration of the VSP data acquisition runs is estimated to be up to 2 days (however, the airguns would not be used continuously over that time period).

Using all of these assumptions, Table 3 outlines the total number of Level B harassment exposures for harbor seals and harbor porpoises from each of the four activities using the calculation and assumptions described here.

TABLE 3—POTENTIAL NUMBER OF EXPOSURES TO LEVEL B HARASSMENT THRESHOLDS DURING BLUECREST'S PROPOSED EXPLORATORY DRILLING PROGRAM DURING THE 2015 OPEN WATER SEASON

Species	Rig tow	Deep-well pump	Pipe driving	VSP	Total
Harbor porpoise	0.02	1.8	0.3	0.5	3
Harbor Seal	0.5	5.4	6.9	10.7	24

In the IHA application, Bluecrest notes that these estimates may be low based on 2013 marine mammal monitoring data. Data collected during marine mammal monitoring at Cosmopolitan State #A–1 during summer 2013 recorded 104 harbor porpoise, 72 harbor seals, 32 minke whales, 19 Dall's porpoise, 12 gray whales, and two killer whales between May and August (112 days of monitoring). Of those sightings, 12 harbor porpoises and 18 harbor seals were sighted within the applicable Level B isopleths. Three minke whales were recorded within 984 ft (300 m) of the active drill rig. None of the gray whales, Dall's porpoises, or killer whales were seen within the Level B isopleths.

For the less common marine mammals such as gray, minke, and killer whales and Dall's porpoises, population estimates within lower Cook Inlet are too small to calculate density estimates. Still, at even very low densities, it is possible to encounter these marine mammals during Bluecrest operations, as evidenced by the 2013 marine mammal sighting data. Marine mammals may approach the drilling rig out of curiosity, and animals may approach in a group. Thus, requested take authorizations for these species are primarily based on group size, the potential for attraction, and the 2013 marine mammal sighting data (with buffers added in to account for missed sightings).

Table 4 here outlines density estimates (where available), NMFS' proposed Level B harassment take levels, the abundance of each species in Cook Inlet, the percentage of each species or stock estimated to be taken, and current population trends.

TABLE 4—DENSITY ESTIMATES, PROPOSED LEVEL B HARASSMENT TAKE LEVELS, SPECIES OR STOCK ABUNDANCE, PERCENTAGE OF POPULATION PROPOSED TO BE TAKEN, AND SPECIES TREND STATUS

Species	Density (#/km^2)	Proposed level B take	Abundance	Percentage of population	Trend
Harbor Seal	0.278	100	22,900	0.4	Stable
Harbor Porpoise	0.013	150	25,987	0.6	No reliable information.
Killer Whale	NA	5	1,123 (resident)	0.45	Resident stock possibly increasing.
			552 (transient)	0.91	Transient stock stable.
Gray whale	NA	20	18,017	0.1	Stable/increasing.
Minke whale	NA	50	810–1,233	4.1–6.2	No reliable information.
Dall's porpoise	NA	40	83,400	0.05	No reliable information.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

No injuries or mortalities are anticipated to occur as a result of Bluecrest's proposed exploratory drilling program, and none are proposed to be authorized. Injury, serious injury, or mortality could occur if there were a large or very large oil spill. However, as discussed previously in this document, the likelihood of a spill is extremely remote. Bluecrest has implemented many design and operational standards to mitigate the potential for an oil spill of any size. NMFS does not propose to authorize take from an oil spill, as it is not part of the specified activity. Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. Instead, any impact that could result from Bluecrest's activities is most likely to be behavioral harassment and is expected to be of limited duration.

None of the species for which take is proposed to be authorized are listed as threatened or endangered under the ESA nor as depleted under the MMPA. The proposed drilling program does not fall within critical habitat designated in Cook Inlet for beluga whales or within critical habitat designated for Steller sea lions. The Cosmopolitan State unit is nearly 100 mi south of beluga whale Critical Habitat Area 1 and approximately 27 mi south of Critical Habitat Area 2. It is also located about 25 mi north of the isolated patch of Critical Habitat Area 2 found in Kachemak Bay. Area 2 is based on dispersed fall and winter feeding and transit areas in waters where whales typically appear in smaller densities or deeper waters (76 FR 20180, April 11, 2011). During the proposed period of operations, the majority of Cook Inlet beluga whales will be in Critical Habitat Area 1, well north of the proposed drilling area. The proposed activities are not anticipated to adversely affect beluga whale critical habitat, and mitigation measures and safety protocols are in place to reduce any potential even further.

Sound levels emitted during the proposed activity are anticipated to be low. The continuous sounds produced by the drill rig do not even rise to the level thought to cause auditory injury in marine mammals. Additionally, impact hammering and airgun operations will occur for extremely limited time periods (for a few hours at a time for 1–3 days and for a few hours at a time for 1–2 days, respectively). Moreover, auditory injury has not been noted in marine mammals from these activities either. Mitigation measures proposed for inclusion in any issued IHA will reduce these potentials even further.

The addition of the jack-up rig and a few support vessels and sound due to rig and vessel operations associated with the exploratory drilling program would not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally. Given the large number of vessels in Cook Inlet and the apparent habituation to vessels by Cook Inlet marine mammals that may occur in the area, vessel activity and sound is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect annual rates of recruitment or survival of marine mammals in the area. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of drilling program activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere nearby. Additionally, drilling operations will not occur in the primary beluga feeding and calving habitat.

Taking into account the mitigation measures that are planned, effects on marine mammals are generally expected to be restricted to avoidance of a limited area around the drilling operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. Animals are not expected to permanently abandon any area that is part of the drilling operations, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation

of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from Bluecrest's proposed exploratory drilling program will not adversely affect annual rates of recruitment or survival, and therefore will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The requested takes proposed to be authorized represent 0.45 percent of the Alaska resident stock and 0.91 percent of the Gulf of Alaska, Aleutian Island and Bering Sea stock of killer whales (1,123 residents and 552 transients), 0.6 percent of the Gulf of Alaska stock of approximately 25,987 harbor porpoises, 0.5 percent of the Alaska stock of approximately 83,400 Dall's porpoises, 4.1–6.2 percent of the Alaska stock of approximately 810–1,233 minke whales, and 0.1 percent of the eastern North Pacific stock of approximately 18,017 gray whales. The take request presented for harbor seals represent 0.4 percent of the Cook Inlet/Shelikof stock of approximately 29,175 animals. These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. The numbers of marine mammals taken are small relative to the affected species or stock sizes. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals. NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Relevant Subsistence Uses

The subsistence harvest of marine mammals transcends the nutritional and economic values attributed to the animal and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA, 2007).

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south central region and participated in the yearly subsistence harvest (Stanek, 1994). From 1994 to 1998, NMFS estimated 65 whales per year (range 21–123) were taken in this harvest, including those successfully taken for food and those struck and lost. NMFS has concluded that this number is high enough to account for the estimated 14 percent annual decline in the population during this time (Hobbs *et al.,* 2008). Actual mortality may have been higher, given the difficulty of estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Public Law 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations. Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS, 2008a).

On October 15, 2008, NMFS published a final rule that established long-term harvest limits on the Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibits harvest for a 5-year period (2008–2012), if the average abundance for the Cook Inlet beluga whales from the prior five years (2003–2007) is below 350 whales. The next 5-year period that could allow for a harvest (2013–2017), would require the previous five-year average (2008–2012) to be above 350 whales. The 2008 Cook Inlet Beluga Whale Subsistence Harvest Final Supplemental Environmental Impact Statement (NMFS, 2008a) authorizes how many beluga whales can be taken during a 5-year interval based on the 5-year population estimates and 10-year measure of the population growth rate. Based on the 2008–2012 5-year abundance estimates, no hunt occurred between 2008 and 2012 (NMFS, 2008a). The Cook Inlet Marine Mammal Council, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. At this time, no harvest is expected in 2014. Residents in the villages of Homer, Ninilchik, and Kenai are the primary subsistence users near the Cosmopolitan drill site.

Data on the harvest of other marine mammals in Cook Inlet are sparse. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet.

Some detailed information on the subsistence harvest of harbor seals is available from past studies conducted by the Alaska Department of Fish & Game (Wolfe *et al.,* 2009). In 2008, only 33 harbor seals were taken for harvest in the Upper Kenai-Cook Inlet area. In the same study, reports from hunters stated that harbor seal populations in the area were increasing (28.6%) or remaining stable (71.4%). The specific hunting regions identified were Anchorage, Homer, Kenai, and Tyonek, and hunting generally peaks in March, September, and November (Wolfe *et al.,* 2009). Since 1992, Alaska Natives from the Cook Inlet villages of Homer and Kenai have annually taken (harvested plus struck and lost) an average of 14–15 harbor seals. There are no data for Ninilchik alone. The villages are located between 14 mi (Ninilchik) and 50 mi (Kenai) away from the Cosmopolitan well site.

Potential Impacts to Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as: An impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The primary concern is the disturbance of marine mammals through the introduction of anthropogenic sound into the marine environment during the proposed exploratory drilling operation. Marine mammals could be behaviorally harassed and either become more difficult to hunt or temporarily abandon

traditional hunting grounds. If a large or very large oil spill occurred, it could impact subsistence species. However, as previously mentioned one is not anticipated to occur, and measures have been taken to prevent a large or very large oil spill. Oil spill trajectory scenarios developed in preparation of the ODPCP indicate that potential spills would travel south through the central channel of Cook Inlet, away from shoreline subsistence harvest areas. The proposed exploratory drilling program should not have any impacts to beluga harvests as none currently occur in Cook Inlet, and no takes of belugas are anticipated or proposed to be authorized. Additionally, subsistence harvests of other marine mammal species are limited in Cook Inlet and typically occur in months when the proposed exploratory drilling program would not operate.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. NMFS regulations define Arctic waters as waters above 60° N. latitude. Bluecrest's Cosmopolitan State #B–1 well location is south of 60° N. latitude; therefore, a Plan of Cooperation is not required for this proposed project. However, the proposed mitigation measures described earlier in this document will reduce impacts to any hunts of harbor seals or other marine mammal species that may occur in Cook Inlet. These measures will ensure that marine mammals are available to subsistence hunters.

Unmitigable Adverse Impact Analysis and Preliminary Determination

The project will not have any effect on current beluga whale harvests because no beluga harvest will take place in 2014 or 2015. Moreover, no take of belugas is anticipated or proposed to be authorized. Additionally, the proposed drilling area is not an important native subsistence site for other subsistence species of marine mammals. Also, because of the relatively small proportion of marine mammals utilizing Cook Inlet, the number harvested is expected to be extremely low. Therefore, because the proposed program would result in only temporary disturbances, the drilling program would not impact the availability of these other marine mammal species for subsistence uses.

The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with Bluecrest's project late in the proposed drilling season, but because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), Bluecrest's program is not expected to have an impact on the subsistence use of harbor seals.

NMFS anticipates that any effects from Bluecrest's proposed exploratory drilling program on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, would be short-term, site specific, and limited to inconsequential changes in behavior. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. In the unlikely event of a major oil spill in Cook Inlet, there could be major impacts on the availability of marine mammals for subsistence uses. As discussed earlier in this document, the probability of a major oil spill occurring over the life of the project is low. Additionally, Bluecrest developed an ODPCP. Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitgable adverse impact on marine mammal availability for subsistence uses from take incidental to Bluecrest's proposed activities.

Endangered Species Act (ESA)

Cook Inlet beluga whales are listed as endangered under the ESA. The U.S. Army Corps of Engineers consulted with NMFS on an earlier version of this proposed project pursuant to section 7 of the ESA. On April 25, 2013, NMFS concurred with the conclusion that the proposed exploratory drilling program (of two wells) in lower Cook Inlet is not likely to adversely affect beluga whales, beluga whale critical habitat, or Steller sea lions. The original proposed action that was the subject of the section 7 consultation involved two wells to be drilled at the Cosmopolitan location by Buccaneer, not Bluecrest. The U.S. Army Corps of Engineers has requested a reinitiation of consultation and submitted a revised biological assessment to NMFS. That informal consultation will be concluded prior to a final determination on this MMPA IHA request. Mitigation measures laid out in the April 25, 2013, section 7 Letter of Concurrence to ensure no take of beluga whales and Steller sea lions have been proposed for inclusion in any issued IHA. Any new measures that arise from the reinitiated consultation would also be included in any issued IHA. Therefore, NMFS' Office of Protected Resources does not intend to initiate formal consultation under Section 7 of the ESA.

National Environmental Policy Act (NEPA)

NMFS has prepared a Draft Environmental Assessment (EA) for issuance of an IHA to Bluecrest for the proposed exploratory drilling program in lower Cook Inlet. The Draft EA has been made available for public comment concurrently with this proposed IHA (see **ADDRESSES**). NMFS will either finalize the EA and prepare a FONSI or prepare an Environmental Impact Statement prior to issuance of the IHA (if issued).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Bluecrest for conducting an exploratory drilling program in lower Cook Inlet during the 2015 open water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This IHA is valid from April 1, 2015, through March 31, 2016.

2. This IHA is valid only for activities associated with Bluecrest's lower Cook Inlet exploratory drilling program. The specific areas where Bluecrest's exploratory drilling operations will occur are described in the July 2014 IHA application and depicted in Figure 1 of the application.

3. Species Authorized and Level of Take

a. The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of Cook Inlet:

i. Odontocetes: 150 harbor porpoise; 40 Dall's porpoise; and 5 killer whales.

ii. Mysticetes: 20 gray whales and 50 minke whales.

iii. Pinnipeds: 100 harbor seals.

iv. If any marine mammal species not listed in conditions 3(a)(i) through (iii) are encountered during exploratory drilling operations and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms) for impulse sources or greater than or equal to 120 dB re 1 μPa (rms), then the Holder of this IHA must shut-down the sound source prior to the animal entering the applicable Level B isopleth to avoid take.

b. The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

4. The authorization for taking by harassment is limited to the following acoustic sources (or sources with comparable frequency and intensity) and from the following activities:

a. airgun array with a total discharge volume of 720 in^3;

b. continuous drill rig sounds during active drilling operations and from rig tow; and

c. impact hammer during conductor pipe driving.

5. The taking of any marine mammal in a manner prohibited under this IHA must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS or her designee.

6. The holder of this IHA must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of exploration drilling activities (unless constrained by the date of issuance of this IHA in which case notification shall be made as soon as possible).

7. Mitigation and Monitoring Requirements: The Holder of this IHA is required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

a. Utilize a sufficient number of NMFS-qualified, vessel-based Protected Species Observers (PSOs) to visually watch for and monitor marine mammals near the drill rig during daytime operations (from nautical twilight-dawn to nautical twilight-dusk) and before and during start-ups of sound sources day or night. PSOs shall have access to reticle binoculars, big-eye binoculars, and night vision devices. PSO shifts shall last no longer than 4 hours at a time. PSOs shall also make observations during daytime periods when the sound sources are not operating for comparison of animal abundance and behavior, when feasible. When practicable, as an additional means of visual observation, drill rig or vessel crew may also assist in detecting marine mammals.

b. When a mammal sighting is made, the following information about the sighting will be recorded:

i. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (e.g., none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;

ii. Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare;

iii. The positions of other vessel(s) in the vicinity of the PSO location (if applicable);

iv. The rig's position, speed if under tow, and water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

c. Within safe limits, the PSOs should be stationed where they have the best possible viewing;

d. PSOs should be instructed to identify animals as unknown where appropriate rather than strive to identify a species if there is significant uncertainty;

e. Conductor Pipe Driving Mitigation Measures:

i. PSOs will observe from the drill rig during impact hammering out to the 160 dB (rms) radius of 1.6 km (1 mi). If marine mammal species for which take is not authorized are about to enter this zone, then use of the impact hammer will cease.

ii. If cetaceans for which take is authorized approach or enter within the 180 dB (rms) radius of 250 m (820 ft) or if pinnipeds for which take is authorized approach or enter within the 190 dB (rms) radius of 60 m (200 ft), then use of the impact hammer will cease. Following a shutdown of impact hammering activities, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

iii. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then Bluecrest can initiate impact hammering using a ''soft start'' technique. Hammering will begin with an initial set of three strikes at 40 percent energy followed by a 1 min waiting period, then two subsequent three-strike sets. This ''soft-start'' procedure will be implemented anytime impact hammering has ceased for 30 minutes or more. Impact hammer ''soft-start'' will not be required if the hammering downtime is for less than 30 minutes and visual surveys are continued throughout the silent period, and no marine mammals are observed in the applicable zones during that time.

f. VSP Airgun Mitigation Measures:

i. PSOs will observe from the drill rig during airgun operations out to the 160 dB radius of 2.5 km (1.55 mi). If marine mammal species for which take is not authorized are about to enter this zone, then use of the airguns will cease.

ii. If cetaceans for which take is authorized approach or enter within the 180 dB (rms) radius of 240 m (787 ft) or if pinnipeds for which take is authorized approach or enter within the 190 dB (rms) radius of 120 m (394 ft), then use of the airguns will cease. Following a shutdown of airgun operations, the applicable zones must be clear of marine mammals for at least 30 minutes prior to restarting activities.

iii. PSOs will visually monitor out to the 160 dB radius for at least 30 minutes prior to the initiation of activities. If no marine mammals are detected during that time, then Bluecrest can initiate airgun operations using a ''ramp-up'' technique. Airgun operations will begin with the firing of a single airgun, which will be the smallest gun in the array in terms of energy output (dB) and volume (in^3). Operators will then continue ramp-up by gradually activating additional airguns over a period of at least 30 minutes (but not longer than 40 minutes) until the desired operating level of the airgun array is obtained. This ramp-up procedure will be implemented anytime airguns have not been fired for 30 minutes or more. Airgun ramp-up will not be required if the airguns have been off for less than 30 minutes and visual surveys are continued throughout the silent period, and no marine mammals are observed in the applicable zones during that time.

g. No initiation of survey operations involving the use of sound sources is permitted from a shutdown position at night or during low-light hours (such as in dense fog or heavy rain).

h. During rig towing operations, speed will be reduced to 8 knots or less, as safety allows, at the approach of any

whales or Steller sea lions within 2,000 ft (610 m) of the towing operations.

i. Helicopters must maintain an altitude of at least 1,000 ft (305 m), except during takeoffs, landings, or emergency situations.

8. Reporting Requirements: The Holder of this IHA is required to:

a. Submit a draft Technical Report on all activities and monitoring results to NMFS' Permits and Conservation Division within 90 days of expiration of the IHA. The Technical Report will include:

i. Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

ii. Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

iii. Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

iv. Analyses of the effects of drilling operation activities;

v. Sighting rates of marine mammals during periods with and without drilling operation activities (and other variables that could affect detectability), such as: (A) Initial sighting distances versus activity state; (B) closest point of approach versus activity state; (C) observed behaviors and types of movements versus activity state; (D) numbers of sightings/individuals seen versus activity state; (E) distribution around the drill rig versus activity state; and (F) estimates of take by Level B harassment based on presence in the 120 dB and 160 dB harassment zones.

b. Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft technical report. If NMFS has no comments on the draft technical report, the draft report shall be considered to be the final report.

9. a. In the unanticipated event that Bluecrest's specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), Bluecrest shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, the Alaska Region Protected Resources Division, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

i. Time, date, and location (latitude/longitude) of the incident;

ii. The name and type of vessel involved;

iii. The vessel's speed during and leading up to the incident;

iv. Description of the incident;

v. Status of all sound source use in the 24 hours preceding the incident;

vi. Water depth;

vii. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

viii. Description of marine mammal observations in the 24 hours preceding the incident;

ix. Species identification or description of the animal(s) involved;

x. The fate of the animal(s); and

xi. Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Bluecrest to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Bluecrest may not resume their activities until notified by NMFS via letter or email, or telephone.

b. In the event that Bluecrest discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Bluecrest will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, the Alaska Region Protected Resources Division, NMFS, and the NMFS Alaska Stranding Hotline. The report must include the same information identified in the Condition 9(a) above. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in Condition 10 below must be implemented. NMFS will work with Bluecrest to determine whether modifications in the activities are appropriate.

c. In the event that Bluecrest discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this IHA (e.g., carcass with moderate to advanced decomposition or scavenger damage), Bluecrest shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, the Alaska Region Protected Resources Division, NMFS, the NMFS Alaska Stranding Hotline (1–877–925–7773), and the Alaska Regional Stranding Coordinators within 24 hours of the discovery. Bluecrest shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in Condition 10 below must be implemented. In this case, NMFS will notify Bluecrest when activities may resume.

10. The following measures describe the specific actions Bluecrest must take if a live marine mammal stranding is reported in Cook Inlet coincident to, or within 72 hours of seismic survey activities involving the use of airguns. A live stranding event is defined as a marine mammal: (i) On a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in apparent need of medical attention; or (iii) in the waters under the jurisdiction of the United States (including navigable waters) but is unable to return to its natural habitat under its own power or without assistance.

The shutdown procedures described here are not related to the investigation of the cause of the stranding and their implementation is in no way intended to imply that Bluecrest's seismic airgun operation is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that initially contributed to the stranding.

a. Should Bluecrest become aware of a live stranding event (from NMFS or another source), Bluecrest must immediately implement a shutdown of the airgun array.

i. A shutdown must be implemented whenever the animal is within 5 km of the seismic airguns.

ii. Shutdown procedures will remain in effect until NMFS determines that, and advises Bluecrest that, all live animals involved in the stranding have left the area (either of their own volition or following herding by responders).

b. Within 48 hours of the notification of the live stranding event, Bluecrest must inform NMFS where and when they were operating airguns and at what discharge volumes.

c. Bluecrest must appoint a contact who can be reached 24/7 for notification of live stranding events. Immediately upon notification of the live stranding event, this person must order the immediate shutdown of the airguns.

d. These conditions are in addition to Condition 9.

11. Activities related to the monitoring described in this IHA do not require a separate scientific research permit issued under section 104 of the MMPA.

12. A copy of this IHA must be in the possession of all contractors and PSOs operating under the authority of this IHA.

13. Penalties and Permit Sanctions: Any person who violates any provision of this IHA is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA.

14. This IHA may be modified, suspended or withdrawn if the Holder fails to abide by the conditions prescribed herein or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for Bluecrest's proposed lower Cook Inlet exploratory drilling program. Please include with your comments any supporting data or literature citations to help inform our final decision on Bluecrest's request for an MMPA authorization.

Dated: September 5, 2014.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–21662 Filed 9–10–14; 8:45 am]

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Part IV

Department of Health and Human Services

Office of the Secretary

45 CFR Part 170

2014 Edition Release 2 Electronic Health Record (EHR) Certification Criteria and the ONC HIT Certification Program; Regulatory Flexibilities, Improvements, and Enhanced Health Information Exchange; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 170

RIN 0991–AB92

2014 Edition Release 2 Electronic Health Record (EHR) Certification Criteria and the ONC HIT Certification Program; Regulatory Flexibilities, Improvements, and Enhanced Health Information Exchange

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule introduces regulatory flexibilities and general improvements for certification to the 2014 Edition EHR certification criteria (2014 Edition). It also codifies a few revisions and updates to the ONC HIT Certification Program for certification to the 2014 Edition and future editions of certification criteria as well as makes administrative updates to the Code of Federal Regulations.

DATES: This rule is effective October 14, 2014, except for the amendments to the amendatory instruction number 3 amendment to § 170.102, the amendments to §§ 170.205, 170.207, 170.210, 170.302, 170.304, 170.306, and the amendatory instruction number 18 amendment to § 170.550, which are effective on March 1, 2015.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Lipinski, Office of Policy, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

Commonly Used Acronyms

CAH Critical Access Hospital
CDA Clinical Document Architecture
CDC Centers for Disease Control and Prevention
CDS Clinical Decision Support
CEHRT Certified Electronic Health Record Technology
CFR Code of Federal Regulations
CHPL Certified Health Information Technology Product List
CLIA Clinical Laboratory Improvement Amendments
CMS Centers for Medicare & Medicaid Services
CQM Clinical Quality Measure
CY Calendar Year
EH Eligible Hospital
EHR Electronic Health Record
EP Eligible Professional
FDA Food and Drug Administration
FY Fiscal Year
HHS Department of Health and Human Services
HIT Health Information Technology
HITECH Health Information Technology for Economic and Clinical Health
HITPC HIT Policy Committee
HITSC HIT Standards Committee
HL7 Health Level Seven
IG Implementation Guide
IHE Integrating the Healthcare Enterprise®
LOINC® Logical Observation Identifiers Names and Codes
MU Meaningful Use
OMB Office of Management and Budget
ONC Office of the National Coordinator for Health Information Technology
NCPDP National Council for Prescription Drug Programs
NIST National Institute of Standards and Technology
PHSA Public Health Service Act
SNOMED CT® Systematized Nomenclature of Medicine Clinical Terms

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I. Executive Summary

A. Purpose of Regulatory Action

1. New Approach

In the notice of proposed rulemaking titled ''Voluntary 2015 Edition Electronic Health Record (EHR) Certification Criteria; Interoperability Updates and Regulatory Improvements; Proposed Rule'' (79 FR 10880) (the ''Proposed Rule''), we gave many reasons for the adoption of the proposed ''2015 Edition EHR certification criteria'' or ''2015 Edition'' (henceforth the ''Proposed Voluntary Edition'' (79 FR 10880)).[1] We still believe that many of these reasons remain valid. However, upon consideration of public comment, further reflection of ONC goals and timelines, and a desire to adhere to the administration's principles embodied in Executive Order (EO) 13563, we have not adopted the Proposed Voluntary Edition. Rather, we have adopted a small subset of our original proposals in the Proposed Voluntary Edition as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria (also referred to as the ''2014 Edition Release 2'' or ''2014 Edition Release 2 EHR certification criteria'') that provide flexibility, clarity, and enhance health information exchange; and administrative proposals (i.e., removal of regulatory text from the Code of Federal Regulations) and proposals for the ONC HIT Certification Program that provide improvements. The certification criteria we have adopted in this final rule are consistent with the principles and instructions for retrospective review of regulations embodied in EO 13563 to make our program more effective and less burdensome in achieving regulatory objectives. This final rule introduces multiple means to reduce regulatory burden, increase regulatory flexibility for stakeholders, and promote further innovation.

[1] 79 FR 10881–82.

We note that EHR technology developers do not have to update and recertify their products to the 2014 Edition Release 2 nor do eligible professionals (EPs), eligible hospitals (EHs), and critical access hospitals (CAHs) have to upgrade to EHR technology certified to the 2014 Edition Release 2. However, we encourage EHR technology developers and the EPs, EHs, and CAHs that they support to consider whether the 2014 Edition Release 2 offers any opportunities that they might want to pursue.

2. Naming Conventions

In the Proposed Rule, we proposed to call the Proposed Voluntary Edition the ''2015 Edition.'' [2]

Comments. Commenters indicated that attributing years to the certification criteria editions creates unrealistic expectations for providers and other potential ''users'' of the certification program that vendors will develop products ready to be used by the designated edition year.

Response. In the July 28, 2010 final rule entitled ''Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology (75 FR 44590) and referred to as the ''2011 Edition Final Rule,'' the Secretary adopted certification criteria in title 45, part 170, §§ 170.302, 170.304, and 170.306 of the Code of Federal Regulations (CFR). In March 2012, to make a clear distinction between the certification criteria adopted in §§ 170.302, 170.304, and 170.306 and the certification criteria proposed for adoption in § 170.314 (the notice of proposed rulemaking with request for comments titled, ''Health Information Technology: Standards, Implementation Specification and Certification Criteria for Electronic Health Record Technology, 2014 Edition; Revisions to the Permanent Certification Program for Health Information Technology'' (77 FR 13832)), we discussed that we would be using an ''edition'' naming approach for the sets of certification criteria subsequently adopted by the Secretary. We stated that we would refer to the certification criteria adopted in the 2011 Edition Final Rule and included in §§ 170.302, 170.304, and 170.306 collectively as the ''2011 Edition EHR certification criteria'' and that the certification criterion adopted in § 170.314 would be referred to as the ''2014 Edition EHR certification criteria.'' We finalized this approach and adopted a ''2014 Edition'' in the September 4, 2012 final rule we issued entitled ''Health Information Technology: Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology, 2014 Edition; Revisions to the Permanent Certification Program for Health Information Technology'' (77 FR 54163) (the ''2014 Edition Final Rule'').

These two years ''2011'' and ''2014'' were purposefully chosen because they coincided with the first year in which compliance with that edition of EHR certification criteria would be required for use under the Medicare and Medicaid EHR Incentive Programs (''EHR Incentive Programs''). This approach was meant to simplify the communication related to the certification criteria editions and enabled generalized statements like ''an EP needs to be using 2014 Edition CEHRT when they demonstrate meaningful use (MU) in CY 2014.'' In retrospect, it appears that this approach unintentionally linked certification criteria editions solely to MU to many stakeholders, while the certification criteria editions already support and are referenced by other HHS programs (e.g., the CMS and HHS Office of Inspector General (OIG) final rules to modify the Physician Self-Referral Law exception and Anti-kickback Statute safe harbor for certain EHR donations (78 FR 78751) and (78 FR 79202), respectively).[3]

We and CMS recently issued a final rule (79 FR 52910) that demonstrated linking a certification criteria edition's year to any other program's compliance date could confuse the original intent of the edition's year selection (due to the final rule pushing back the compliance requirement of using EHR technology certified only to the 2014 Edition to fiscal year (FY) and calendar year (CY) *2015* for EPs, EHs, and CAHs). Accordingly, we believe that a simpler approach will be for future certification criteria editions to be *named by the year in which the final rule is published,* and other rulemakings like this final rule (which include additional criteria or alternatives to previously adopted certification criteria) would be added to the most current edition of certification criteria. To further clarify, a rulemaking like this one that does not adopt an edition of certification criteria would be referred to as ''[current edition year] Release #X.''

For example, we expect that the final rule for the next edition of certification criteria we adopt will be an edition of certification criteria and will be published in 2015. Thus, that edition of certification criteria would be called the ''2015 Edition'' because it will be an edition of certification criteria and its final rule would be published in 2015. If we were to subsequently issue a final rule in 2016 with seven certification criteria to support another HHS program or to make revisions to the adopted 2015 Edition certification criteria, we would refer to that rulemaking as the ''2015 Edition Release 2'' rulemaking and ultimately make modifications to the 2015 Edition certification criteria at its CFR location and regulation text.

Importantly, this provides stakeholders with a consistent and predictable naming approach for future editions and also supports ONC's broader interests to have the ONC HIT Certification Program be generally accessible to other programs either within or outside government. Stakeholders that seek to leverage the ONC HIT Certification Program would then be able to choose which edition of certification criteria (or subset of criteria within an edition) is most relevant and appropriate for their program needs.

B. Summary of Major Provisions

1. Overview of the 2014 Edition Release 2 EHR Certification Criteria

The 2014 Edition Release 2 EHR certification criteria we have adopted in this final rule include ten optional and two revised certification criteria for inclusion in the 2014 Edition.[4] Each of these certification criteria originate with the current 2014 Edition. The optional certification criteria include the splitting of the ''computerized provider order entry'' (CPOE) criterion into three certification criteria based on capabilities (medications, laboratory, and diagnostic imaging); a ''transitions of care'' (ToC) certification criterion that is decoupled from the transport method; three separate transport method certification criteria (corresponding to the three transport standards found in § 170.314(b)(1) and (2)); a ''clinical information reconciliation and incorporation certification'' (CIRI) certification criterion that moves

[2] 79 FR 10885.

[3] CMS final rule ''Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Exception for Certain Electronic Health Records Arrangements'' (78 FR 78751). OIG final rule ''Medicare and State Health Care Programs: Fraud and Abuse; Electronic Health Records Safe Harbor Under the Anti-Kickback Statute'' (78 FR 79202).

[4] As we explained in the Proposed Rule (79 FR 10918), the designation of ''optional'' for certification criteria (in this case, the 2014 Edition) was developed to accommodate the Complete EHR definition. If a certification criterion is not designated ''optional,'' an EHR technology designed for the ambulatory setting or inpatient setting would need to be certified to the criterion in order to satisfy the Complete EHR definition and be issued a Complete EHR certification.

''incorporation'' from the ToC certification criterion; and a ''transmission to public health agencies—syndromic surveillance'' certification criterion that permits any electronic method for creating syndromic surveillance information for exchange. Additionally, the ''automated numerator recording'' certification criterion (§ 170.314(g)(1)) has been changed to be designated ''optional'' for the purposes of excluding it from the 2014 Edition Complete EHR definition as discussed in more detail in the ONC HIT Certification Program section below.

The two revised certification criterion include a revised ''view, download, and transmit to 3rd party'' (VDT) certification criterion (§ 170.314(e)(1)) that permits the same optionality provided in the new optional ToC certification criterion as it relates to transport methods, and a revised ''safety-enhanced design'' (SED) certification criterion that includes the optional CPOE certification criteria and the optional CIRI certification criterion. We discuss the revisions to SED under the discussions of CPOE and CIRI in section III.A.2 of this preamble.

Table 1 below specifies the 2014 Edition Release 2 EHR certification criteria.

TABLE 1—2014 EDITION RELEASE 2 EHR CERTIFICATION CRITERIA

Optional certification criteria		Revised certification criteria	
Regulation section	Title of regulation paragraph	Regulation section	Title of regulation paragraph
§ 170.314(a)(18)	Optional—computerized provider order entry—medications.	§ 170.314(e)(1)	View, download, and transmit to 3rd party.
§ 170.314(a)(19)	Optional—computerized provider order entry—laboratory.	§ 170.314(g)(3)	Safety-enhanced design.
§ 170.314(a)(20)	Optional—computerized provider order entry—diagnostic imaging.		
§ 170.314(b)(8)	Optional—transitions of care.		
§ 170.314(b)(9)	Optional—clinical information reconciliation and incorporation.		
§ 170.314(f)(7)	Optional—ambulatory setting only—Transmission to public health agencies—syndromic surveillance.		
§ 170.314(g)(1)	Optional—automated numerator recording.		
§ 170.314(h)(1)	Optional—Applicability Statement for Secure Health Transport.		
§ 170.314(h)(2)	Optional—Applicability Statement for Secure Health Transport and XDR/XDM for Direct Messaging.		
§ 170.314(h)(3)	Optional—SOAP Transport and Security Specification and XDR/XDM for Direct Messaging.		

2. ONC HIT Certification Program

We proposed several modifications to the ONC HIT Certification Program, some of which we have finalized in this final rule. We are discontinuing the ''Complete EHR'' certification concept, including the definition, starting with the next certification criteria edition that we adopt in a subsequent final rule. This decision has no effect on certification to the 2014 Edition. We have adopted an updated standard (ISO/IEC 17065) for the accreditation of ONC-Authorized Certification Bodies (ACBs) to maintain alignment with industry practices. We have adopted the ''ONC Certified HIT'' certification and design mark for required use by ONC–ACBs, which we believe will provide clarity for the market as it relates to EHR technology certified under the program. We have designated the 2014 Edition ''automated numerator recording'' certification criterion (§ 170.314(g)(1)) as optional for the purposes of excluding it from Complete EHR certification (it still applies for EHR Module certification) and revised § 170.550(f) to clearly require and permit EHR Module certification to either § 170.314(g)(1) or (g)(2) (''automated measure calculation''). Last, we have provided clarifying guidance for certification to the 2014 Edition ''patient list creation'' certification criterion.

C. Costs and Benefits

Our estimates indicate that this final rule is not an economically significant rule as its overall costs are significantly below $100 million in any one year. We have, however, estimated the costs and benefits of this final rule. The estimated costs expected to be incurred by EHR technology developers to develop and prepare EHR technology to be tested and certified in accordance with the adopted optional and revised 2014 Edition certification criteria (and the standards and implementation specifications they include) are represented in monetary terms in Table 2 below. We believe a small number of EHR technology developers and other health information technology (HIT) developers will seek to be tested and certified to the certification criteria adopted in this final rule. We estimate that development and preparation efforts for the optional and revised 2014 Edition certification criteria adopted in the final rule will be split evenly over CYs 2014 and 2015 and will be confined to these years because we expect to issue a 2015 Edition final rule in 2015 and expect that the majority of EHR development and preparation efforts at that time will shift towards meeting the 2015 Edition. The dollar amounts expressed in Table 2 are expressed in 2014 dollars.

TABLE 2—DISTRIBUTED TOTAL DEVELOPMENT AND PREPARATION COSTS FOR EHR TECHNOLOGY DEVELOPERS (2-YEAR PERIOD)—TOTALS ROUNDED

Year	Ratio (percent)	Total low cost estimate ($M)	Total high cost estimate ($M)	Total average cost estimate ($M)
2014	50	$1.46	$2.90	$2.19
2015	50	1.46	2.90	2.19
2-Year Totals		2.92	5.80	4.38

While we believe only a small number of EHR technology developers and other HIT developers will seek testing and certification to the optional and revised 2014 Edition certification criteria adopted in the final rule, the regulatory flexibility these certification criteria provide will offer several significant benefits to patients, health care providers, and HIT developers. The 2014 Edition Release 2 incorporates stakeholder feedback on particular 2014 Edition issues identified as impacting innovation and causing undue burden. The 2014 Edition Release 2 also seeks to continue to improve EHR technology's interoperability and electronic health information exchange. Specifically, the separating out of the ''content'' and ''transport'' capabilities in the optional 2014 Edition ToC certification criterion we have adopted in this final rule (compared to the 2014 Edition ToC certification criteria adopted at § 170.314(b)(1) and (2)) and the adoption of the Implementation Guide (IG) for Direct Edge Protocols (Direct Edge Protocols IG) is aimed at improving the market availability of electronic health information exchange services for transitions of care. The new certification flexibilities offered by the optional ''CPOE'' and optional ''syndromic surveillance'' certification criteria are designed to enhance innovation and offer providers enhanced functionality and options for meeting applicable MU measures. The new flexibility in the VDT certification criterion is designed to further facilitate the exchange of patient health information between provider and patient. The optional CIRI criterion is designed to better align with clinical workflows than the process in the ToC certification criterion at § 170.314(b)(1).

II. Background

A. Statutory Basis

The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (the Recovery Act) (Pub. L. 111–5), was enacted on February 17, 2009. The HITECH Act amended the Public Health Service Act (PHSA) and created ''Title XXX—Health Information Technology and Quality'' (Title XXX) to improve health care quality, safety, and efficiency through the promotion of HIT and electronic health information exchange.

1. Standards, Implementation Specifications, and Certification Criteria

The HITECH Act established two new federal advisory committees, the HIT Policy Committee (HITPC) and the HIT Standards Committee (HITSC) (sections 3002 and 3003 of the PHSA, respectively). Each is responsible for advising the National Coordinator for Health Information Technology (National Coordinator) on different aspects of standards, implementation specifications, and certification criteria. The HITPC is responsible for, among other duties, recommending priorities for the development, harmonization, and recognition of standards, implementation specifications, and certification criteria. Main responsibilities of the HITSC include recommending standards, implementation specifications, and certification criteria for adoption by the Secretary under section 3004 of the PHSA consistent with the ONC-coordinated Federal Health IT Strategic Plan.

Section 3004 of the PHSA identifies a process for the adoption of health IT standards, implementation specifications, and certification criteria and authorizes the Secretary to adopt such standards, implementation specifications, and certification criteria. As specified in section 3004(a)(1), the Secretary is required, in consultation with representatives of other relevant federal agencies, to jointly review standards, implementation specifications, and certification criteria endorsed by the National Coordinator under section 3001(c) and subsequently determine whether to propose the adoption of any grouping of such standards, implementation specifications, or certification criteria. The Secretary is required to publish all determinations in the **Federal Register**.

Section 3004(b)(3) of the PHSA titled ''Subsequent Standards Activity'' provides that the ''Secretary shall adopt additional standards, implementation specifications, and certification criteria as necessary and consistent'' with the schedule published by the HITSC. We consider this provision in the broader context of the HITECH Act to grant the Secretary the authority and discretion to adopt standards, implementation specifications, and certification criteria that have been recommended by the HITSC and endorsed by the National Coordinator, as well as other appropriate and necessary HIT standards, implementation specifications, and certification criteria. Throughout this process, the Secretary intends to continue to seek the insights and recommendations of the HITSC.

2. HIT Certification Programs

Section 3001(c)(5) of the PHSA provides the National Coordinator with the authority to establish a certification program or programs for the voluntary certification of HIT. Specifically, section 3001(c)(5)(A) specifies that the ''National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall keep or recognize a program or programs for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under this subtitle'' (i.e., certification criteria adopted by the Secretary under section 3004 of the PHSA).

The certification program(s) must also ''include, as appropriate, testing of the technology in accordance with section 13201(b) of the [HITECH] Act.'' Overall, section 13201(b) of the HITECH Act requires that with respect to the development of standards and implementation specifications, the Director of the National Institute of Standards and Technology (NIST), in coordination with the HITSC, ''shall support the establishment of a

conformance testing infrastructure, including the development of technical test beds.'' The HITECH Act also indicates that ''[t]he development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.''

B. Regulatory History

1. Standards, Implementation Specifications, and Certification Criteria Rules

The Secretary issued an interim final rule with request for comments titled, ''Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology'' (75 FR 2014, Jan. 13, 2010) (the ''S&CC January 2010 interim final rule''), which adopted an initial set of standards, implementation specifications, and certification criteria. After consideration of the public comments received on the S&CC January 2010 interim final rule, a final rule was issued to complete the adoption of the initial set of standards, implementation specifications, and certification criteria and realign them with the final objectives and measures established for meaningful use (MU) Stage 1 (formally titled: Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology; Final Rule, (75 FR 44590, July 28, 2010) and referred to as the ''2011 Edition Final Rule''). The 2011 Edition Final Rule also established the first version of the CEHRT definition. Subsequent to the 2011 Edition Final Rule (October 13, 2010), we issued an interim final rule with a request for comment to remove certain implementation specifications related to public health surveillance that had been previously adopted in the 2011 Edition Final Rule (75 FR 62686).

The standards, implementation specifications, and certification criteria adopted by the Secretary in the 2011 Edition Final Rule established the capabilities that CEHRT must include in order to, at a minimum, support the achievement of MU Stage 1 by EPs, EHs, and CAHs under the Medicare and Medicaid EHR Incentive Programs Stage 1 final rule (the ''EHR Incentive Programs Stage 1 final rule'') (see 75 FR 44314 for more information about MU and the Stage 1 requirements).

The Secretary issued a notice of proposed rulemaking with request for comments titled ''Health Information Technology: Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology, 2014 Edition; Revisions to the Permanent Certification Program for Health Information Technology'' (77 FR 13832, March 7, 2012) (the ''2014 Edition NPRM''), which proposed new and revised standards, implementation specifications, and certification criteria. After consideration of the public comments received on the 2014 Edition NPRM, a final rule was issued to adopt the 2014 Edition set of standards, implementation specifications, and certification criteria and realign them with the final objectives and measures established for MU Stage 2 as well as MU Stage 1 revisions (Health Information Technology: Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology, 2014 Edition; Revisions to the Permanent Certification Program for Health Information Technology (77 FR 54163, Sept. 4, 2012) (the ''2014 Edition Final Rule''). The standards, implementation specifications, and certification criteria adopted by the Secretary in the 2014 Edition Final Rule established the capabilities that CEHRT must include in order to, at a minimum, support the achievement of MU Stage 2 by EPs, EHs, and CAHs under the Medicare and Medicaid EHR Incentive Programs Stage 2 final rule (the ''EHR Incentive Programs Stage 2 final rule'') (see 77 FR 53968 for more information about the MU Stage 2 requirements).

On December 7, 2012, an interim final rule with a request for comment was jointly issued by ONC and CMS to update certain standards that had been previously adopted in the 2014 Edition Final Rule. The interim final rule also revised the EHR Incentive Programs by adding an alternative measure for the MU Stage 2 objective for hospitals to provide structured electronic laboratory results to ambulatory providers, corrected the regulation text for the measures associated with the objective for hospitals to provide patients the ability to view online, download, and transmit information about a hospital admission, and made the case number threshold exemption policy for clinical quality measure (CQM) reporting applicable for eligible hospitals and CAHs beginning with FY 2013. The rule also provided notice of CMS's intent to issue technical corrections to the electronic specifications for CQMs released on October 25, 2012 (77 FR 72985).

On November 4, 2013, the Secretary published an interim final rule with a request for comment, 2014 Edition Electronic Health Record Certification Criteria: Revision to the Definition of ''Common Meaningful Use (MU) Data Set'' (78 FR 65884), to make a minor revision to the Common MU Data Set definition. This revision was intended to allow more flexibility with respect to the representation of dental procedures data for EHR technology testing and certification.

On February 26, 2014, the Secretary issued the Proposed Rule. The Proposed Rule proposed voluntary certification criteria that would enable a more efficient and effective response to stakeholder feedback, incorporate ''bug fixes'' to improve on 2014 Edition in ways designed to make ONC's rules clearer and easier to implement, and reference newer standards and implementation specifications. A correction notice was published for the Proposed Rule on March 19, 2014, entitled ''Voluntary 2015 Edition Electronic Health Record (EHR) Certification Criteria; Interoperability Updates and Regulatory Improvements; Correction'' (79 FR 15282). This correction notice corrected the preamble text and gap certification table for four certification criteria that were omitted from the list of certification criteria eligible for gap certification for the 2015 Edition EHR certification criteria.

On May 23, 2014, CMS and ONC jointly published the ''Medicare and Medicaid Programs; Modifications to the Medicare and Medicaid Electronic Health Record Incentive Programs for 2014; and Health Information Technology: Revisions to the Certified EHR Technology Definition'' proposed rule (79 FR 29732). The rule proposed to update the MU Stage 2 and Stage 3 participation timeline. It proposed to revise the CEHRT definition to permit the use of EHR technology certified to the 2011 Edition to meet the CEHRT definition for FY/CY 2014. It also proposed to allow EPs, EHs, and CAHs that could not fully implement EHR technology certified to the 2014 Edition for an EHR reporting period in 2014 due to delays in the availability of such technology to continue to use EHR technology certified to the 2011 Edition or a combination of EHR technology certified to the 2011 Edition and 2014 Edition for the EHR reporting periods in CY 2014 and FY 2014. On September 4, 2014, a final rule (''MU Flexibility Final Rule'') was published (79 FR 52910) adopting these proposals.

2. ONC HIT Certification Program Rules

On March 10, 2010, ONC published a proposed rule (75 FR 11328) titled, ''Proposed Establishment of Certification Programs for Health Information Technology'' (the

''Certification Programs proposed rule''). The rule proposed both a temporary and permanent certification program for the purposes of testing and certifying HIT. It also specified the processes the National Coordinator would follow to authorize organizations to perform the certification of HIT. A final rule establishing the temporary certification program was published on June 24, 2010 (75 FR 36158) (the ''Temporary Certification Program final rule'') and a final rule establishing the permanent certification program was published on January 7, 2011 (76 FR 1262) (''the Permanent Certification Program final rule'').

On May 31, 2011, ONC published a proposed rule (76 FR 31272) titled ''Permanent Certification Program for Health Information Technology; Revisions to ONC-Approved Accreditor Processes.'' The rule proposed a process for addressing instances where the ONC–Approved Accreditor (ONC–AA) engaged in improper conduct or did not perform its responsibilities under the permanent certification program, addressed the status of ONC–Authorized Certification Bodies in instances where there may be a change in the accreditation organization serving as the ONC–AA, and clarified the responsibilities of the new ONC–AA. All these proposals were finalized in a final rule published on November 25, 2011 (76 FR 72636).

The 2014 Edition Final Rule made changes to the permanent certification program. The final rule adopted a proposal to change the Permanent Certification Program's name to the ''ONC HIT Certification Program,'' revised the process for permitting the use of newer versions of ''minimum standard'' code sets, modified the certification processes ONC-Authorized Certification Bodies (ONC–ACBs) need to follow for certifying EHR Modules in a manner that provides clear implementation direction and compliance with the new certification criteria, and reduced regulatory burden by eliminating the certification requirement that every EHR Module be certified to the ''privacy and security'' certification criteria.

The Proposed Rule included proposals that focused on improving regulatory clarity, simplifying the certification of EHR Modules that are designed for purposes other than achieving MU, and discontinuing the use of the Complete EHR definition starting with the ''Proposed Voluntary Edition.''

III. Adopted Proposals

A. 2014 Edition Release 2 EHR Certification Criteria

We proposed to adopt the Proposed Voluntary Edition, which included a full set of certification criteria (57 certification criteria) for the ambulatory and inpatient settings.

Comments. We received both positive and negative comments on the Proposed Voluntary Edition. Commenters that supported the Proposed Voluntary Edition stated that it was responsive to stakeholder feedback, permitted certification to new functionality and standards in a timely manner, and appropriately raised the bar on interoperability. Commenters that did not support the Proposed Voluntary Edition stated that the scope was too large, some standards were too immature for adoption, additional certification would be too costly (after just preparing EHR technology for certification to the 2014 Edition), and that it set an unrealistic expectation among providers and patients that EHR technology developers could have products certified to the Proposed Voluntary Edition in a timely manner (shortly after the 2014 Edition and while preparing for the next edition that would directly support MU Stage 3).

Response. We thank commenters for their support of the Proposed Voluntary Edition. We also appreciate the constructive feedback offered by other commenters. As stated in the Executive Summary, we have only adopted a small subset of our original proposals in the Proposed Voluntary Edition as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria (also referred to as the ''2014 Edition Release 2'' or ''2014 Edition Release 2 EHR certification criteria'') that provide flexibility, clarity and enhance health information exchange. While we believe there are many valid reasons for the adoption of the Proposed Voluntary Edition, including those mentioned by commenters, we believe that our approach in this final rule is the most appropriate at this time. This approach addresses commenters' concerns and introduces multiple means to reduce regulatory burden, increase regulatory flexibility for stakeholders, and promote further innovation.

1. National Technology Transfer and Advancement Act (NTTAA) of 1995

The National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 3701 et seq.) and the Office of Management and Budget (OMB) Circular A–119 [5] require the use of, wherever practical, technical standards that are developed or adopted by voluntary consensus standards bodies to carry out policy objectives or activities, with certain exceptions. The NTTAA and OMB Circular A–119 provide exceptions to selecting only standards developed or adopted by voluntary consensus standards bodies, namely when doing so would be inconsistent with applicable law or otherwise impractical. In this final rule, we have adopted ISO/IEC 17065, which is a voluntary consensus standard. We have also adopted the ONC Implementation Guide for Direct Edge Protocols, Version 1.1. This standard was not developed by a voluntary consensus standards body, but was developed by a group of industry stakeholders committed to advancing the Direct Project,[6] which started as an initiative under the Standards and Interoperability (S&I) Framework.[7] This group used a consensus process similar to those used by other industry stakeholders and voluntary consensus standards bodies. We are aware of no voluntary consensus standard that would serve as an alternative to this standard for the purposes that we have identified in this final rule.

2. Certification Criteria

Computerized Provider Order Entry

Section 3000 of the PHSA, as added by section 13101 of the HITECH Act, requires that computerized provider order entry (CPOE) capabilities be included in CEHRT. We included CPOE capabilities in the Base EHR definition, which is part of the CEHRT definition, under 45 CFR 170.102. Within the 2011 and 2014 Editions, we adopted CPOE certification criteria that require EHR technology to be capable of performing CPOE for medication, laboratory, and radiology/imaging orders. In the Proposed Rule, we stated that based on stakeholder feedback since the 2014 Edition Final Rule, we understood that this approach can prevent EHR technology developers from creating more efficient, provider-specific ''adaptations'' of EHR technology that support CPOE.[8] For example, a mobile adaptation of CPOE currently must include all of the capabilities listed in the 2014 Edition CPOE certification

[5] *http://www.whitehouse.gov/omb/circulars_a119.*

[6] *http://www.healthit.gov/policy-researchers-implementers/direct-project.*

[7] *http://www.healthit.gov/policy-researchers-implementers/standards-interoperability-si-framework.*

[8] Please see 77 FR 54267–68 for a discussion of adaptations.

criterion (i.e., the adaptation must be capable of performing CPOE for each of the three types of orders (medication, laboratory and radiology/imaging)) even though the EHR technology developer's customers may only wish to use the mobile adaptation to enter medication orders away from the office.

Similarly, we noted that some providers could interpret our approach to CPOE certification as inconsistent with the flexibility provided in the FY/CY 2014 CEHRT definition under § 170.102. As one example, we noted that the MU Stage 2 CPOE objective for EPs includes three associated measures (one measure for each of the three types of orders) and exclusions for each of those three measures. An EP who could potentially meet an exclusion for one or two of the measures would still need to possess EHR technology certified to the 2014 Edition CPOE certification criterion (that is, CEHRT that includes CPOE capabilities for each of the three types of orders). As another example, we stated that the MU Stage 1 CPOE objective for EPs does not include measures for laboratory and radiology orders, which means EPs attempting this objective also do not necessarily require these additional certified CPOE capabilities. As one final example, we explained that if an EP expects to meet the MU exclusion for one or two of the MU measures (i.e., writing fewer than 100 of each order type during an EHR reporting period), they could choose to adopt EHR technology certified only to the proposed CPOE certification criterion for the order types reflected in the measure(s) they expect to demonstrate for MU. This approach would permit an EP to meet the Base EHR definition requirements and CEHRT definition without having to adopt EHR technology that includes certified CPOE capabilities they would not expect to use for MU.

For the reasons above, we proposed to split the CPOE certification criterion for the Proposed Voluntary Edition into three separate certification criteria with each criterion focused on one of the three order types, reasoning that certification criteria focused on each order type would permit EHR technology developers to develop order-specific CPOE adaptations and provide EPs, EHs, and CAHs with significantly more implementation flexibility.

In the Proposed Rule, we also stated that the proposed ''CPOE'' certification criteria would omit the ''at a minimum'' language included in the 2014 Edition and 2011 Edition CPOE certification criteria. We noted that the ''at a minimum'' language was included in prior editions to indicate that EHR technology developers could include capabilities that support other types of orders. We stated that this language is extraneous because we have consistently maintained that certification criteria (and certification in general) serve as minimum requirements or a baseline.

Comments. We received universal support for adopting three separate CPOE certification criteria based on medications, laboratory, and radiology/imaging orders. We also received support for the elimination of the ''at a minimum'' language found in the 2011 and 2014 Edition criteria with commenters stating that elimination of the language would remove redundancy from the criteria and reduce confusion.

Response. We have adopted these three certification criteria as 2014 Edition optional certification criteria based on stakeholder feedback and for the reasons we cited in the Proposed Rule. We clarify and emphasize that there are no standards included in the optional certification criteria, unlike the proposed CPOE—laboratory certification criterion. We have also omitted the ''at a minimum'' language in these certification criteria for the reasons proposed and supported by commenters.

We have changed the title of the certification criterion that supports CPOE for ''radiology/imaging'' (§ 170.314(a)(20)) to ''CPOE—diagnostic imaging'' and changed the relevant regulation text of this certification criterion from ''radiology and imaging orders'' to ''diagnostic imaging orders.'' We have also made a similar revision to § 170.3014(a)(1)(iii) by replacing ''radiology/imaging'' with ''diagnostic imaging.'' We have made these revisions to eliminate any potential confusion as to the type of orders we are referencing. We note, however, that these revisions in no way alter the required capability.

We have adopted the optional certification criteria at § 170.314(a)(18) through (20) and included them in the Base EHR definition. We have also revised the ''safety-enhanced design'' (SED) certification criterion at § 170.314(g)(3) to include the three optional CPOE certification criteria. These optional CPOE certification criteria included the same ''patient safety-related'' capabilities included in the CPOE certification criterion at § 170.314(a)(1) and thus the same ''patient safety risk'' rationale for their inclusion in the SED certification criterion at § 170.314(g)(3) applies.[9]

As we noted in the Proposed Rule (79 FR 10886), we caution that this additional flexibility comes with potential risk for EPs who expect to qualify for one or more of the exclusions from the CPOE measures, but do not ultimately satisfy the exclusion criteria based on the number of orders written during an EHR reporting period. EPs who choose to possess EHR technology that is not certified for each of the three types of orders may risk not having EHR technology that meets the CEHRT definition if they ultimately fail to meet one or more MU exclusions. Therefore, we emphasize that EHR technology developers need to be aware that this additional certification flexibility and subsequent certification decisions could have corresponding impacts on EPs who are ultimately responsible for ensuring that their EHR technology meets the CEHRT definition.

We note that we discuss comments received on each of the three proposed CPOE certification criteria that suggested changes to the criteria under section IV.A ''Not Adopted EHR Certification Criteria and Certification Criteria Proposals.'' This includes a discussion of our reasons for not adopting the HL7 Laboratory Orders Interface (LOI) standard and the Clinical Laboratory Improvement Amendments (CLIA)-related requirements for the proposed ''CPOE—laboratory'' certification criterion.

Transitions of Care

We proposed to make several changes to the ''transitions of care'' (ToC) certification criterion, including decoupling content and transport capabilities, the inclusion of the Direct Edge Protocols IG Version 1.0, and shifting the ''incorporation'' requirements into an updated ''clinical information reconciliation and incorporation'' (CIRI). We included several other proposals in the ToC certification criterion that we have not finalized. These proposals are discussed in section IV.A of this preamble.

''Decoupling'' Content and Transport

In the Proposed Rule, we recited specific stakeholder feedback stating that the ''binding'' of transport and content capabilities within the scope of a single certification criterion could impede innovation and limit EPs', EHs', and CAHs' market choices for electronic health information exchange. We also recited stakeholder feedback indicating that we had incorrectly imposed the coupling of technical capabilities that

[9] Please see the 2014 Edition Final Rule (77 FR 54187) for a discussion of the capabilities and certification criteria that we believe present a risk to patient safety and thus are included in the SED certification criterion.

can be adequately performed by two different systems. More specifically, stakeholders stated that content capabilities and transport capabilities should be separately tested and certified as the standard that supports one may change over time while the other remains the same. In this regard, we illustrated how the ''binding'' of the transport and content capabilities within the scope of a single criterion has led, in some cases, to the intertwining of EHR and health information service provider (HISP) functionality (i.e., HISP functionality being built into an EHR or EHR functionality being built into a HISP) solely for the purposes of certification. As a result, we proposed to decouple content and transport capabilities and adopt a single ToC criterion that focused on content capabilities and EHR technology's capability to connect to a service that is conformant with the primary Direct Project specification through the use of the Direct Edge Protocols IG Version 1.0.

Comments. We received significant public comment on this proposal from associations representing providers, consumers, and HIT developers as well as comments from numerous HIT developers. The vast majority of the commenters supported decoupling content and transport capabilities, with some voicing concerns about the proposed Edge Protocol IG Version 1.0. Specifically, commenters noted that the decoupling represented a much-needed flexibility for HIT developers and a workflow update that reflected implementations already widely used. One commenter, an ONC–ACB, noted that ToC and HISP functionality was already separated for most EHRs across different systems. Other commenters voiced concerns that the decoupling would create a greater burden on providers and hospitals as they assemble their certified systems. Finally, comments from the EHR technology developer community stated that the change was proposed too late to provide flexibility, noting that they had already complied with the 2014 Edition requirements and combined the functionality.

Response. We have decided to finalize our proposal to decouple content and transport capabilities. We have also decided to adopt an updated version of the Direct Edge Protocols IG, which we discuss in more detail below. We appreciate the support for this proposal and agree with commenters that the decoupling will achieve much needed flexibility and allow for continued innovation in the market. While this flexibility may be considered too late by some stakeholders, we believe that the potential benefits of its availability for the 2015 EHR reporting period outweigh the negatives. Accordingly, we have adopted an optional ToC certification criterion at § 170.314(b)(8) that focuses on content creation and edge protocol capabilities. We do not believe the optional ToC certification criterion will cause additional burden or complexity for EPs, EHs, and CAHs because it is voluntary and if pursued by an EHR technology developer will be done so to provide additional flexibility and options for an EP, EH, or CAH to choose their HISP.

Edge Protocol for EHR to HISP Connectivity for Direct Transmissions

Comments. Commenters voiced support for decoupling the content and transport requirements under the ToC criterion, however, many voiced concern about the Direct Edge Protocols IG Version 1.0 (''Version 1.0''). Commenters stated the protocol optionality in Version 1.0 provided the potential for interoperability incompatibilities. Commenters also noted that this level of optionality would require technology developers to support all four protocols in Version 1.0 in order to support the variety of valid protocol implementations in ToC. Commenters recommended ONC choose a minimum set of edge protocols that would be mandatory, instead of allowing all four. Other commenters noted that Version 1.0 was never intended to be part of a regulatory framework. Commenters also voiced concern that Version 1.0 did not have widespread development and implementation experience and it that it was premature to adopt it. Finally, commenters noted that the Direct Edge Protocols IG Version 1.1 (''Version 1.1'') would be finalized shortly and urged us to include that version instead of Version 1.0 if we decided to adopt the Direct Edge Protocol IG.

Response. We appreciate the diverse and specific feedback on our proposal to adopt the Version 1.0. In addition to the comments we received on the Proposed Rule, stakeholders who helped develop Version 1.0 provided feedback (through the IG development process) that the edge protocol specifications and message tracking guidance needed to be clarified and refined based upon their experiences in the field. We agree that some of the ambiguities in Version 1.0 could introduce interoperability and implementation challenges for technology developers. Version 1.0 represented a first attempt toward a consistent and uniform approach for HISPs and EHR technology (and other so-called ''edge'' systems in the IG) to implement the most common protocols (described as ''edge protocols'' in the IG) between these systems.

In response to feedback, the stakeholder community (comprised of several HISPs and EHR technology developers) released an updated version of the IG for Direct Edge Protocols, Version 1.1 through the stakeholder lead Direct Project.[10] Version 1.1, as discussed in more detail below, builds on and improves Version 1.0 with consistent implementation and interoperability in mind because it includes more thoroughly documented technical constraints for the edge protocols it references. Version 1.1 addresses many stakeholder concerns because it minimizes variability between implementations.

As outlined in the Proposed Rule, we believe it is important to adopt a Direct Edge Protocols IG in order to support the separation of content and transport related to ToC. If we were to not adopt a Direct Edge Protocols IG, HIT developers would likely first implement inconsistent approaches to edge protocols and then need to spend additional resources later to reconcile those inconsistencies. Providing for certification to Version 1.1 can enable greater certainty and assurance to HIT developers that products certified to this IG have implemented the IG's edge protocol(s) in a consistent manner. The availability of certification should also enhance HIT developers' ability to reliably connect their products without the need for customized interfaces and, ultimately, enable health care providers a greater ability to choose or switch HISP services.

Therefore, in consideration of public comments and our proposal to permit content and transport capabilities to be separately tested and certified, we have decided to adopt Version 1.1 as part of this optional ToC certification criterion. EHR technology presented for certification to the criterion adopted at § 170.314(b)(8) would need to demonstrate compliance with Version 1.1.

The following explains the context and reasons for our decision to adopt Version 1.1 as a standard at § 170.202(d) and reference it within the optional ToC certification criterion at § 170.314(b)(8). For clarity, we note that the optional ToC certification criterion adopted at § 170.314(b)(8) would be only applicable to EHR technology in the role of the ''edge system'' identified in Version 1.1. We also note that this

[10] *http://www.healthit.gov/sites/default/files/implementationguidefordirectedgeprotocolsv1_1.pdf.*

policy only applies for the purposes of EHR technology to be certified and is not meant to impose a ''ceiling'' or limit the use of other edge protocols if so implemented in order to enable electronic exchange for the purposes of meeting the MU transitions of care objective and measures.

Version 1.1 includes two key improvements upon Version 1.0:

- Version 1.1 clarifies the permissible combinations of edge protocols and their applicability within the scope of the IG. For example, two of the edge protocols within the IG (Post Office Protocol (POP) and Internet Message Access Protocol (IMAP)) are unidirectional, meaning they must be paired with another protocol to enable two-way communication between an ''edge system'' and its HISP. Version 1.0 did not clearly specify what the other protocols should be paired with POP and IMAP. Thus, implementers found this guidance incomplete and unclear. Version 1.1 addresses that ambiguity and instructs Edge systems to pair POP and IMAP with Simple Mail Transfer Protocol (SMTP).
- Version 1.1 clarifies technical constraints for Cross-Enterprise Document Reliable Interchange (XDR), SMTP, POP, and IMAP. Implementers of Version 1.0 noted that the IG's level of specification for edge protocols left room for too much variation in implementations, impacting interoperability by creating interface incompatibilities in some instances. In this case, Version 1.0's ambiguities and inherent variability proved problematic and, from a consistent implementation perspective, demonstrated that a more tightly constrained specification would be beneficial. Version 1.1 improves the specificity around XDR, SMTP, POP, and IMAP in areas such as security and authentication to minimize variability and increase interoperability.

Version 1.1 references the same four edge protocols that were referenced in Version 1.0:

1. Integrating the Healthcare Enterprise (IHE) XDR profile for Limited Metadata Document Sources;
2. SMTP;
3. Internet Message Access Protocol version 4rev1 (IMAP4); and
4. Post Office Protocol version 3 (POP3).

However, with respect to the edge system specifications identified in Version 1.1, such edge systems are expected to support either the ''IHE XDR profile for Limited Metadata Document Sources'' edge protocol or an SMTP-focused edge protocol (SMTP alone or SMTP in combination with either IMAP4 or POP3). Thus, for the purposes of testing and certification, compliance with this specific capability within the certification criterion can be demonstrated in one of two ways: Using the specific IHE XDR approach or one of the SMTP approaches.

For this final rule, we evaluated whether to adopt a single edge protocol (of the four available) and decided to conduct fact finding with several HISPs and EHR technology developers to understand what edge protocol(s) they had implemented in the absence of any specific edge protocol requirements as part of the 2014 Edition. Our fact finding identified that EHR technology developers (for the ambulatory and inpatient settings) have already started implementing the two edge protocol approaches identified in Version 1.1 and used either an IHE XDR-based or SMTP-based edge protocol approach to connect to HISPs, and that HISPs were supporting both IHE XDR and SMTP-based edge protocol approaches in order to accommodate different customer needs. We also learned that smaller EHR technology developers were more likely to have implemented an SMTP-based edge protocol approach because the IHE XDR edge protocol approach would have been too resource-intensive. Given this additional information, we determined that requiring the adoption of a single edge protocol would be unwise since such an approach could disadvantage certain EHR technology developers in addition to not providing any commensurate downstream benefit to their customers (EPs, EHs and CAHs).

Overall, we believe that the adoption of Version 1.1 will further support efforts already underway by the community by enabling EHR technology developers to demonstrate through testing and certification that they have implemented an edge protocol in a manner consistent with Version 1.1. Without this consistency, interoperability could be impacted and make it difficult for any specific EHR technology to reliably connect to any HISP. It could also lead to greater costs to providers for continued customized interfaces for the edge connectivity to a HISP and, thus, make it more likely that the provider would be ''locked-in'' to that HISP instead of being able to pair with/subscribe to a HISP of their choosing.

Shifting ''Incorporation'' From ToC to Clinical Information Reconciliation

In response to stakeholder feedback indicating that the inclusion of ''incorporation'' capabilities in the 2014 Edition ToC criterion (§ 170.314(b)(1)(iii)) was not aligned with typical clinical workflows, we proposed to include ''incorporation'' capabilities in a proposed ''clinical information reconciliation and incorporation'' (CIRI) certification criterion. The ''incorporation'' capabilities require EHR technology, upon receipt of a transition of care/referral summary formatted according to the Consolidated CDA Release 1.1, to demonstrate that the transition of care/referral summary received is or can be properly matched to the correct patient and it can electronically incorporate medications, problems, and medication allergies according to specified vocabulary standards.

Comments. We received comments from several EHR developers on this proposal. Commenters overwhelmingly supported including the incorporation functionality in a CIRI criterion instead of a ToC criterion. Commenters stated that this was a better fit for the capabilities and more appropriate for clinical workflow. One commenter stated that we should change the language in the CIRI criterion to clarify ambiguities around the ''extract'' term and its associated requirements.

Response. Given the comments in support, we have finalized our proposal to ''move'' the incorporation requirements into an updated CIRI criterion as proposed. We have adopted the updated CIRI criterion as an optional 2014 Edition certification criterion at § 170.314(b)(9). We agree with commenters that this approach will clarify the interplay between the ToC and CIRI certification criteria and will clear up any misconceptions about anticipated workflow. We decline to change the term ''extract'' at this time because: 1) It is not part of the CIRI criterion; and 2) the same term is used in the 2014 Edition ToC certification criterion at § 170.314(b)(1) as well as the new optional 2014 Edition ToC criterion at § 170.314(b)(8), and the term's meaning and context is discussed in the 2014 Edition Final Rule (77 FR 54219).

Clinical Information Reconciliation and Incorporation

We proposed a CIRI certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. As discussed in more detail under the ToC certification criterion above, we proposed a CIRI criterion that included the same type of incorporation capabilities that we previously adopted as part of the ToC certification criterion at § 170.314(b)(1).

Comments. As noted in the ToC certification criterion above, we received widespread support for ''moving'' the incorporation capabilities

into a CIRI certification criterion. One commenter suggested that we make this certification criterion eligible for gap certification.

Response. We have adopted a new optional 2014 Edition CIRI certification criterion that includes the incorporation capability. We appreciate the comments in support of this proposal and believe it will more align with clinical workflow. This certification criterion is not eligible for gap certification because the change in capabilities required to meet this optional CIRI certification criterion make it a ''revised'' certification criterion as compared to the current 2014 Edition ''clinical information reconciliation'' (CIR) certification criterion and thus ineligible for gap certification.

We have also revised the SED certification criterion at § 170.314(g)(3) to include this optional CIRI certification criterion. The optional CIRI certification criterion includes the same ''patient safety-related'' capabilities included in the CIR certification criterion at § 170.314(b)(4) and thus the same ''patient safety risk'' rationale for its inclusion in the SED certification criterion at § 170.314(g)(3) applies.[11]

View, Download, and Transmit to 3rd Party (VDT)

The Proposed Rule summary in this section only summarizes and includes the ''comments'' and ''response'' for the proposal that we have adopted as part of this final rule. We included several other proposals in the proposed VDT certification criterion that we have not finalized. These proposals are discussed in section IV.A of this preamble.

Decoupling Transport and Content

For the reasons we provided in the Proposed Rule for the separation of content capabilities and transport capabilities (79 FR 10896–97, 10906) and recited under the ToC certification criterion discussed previously in this preamble section, we proposed to ''decouple'' the transport and content capabilities of the VDT certification criterion. We noted that similar to the proposed ToC revisions, the certification criterion would focus on content requirements and EHR technology's ability to demonstrate conformance with the Direct Edge Protocols IG Version 1.0 and enable a successful transmission. We further specified that this would require EHR technology to enable a patient to accomplish a transmission that conforms to the Direct Edge Protocols IG Version 1.0 and is used by a service that has implemented the primary Direct Project specification.

We clarified that ''accomplish'' was intended to convey our expectation and that our anticipated approach through testing would be to assess whether the transmitted Consolidated Clinical Document Architecture (CDA) arrived at its destination. We emphasized that under this proposed revision EHR technology developers seeking testing and certification would be permitted to demonstrate compliance with the transport requirement without having to be a HISP (or be bound to a single HISP through certification). However, we indicated that demonstrating this outcome could be expedited if the EHR technology developer uses a service that is certified to enable health information to be electronically transmitted (sent and received) in accordance with the primary Direct Project specification (under our new proposal for this to be a separate certification criterion).

Comments. Given the parallels between this proposal and the proposal we made for the ToC criterion, the vast majority of commenters expressed the same general support for the ''decoupling.'' Commenters also expressed similar concerns about the proposed Edge Protocol IG Version 1.0 interoperability incompatibilities and the need for HIT developers to support all four protocols in order to support the variety of valid protocol implementations. In general, commenters stated that the decoupling of content and transport represented a much-needed flexibility for developers and a workflow update that reflected implementations already widely used.

Response. For the same reasons we provide in response to the ToC certification criterion related to the decoupling of content and transport as well as the Direct Edge Protocols IG Version 1.1, we have adopted Version 1.1 for the purposes of the VDT certification criterion. In light of our overall approach for this final rule's scope, we have determined that the best and simplest approach to include this new flexibility is to modify the existing VDT certification criterion at § 170.314(e)(1). This modification would add an alternative pathway for EHR technology developers to demonstrate compliance with the certification criterion. The modification would do so in a way that recognizes the content and transport separation we discussed in the Proposed Rule. Specifically, we have modified § 170.314(e)(1)(i)(C)(*1*) and (*2*) to include the alternative ''decoupled'' approach. This revised regulatory text expresses that compliance with the specific transport capability requirement can be demonstrated in one of two ways. One way is the original approach adopted as part of the 2014 Edition Final Rule (certification to the ONC Applicability Statement for Secure Health Transport (Direct)).[12] The other way is the new approach adopted in this final rule (certification to the Edge Protocol IG Version 1.1). We note that this optionality is specified with regulatory text that states ''at least one of the following'' to more clearly convey that both transport approaches do not need to be supported for the purposes of certification nor would an EHR technology developer customers need the other approach certified if the alternative was demonstrated for the purposes of certification.

Transmission to Public Health Agencies—Syndromic Surveillance

We proposed to revise the 2014 Edition ''syndromic surveillance'' certification criterion and adopt a parallel ''syndromic surveillance'' certification criterion for the Proposed Voluntary Edition.

For both MU Stages 1 and 2, EPs may choose the ''electronic syndromic surveillance data'' objective under the menu set. In the MU Stage 2 final rule, CMS stated that very few public health agencies were accepting syndromic surveillance data from ambulatory, non-hospital providers, and there was no corresponding HL7 2.5.1 IG available at the time of the final rule's publication (77 FR 54025). CMS also noted, however, that the CDC was working with the syndromic surveillance community to develop a new IG for ambulatory reporting of syndromic surveillance data, which was expected to be published in spring 2013.

We stated in the Proposed Rule that only a few public health agencies are currently accepting syndromic surveillance data from the ambulatory setting using HL7 2.5.1. We stated that due to lack of demand, the CDC no longer planned to develop an HL7 2.5.1 IG for ambulatory reporting of syndromic surveillance data and that without such an IG most public health agencies would not have enough specific guidance to build systems to receive syndromic surveillance data from the ambulatory setting formatted to HL7 2.5.1. Further, we noted that the MU Stage 2 final rule permits an EP, EH, or CAH to claim an exclusion if the public health agency does not have the

[11] Please see the 2014 Edition Final Rule (77 FR 54187) for a discussion of the capabilities and certification criteria that we believe presented a risk to patient safety and thus included in the SED certification criterion.

[12] 77 FR 54182.

capacity to accept reporting (77 FR 54021) and, therefore, many EPs may qualify for an exclusion for this objective and associated measure and, as a result, would need to choose another objective from the menu set on which to report.

Given the lack of an ambulatory IG for HL7 2.5.1, we proposed to revise the current 2014 Edition certification criterion to allow EHR technology designed for the ambulatory setting to be certified to alternative standards that support other modes of electronic syndromic surveillance data submission. In this regard, we indicated that syndromic surveillance data was being sent to public health agencies through new query-based models, including the QueryHealth initiative.[13] Query-based models take patient level data, de-identify it, and aggregate it for population health use. In the Proposed Rule, we also noted that we understood that the query-based models use HL7 CDA and QRDA Category III (''QRDA III'') standards, and did not necessarily use the HL7 2.5.1 standard. Further, we stated that CDA and QRDA III standards were adopted and referenced by 2014 Edition certification criteria and, as a result, had become more widely implemented.

In light of the potential that many EPs may qualify for an exclusion for the MU objective and associated measure with which this certification criterion correlates, we noted that we sought to make available additional electronic syndromic surveillance submission capabilities in order to better support their opportunity to receive credit for the syndromic surveillance MU objective. Therefore, we proposed to specifically revise the 2014 Edition ''syndromic surveillance'' certification criterion at § 170.314(f)(3) to include the HL7 CDA and QRDA III standards as alternative standards to HL7 2.5.1 for EHR technology certification designed for the ambulatory setting.

For EHR technology certification to the inpatient setting, we proposed to revise the 2014 Edition certification criterion by replacing the adopted version of the HL7 2.5.1 IG with a newer version of the IG that incorporates an addendum clarifying conformance guidance (PHIN Messaging Guide for Syndromic Surveillance: Emergency Department, Urgent Care, and Inpatient Settings, Release 1.9 (April 2013)).

We proposed the same ambulatory and inpatient setting requirements in a parallel ''syndromic surveillance'' certification criterion for the Proposed Voluntary Edition.

We solicited comment on whether public health agencies are using the QRDA Category I standard to receive query-based syndromic surveillance data, and whether we should consider adopting the standard for the ambulatory setting.

Comments. We received a range of comments on the use of the CDA and QRDA III standards in addition to the HL7 2.5.1 standard for ambulatory setting certification. Some commenters stated that the added flexibility of allowing alternate standards would increase the exchange of syndromic surveillance data. Commenters stated that the lack of a HL7 2.5.1 IG for the ambulatory setting has led to variation across EHRs. Other commenters opined that the absence of an HL7 2.5.1 IG for the ambulatory setting has also resulted in reluctance from EHR developers to build custom interfaces to enable public health agencies to receive ambulatory syndromic surveillance. One public health agency commented that they have built the infrastructure to receive CDA and QRDA III through their HIE and related partners. This public health agency stated that CDA and QRDA III standards could represent significant advances for timely and efficient ambulatory syndromic surveillance data collection and supported the proposal to allow alternate standards for certification.

Commenters in opposition to the proposal to allow use of CDA and QRDA III standards for certification stated that ONC should promote a single standard for ambulatory syndromic surveillance rather than allow multiple standards. Others commented that despite the proposed regulation text permitting use of HL7 2.5.1, CDA, ''or'' QRDA III standards, the ''or'' would really be implemented as an ''and'' if the EHR technology developer's customers want to use CDA or QRDA III because an EHR developer would have to offer any and all options desired by their customers. Some commenters expressed concern that public health agencies are not ready to develop the infrastructure to receive CDA and QRDA III data if they had not previously done so. Commenters noted that, without specific IGs for the use of CDA and QRDA III for ambulatory syndromic surveillance, the standards are not constrained enough to reach uniform submission of the data. Likewise, commenters indicated that the CDA and QRDA III standards have not been piloted or tested for syndromic surveillance purposes.

The majority of commenters supported adoption of the proposed updated IG for inpatient certification. However, many commenters stated that since the IG Release 1.9 publication numerous errors have been identified with Release 1.9. For example, many commenters pointed to the report issued by the International Society for Disease Surveillance identifying issues and errors with Release 1.9.[14] Commenters opined that those issues and errors should be addressed before requiring compliance with Release 1.9. A few commenters noted that stakeholders are working toward Release 2.0 of the IG, which they noted would include more substantive updates relative to Release 1.8 in comparison to the updates included in Release 1.9. Therefore, the commenters recommended waiting to adopt Release 2.0 to avoid redundant and unnecessary work for EHRs and public health agencies as well as to get the maximum benefit for updated systems.

A few commenters stated that QRDA Category I is not being used for query-based syndromic surveillance in ambulatory settings and opined that Category I is not appropriate as it includes patient-level results rather than aggregate results which are more suitable for syndromic surveillance.

Response. We proposed revisions to the 2014 Edition version of this criterion and a ''syndromic surveillance'' certification criterion for the Proposed Voluntary Edition to permit alternate standards for the transmission of ambulatory syndromic surveillance data as a means of providing additional flexibility for EHR technology certification and for EPs attempting to meet the syndromic surveillance MU objective and measure. Since publication of the Proposed Rule we have heard from the CDC that some public health agencies have requested that the CDC reconsider developing an IG for HL7 2.5.1 as the HL7 2.5.1 standard is used by some public health agencies.

With consideration of the request to CDC, our overall approach to this final rule as described in the Executive Summary, and to provide the most clarity for certification as possible, we are not removing or revising the current 2014 Edition ''syndromic surveillance'' certification criterion (§ 170.314(f)(3)) nor adopting a separate ''syndromic surveillance'' certification criterion for the Proposed Voluntary Edition. Rather, we have adopted an optional 2014 Edition ''syndromic surveillance'' certification criterion (§ 170.314(f)(7)) for the ambulatory setting. The optional

[13] *http://wiki.siframework.org/Query+Health.*

[14] The ISDS Issue Report is available at *https://docs.google.com/spreadsheet/ccc?key=0AlhELG407-6OdFVPa0ZjZXFjYnNVd0tPSHRCRGF0WXc&usp=sharing.*

certification criterion permits EHR technology, for the purposes of certification, to use any method or standard to electronically create syndrome-based public health surveillance information for electronic transmission. Consistent with the intent of our proposal, this will provide additional certification flexibility for EHR technology developers and flexibility for EPs attempting to achieve MU. We note that this approach does not affect the corresponding MU Stage 2 objective and measure.[15]

We agree with commenters that without specific IGs for the use of CDA and QRDA III for the transmission of ambulatory syndromic surveillance data, the standards are not constrained enough on their own to enable interoperable submissions. However, even before publication of the Proposed Rule, query-based standards were piloted and demonstrated in a few cases for ambulatory syndromic surveillance data, including through the QueryHealth initiative. These efforts and the use of query-based models continue and we expect the use of query-based models to grow among public health agencies. Therefore, we concluded that the best approach at this time was to adopt an optional ''syndromic surveillance'' certification criterion that permits EHR technology designed for the ambulatory setting to simply demonstrate that it can electronically create syndrome-based public health surveillance information for electronic submission (using any method or standard) to be certified to this criterion. This provides certification flexibility and potential EP flexibility as mentioned above, while also providing a path forward as described below.

Because there is no current IG that supports ambulatory syndromic surveillance data submission using query-based standards, we have also included an optional set of data elements *within* this optional certification criterion to provide some additional specificity and to which EHR technology developers may choose to have their EHR technology certified. These data elements are: Patient demographics, provider specialty, provider address, problem list, vital signs, laboratory results, procedures, medications, and insurance. While the aforementioned data elements are optional for the purposes of demonstrating compliance to this certification criterion, if an EHR technology developer wishes to certify its EHR technology to this criterion as a whole, including the optional data set, the EHR technology would need to demonstrate that it can electronically produce syndromic surveillance information that contains all of the data elements. In other words, an EHR technology that could only produce half of the data elements would not be able to be certified to this optional portion of the criterion. The public health agencies and stakeholders that have piloted and continue to pilot query-based models for transmitting ambulatory syndromic surveillance data send all of the data elements identified above. Therefore, by identifying these data elements for certification, EHR technology developers will have clarity as to the data elements they should focus on for creating syndrome-based public health information submissions and will need to include to support query-based models now and in the future, including any potential certification requirements introduced through future rulemaking.

The use of the QRDA III standard represents the response portion of a query-response model, but there currently are no mature standards for the query portion of the model of which we are aware. We intend to continue working with stakeholders on standards for both the query and response portions to support the electronic transmission of ambulatory syndromic surveillance data. We intend to gather more information regarding the implementation guidance provided by stakeholders that are currently piloting or using CDA or constrained QRDA III for ambulatory syndromic surveillance data transmissions to inform our consideration of what standards to propose in the future. This work will include confirming which data elements are commonly transmitted through these and other query-based models, such as the ones identified above and any other data elements that may also be typically sent using query-based approaches.

Given our approach to this final rule as stated in the Executive Summary, we have not adopted the IG Release 1.9 for inpatient certification to either the current ''syndromic surveillance'' certification criterion or the optional ''syndromic surveillance'' certification criterion we have adopted in this final rule. We agree with comments that any issues or errors identified in Release 1.9 should be remedied before requiring the IG for adoption. We also recognize that the industry is working on Release 2.0 of the IG. Therefore, we will consider this feedback for future rulemaking concerning a ''syndromic surveillance'' certification criterion.

We also thank commenters for the input on the usefulness of QRDA Category I for query-based ambulatory syndromic surveillance and will consider this feedback for future rulemaking.

Transport Methods (Formerly ''Transmission'') Certification Criteria

As a result of our proposal to decouple content and transport capabilities from the ToC certification criteria and VDT certification criterion, we proposed to adopt three separate transport certification criteria. These three proposed transport certification criteria mirrored the specific transport capabilities identified within the 2014 Edition ToC certification criteria at § 170.314(b)(1) and (2). The first criterion mirrored the capability expressed at § 170.314(b)(1)(i)(A) and § 170.314(b)(2)(ii)(A) (i.e., Direct); the second mirrored the ''optional'' capability expressed at § 170.314(b)(1)(i)(B) and § 170.314(b)(2)(ii)(B) (i.e., Direct and XDR/XDM for Direct Messaging); and the third mirrored the ''optional'' capability expressed at § 170.314(b)(1)(i)(C) and § 170.314(b)(2)(ii)(C) (i.e., SOAP RTM and XDR/XDM for Direct Messaging). We stated for all three proposed certification criteria that we expected them to be tested similarly to how they are tested today except that only these capabilities would be tested.

Comments. Commenters generally supported the separation of content and transport (as outlined in more detail under the ToC certification criterion above) and the inclusion of independent transport certification criteria in order to support our overall approach to decoupling content and transport capabilities. Some commenters believed the first three transport criteria (i.e., Direct, Direct and XDR/XDM for Direct Messaging, and SOAP RTM and XDR/XDM for Direct Messaging) should be eligible for gap certification because each capability could be tested as part of the 2014 Edition ToC criteria. One commenter asked for clarification regarding the grouping of the proposed certification criteria. Specifically, the commenter asked if the transport criteria were separate and could be individually tested and certified.

Response. We have revised the title of this category of certification criteria for clarity. We now refer to this category of certification criteria (§ 170314(h)) as ''transport methods'' instead of ''transmission.'' We believe this provides better attribution to the type of criteria and functionality that are included in this category.

[15] MU2 Measure: Successful ongoing submission of electronic syndromic surveillance data from certified EHR technology to a public health agency for the entire EHR reporting period.

We appreciate the widespread support and feedback regarding the decoupling of content and transport requirements. We believe finalizing three, independent transport criteria will allow technology developers to build in the transport capabilities suited to their customers' needs. Therefore, consistent with our earlier discussion related to the optional ToC certification criterion (§ 170.314(b)(8)), we have decided to adopt all three of the proposed transport capabilities (previously contained within the ToC certification criteria) in three separate certification criteria that can be individually tested and certified. For all three adopted criteria, we have removed the term ''transmit'' from the title of criteria and replaced the regulation text ''electronically transmitted'' in each criterion with ''electronically sent and electronically received.'' These changes provide clarity in two ways. They eliminate any confusion with the use of the term ''transmit'' (or ''transmitted''), which we used in the 2014 Edition Final Rule to mean only ''send from one point to another'' (77 FR 54168). Equally important, the changes clearly specify how these standards will be tested and certified, which is consistent with how these standards are currently tested and certified. The changes are also consistent with our expectations expressed in the Proposed Rule and recited above about testing and certification.

As noted in the following section (III.A.3 ''Gap Certification Eligibility Table for 2014 Edition Release 2''), the certification criteria for Direct, Direct and XDR/XDM for Direct Messaging, and SOAP RTM and XDR/XDM for Direct Messaging are eligible for gap certification. We discuss each certification criterion in more detail in the following comments and responses.

Comments. Some commenters asked that we identify one transport criterion as the minimum required for transport. The commenters noted that if one method of transmission were not required, vendors would be forced to support all transport methods.

Response. As we explained in the preamble of the Proposed Rule, we seek to maintain the same policy we included in the 2014 Edition Final Rule—that in order for EPs, EHs, and CAHs to have EHR technology that met the CEHRT definition they would need to have EHR technology capable of performing transmissions in accordance with the primary Direct Project specification. We accentuated this policy by proposing to modify the Base EHR definition to ensure that it reflected this policy, which we have finalized in this final rule. Thus, in response to these comments, we reiterate that the primary Direct Project specification is still the minimum required transport capability EPs, EHs, and CAHs will need to meet the CEHRT definition.

Applicability Statement for Secure Health Transport

Comments. Commenters widely supported the adoption of this certification criterion. One commenter noted that in the case of immunization information, Direct is a suboptimal transport method.

Response. We appreciate the comments received on this certification criterion and have adopted this criterion as a new optional certification criterion at § 170.314(h)(1). We recognize that the primary Direct Project specification may not be the best fit for every type of transmission. However, we note that the standard is not required for public health transmissions.

Applicability Statement for Secure Health Transport and XDR/XDM for Direct Messaging

Comments. We did not receive any comments suggesting we not adopt this specific criterion.

Response. We have adopted this criterion as a new optional certification criterion at § 170.314(h)(2). We note that the proposed regulation text in the Proposed Rule was not consistent with the Proposed Rule preamble in that it did not mirror the ''optional'' capability expressed at § 170.314(b)(1)(i)(B) and§ 170.314(b)(2)(ii)(B) (i.e., Direct and XDR/XDM for Direct Messaging). Rather, it only referenced the XDR/XDM for Direct Messaging standard. In what we are adopting in this final rule, we have now aligned the regulation text with our proposal by including references to both the XDR/XDM for Direct Messaging (§ 170.202(b)) and the Direct standard (§ 170.202(a)).

SOAP Transport and Security Specification and XDR/XDM for Direct Messaging

Comments. Commenters supported the adoption of this certification criterion. One commenter noted that this criterion would best support immunization information transmissions.

Response. We appreciate the comments we received on this criterion and have adopted this criterion as a new optional certification criterion at § 170.314(h)(3). We note that the proposed regulation text in the Proposed Rule was not consistent with the Proposed Rule preamble in that it did not mirror the ''optional'' capability expressed at § 170.314(b)(1)(i)(C) and § 170.314(b)(2)(ii)(C) (i.e., SOAP RTM and XDR/XDM for Direct Messaging). Rather, it only referenced the SOAP RTM standard. In what we are adopting in this final rule, we have now aligned the regulation text with our proposal by including references to both the SOAP RTM standard (§ 170.202(c)) and the XDR/XDM for Direct Messaging (§ 170.202(b)).

3. Gap Certification Eligibility Table for 2014 Edition Release 2

''Gap certification'' is defined at 45 CFR 170.502 as ''the certification of a previously certified Complete EHR or EHR Module(s) to: (1) [a]ll applicable new and/or revised certification criteria adopted by the Secretary at subpart C of [part 170] based on the test results of a NVLAP-accredited testing laboratory; and (2) [a]ll other applicable certification criteria adopted by the Secretary at subpart C of [part 170] based on the test results used to previously certify the Complete EHR or EHR Module(s)'' (for further explanation, see 76 FR 1307–1308). Our gap certification policy focuses on the differences between certification criteria that are adopted through rulemaking at *different points in time.* Under our gap certification policy, ''unchanged'' criteria (see 77 FR 54248 for further explanation) are eligible for gap certification, and each ONC–ACB has discretion over whether it will provide the option of gap certification.

In the Proposed Rule, we included a table (79 FR 10916) that provided a crosswalk of unchanged Proposed Voluntary Edition EHR certification criteria to the corresponding 2014 Edition EHR certification criteria. We provided corrections to this table in a notice published in the **Federal Register** on March 19, 2014 (79 FR 15282). We have provided a new table (Table 3) in this final rule because we have not adopted the full Proposed Voluntary Edition and have also made revisions to a proposed certification criterion that we are including in the 2014 Edition as part of Release 2 (i.e., ''CPOE—laboratory'' § 170.314(a)(19)). The table below provides a crosswalk of 2014 Edition Release 2 certification criteria that are eligible for gap certification using the test results of EHR technology previously certified to the 2014 Edition and 2011 Edition.

TABLE 3—GAP CERTIFICATION ELIGIBILITY FOR 2014 EDITION, RELEASE 2 EHR CERTIFICATION CRITERIA

2014 edition release 2		2014 Edition		2011 Edition	
Regulation section	Title of regulation paragraph	Regulation section	Title of regulation paragraph	Regulation section	Title of regulation paragraph
§ 170.314(a)(18).	Optional—computerized physician order entry—medications.				
§ 170.314(a)(19).	Optional—computerized physician order entry—laboratory.	§ 170.314 (a)(1).	Computerized physician order entry.	§ 170.304(a); § 170.306(a).	Computerized physician order entry.
§ 170.314 (a)(20).	Optional—computerized physician order entry—diagnostic imaging.				
§ 170.314(f)(7)*	Optional—ambulatory setting only—transmission to public health agencies—syndromic surveillance.	§ 170.314(f)(3)	Transmission to public health agencies—syndromic surveillance (ambulatory setting only).	§ 170.302(1) ..	Public health surveillance (ambulatory setting only).
§ 170.314(h)(1)	Optional—Applicability Statement for Secure Health.	§ 170.314(b)(1)(i)(A) and § 170.314(b)(2)(ii)(A).	Transitions of care—receive, display, and incorporate transition of care/referral summaries.Transitions of care—create and transmit transition of care/referral summaries..	Not applicable	Not applicable.
§ 170.314(h)(2)	Optional—Applicability Statement for Secure Health Transport and XDR/XDM for Direct Messaging.	§ 170.314(b)(1)(i)(B) and § 170.314(b)(2)(ii)(B).	Transitions of care—receive, display, and incorporate transition of care/referral summaries Transitions of care—create and transmit transition of care/referral summaries..	Not applicable	Not applicable.
§ 170.314(h)(3)	Optional—SOAP Transport and Security Specification and XDR/XDM for Direct Messaging.	§ 170.314(b)(1)(i)(C) and § 170.314(b)(2)(ii)(C).	Transitions of care—create and transmit transition of care/referral summaries.	Not applicable	Not applicable.

* Gap certification does not apply for the optional data elements listed in § 170.314(f)(7).

4. Base EHR Definition

We proposed to include in the Base EHR definition (a foundational part of the CEHRT definition) the Proposed Voluntary Edition EHR certification criteria that corresponded to the 2014 Edition EHR certification criteria already specified in the Base EHR definition (i.e., CPOE, demographics, problem list, medication list, medication allergy list, clinical decision support (CDS), CQMs, transitions of care, data portability, and privacy and security).

Comments. We received a comment that supported the inclusion of the proposed CPOE certification criteria in the Base EHR definition because it would provide the potential for more flexibility and less burden for EPs, EHs, and CAHs in meeting the Base EHR definition.

Response. We have not revised the Base EHR definition as proposed. However, we have revised the Base EHR definition to include the *optional* CPOE, ToC, and the Direct transport (§ 170.314(h)(1)) certification criteria adopted in this final rule. The inclusion of these certification criteria in the Base EHR definition will, as noted by the commenter in relation to the CPOE certification criteria, offer flexibility and reduced burden in meeting the Base EHR definition for some EPs, EHs, and CAHs.

B. ONC HIT Certification Program

1. Discontinuation of the Complete EHR

We proposed to discontinue use of the Complete EHR definition as a regulatory concept and the certification of Complete EHRs *beginning with* the Proposed Voluntary Edition. As an alternative to the proposal, if we were to keep the Complete EHR concept and definition for editions of certification criteria beyond the 2014 Edition, we proposed to either continue the same policy of adopting an edition-specific Complete EHR (e.g., ''2015 Edition'' Complete EHR) or define a Complete EHR as ''EHR technology that has been developed to meet, at a minimum, all mandatory certification criteria of an edition of EHR certification criteria adopted by the Secretary for either an ambulatory setting or inpatient setting and meets the Base EHR definition.'' For the latter, we noted that ONC–ACBs would be responsible for issuing Complete EHR certifications that specify the edition the Complete EHR was certified to and that the information would be evident through listing on the Certified HIT Product List (CHPL).

Comments. We received many comments from associations representing providers, consumers, and HIT developers as well as comments from numerous HIT developers. The overwhelming majority supported our proposal to discontinue the Complete EHR definition and Complete EHR certification for the reasons we specified in the Proposed Rule (recited below in the response). One association was neither for nor against our proposal, but was more concerned that providers have a clear understanding of what they are purchasing. In particular, the association stated that information outlining the product's criteria should be readily apparent when purchasing the product and also available on ONC's Web site. A few commenters suggested that we retain Complete EHR certification as an option for EHR technology developer and consumer purchasing. One of these commenters recommended that we tailor a Complete

EHR certification by the MU Stage it would be associated with, while another suggested calling it a ''Comprehensive EHR.''

Response. We have finalized our proposal to discontinue the Complete EHR definition and Complete EHR certification. While we have not adopted the Proposed Voluntary Edition, this approach will apply for all future adopted editions of certification criteria as specified in § 170.501(b) (discussed in more detail under section III.B.2 ''Applicability'' of this preamble). To be clear, the discontinuation of the Complete EHR definition and Complete EHR certification will have *no impact* on current 2014 Edition Complete EHR certifications or in using a 2014 Edition Complete EHR to meet the current CEHRT definition. In regard to additional 2014 Edition Release 2 certification criteria, we have adopted them all as optional criteria and thus they do not impact the 2014 Edition Complete EHR definition.

In the Proposed Rule (79 FR 10917–10918), we explained our rationale for discontinuing the Complete EHR definition. We are reciting our rationale again here as we still believe these reasons hold true. Following the recitation of these reasons, with minor modifications due to the MU Flexibility Final Rule (79 FR 52910), we offer further rationale and responses to comments.

(1) The Complete EHR definition initially was intended to support the original CEHRT definition established in the 2011 Edition Final Rule under § 170.102. As a general summary, the original CEHRT definition required an EP, EH, and CAH to have EHR technology that met *ALL* of the certification criteria adopted for an applicable setting (ambulatory or inpatient). The ''Complete EHR'' term and definition was meant to convey that all applicable certification criteria had been met and the statutory requirements of the Qualified EHR definition had been fulfilled. The CEHRT definition based on EHR technology certification to the 2014 Edition (2014 Edition CEHRT definition) and Complete EHR definition no longer share the same symmetry. In fact, the 2014 Edition Complete EHR definition now exceeds the 2014 Edition CEHRT definition's requirements as to the number of certification criteria to which an EHR technology would need to be certified to meet the CEHRT definition.

(2) Since publication of the 2014 Edition Final Rule, we have received stakeholder feedback through email questions and during educational presentations and other outreach that demonstrates confusion about the interplay between the CEHRT definition, the Base EHR definition (adopted as part of the 2014 Edition Final Rule), and the Complete EHR definition. Stakeholders have correctly concluded that a certified 2014 Edition Complete EHR could be used to meet the CEHRT definition. However, some stakeholders believe incorrectly that their only regulatory option to meet the CEHRT definition is to adopt a certified Complete EHR when, under the CEHRT definition for FY/CY 2014 and subsequent years in § 170.102, they can use EHR technology (EHR Module(s)) certified to the 2014 Edition EHR certification criteria that meets the Base EHR definition (a finite set of capabilities) and includes all other capabilities that are necessary to meet the objectives and measures and successfully report CQMs *for the MU Stage they are attempting to achieve.*

(3) A Complete EHR is not necessarily ''complete'' or sufficient when it comes to an EP's, EH's, or CAH's attempt to achieve MU. For example, based on the ''Complete EHR, 2014 Edition'' definition, it may not be certified to particular CQMs on which an EP intends to report and it may not have been certified to capabilities included in *optional* certification criteria that an EP needs for MU, such as the 2014 Edition cancer reporting certification criteria (§ 170.314(f)(5) and (6)). Thus, if we were to continue this policy approach, we believe this discrepancy would only grow and cause greater confusion over time.

(4) Stakeholder feedback to us since the 2014 Edition Final Rule (via conference and webinar question and answer sessions, public meetings, and emails) and the data currently available on the CHPL indicates that some EHR technology developers have continued to seek only a 2014 Edition Complete EHR certification and, thus, only plan to offer a certified Complete EHR as a solution to customers. While we recognize EHR technology developers may choose to pursue various approaches for designing and marketing their products, we are in a position to modify our policy so that it *does not encourage* EHR technology developers to offer only a single certified solution. In general, we believe the decision to seek certification only for a Complete EHR serves to defeat the flexibility provided by the 2014 Edition CEHRT definition. Consequently, by discontinuing the availability of the Complete EHR certification, *the EHR technology market could be driven by EHR technology developers competing on the capabilities included in their EHR technology rather than on the type of certification issued (Complete EHR or EHR Module).*

(5) The discrepancy between what any single EP, EH, or CAH needs to achieve MU and the Complete EHR definition will likely only grow more disparate when we adopt certification criteria in a new edition to support MU Stage 3. At that time, there may be EPs, EHs, and CAHs attempting to achieve each of the three stages of MU, but a Complete EHR following the structure of the 2014 Edition Complete EHR definition would likely include capabilities that support core and menu objectives and measures for all MU stages.

(6) Discontinuing the use of the Complete EHR concept would be consistent with the instruction of Executive Order 13563 to identify and consider approaches that make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. To illustrate, we would not need to designate EHR certification criteria as mandatory or optional in our regulation text as these categories were specifically developed to accommodate the Complete EHR definition (i.e., cases where EHR technology would otherwise have to be certified to a criterion solely because it is required in order to satisfy the Complete EHR certification).

As stated in the Proposed Rule, discontinuation of Complete EHR definition and certification does not affect EHR Module certification. In fact, as it stands now with 2014 Edition certification, an EHR Module certificate can be issued to an EHR technology that includes every certification criterion that is included in a Complete EHR certificate issued to an EHR technology (and even with the EHR Module certificate, the capabilities can be integrated in the same manner),[16] but would not be given the ''Complete EHR'' designation. The discontinuation of the Complete EHR definition and certification will also help to address commenters' concerns about clearly knowing what certification criteria an EHR technology is certified to because, unlike Complete EHR developers for their Complete EHRs, an EHR Module developer is required by regulation to specifically list in communications and marketing materials all the certification criteria to which the EHR technology was certified and for which it was issued an EHR Module certificate.

[16] To note, the ONC HIT Certification Program does not include integration testing and certification of Complete EHRs or EHR Modules as that is left to the EHR technology developer and its customers.

Therefore, with only EHR Module certificates on the market, we believe it will be easier to know and compare the certification criteria to which they have been certified. Last, while we do not believe the use of the terms ''Complete'' or ''Comprehensive'' are appropriate for ''labeling'' EHR technology going forward, we will consider for our next rulemaking whether any other ''labeling'' for certified technologies could continue to make the scope of certification clearer.

2. Applicability

We proposed to revise the ''applicability'' section (§ 170.501) for the ONC HIT Certification Program to clearly indicate that references to the term Complete EHR and Complete EHR certification *do not* apply to certification in accordance with the Proposed Voluntary Edition and any subsequent edition of certification criteria adopted by the Secretary under subpart C. This proposal was consistent with our proposal to discontinue the use of the Complete EHR concept and Complete EHR certification beginning with the Proposed Voluntary Edition.

Comments. We received two comments expressing agreement with our proposal.

Response. We have finalized our proposal consistent with our decision to finalize the proposals to discontinue use of the Complete EHR concept and Complete EHR certification for any subsequent adopted edition of certification criteria. We have, however, finalized this proposal in a manner that accounts for our decision not to adopt the Proposed Voluntary Edition. Specifically, we have revised § 170.501(b) to read: ''References to the term Complete EHR and Complete EHR certification throughout this subpart do not apply to certification in accordance with any edition of certification criteria that is adopted by the Secretary under subpart C after the 2014 Edition EHR certification criteria.''

3. ONC Regulations FAQ 28

In ONC regulations FAQ 28,[17] we provide guidance on the application of § 170.314(g)(1) and (g)(2) to the certification of Complete EHRs and EHR Modules. We state in FAQ 28 and in the 2014 Edition Final Rule (77 FR 54186) that ONC–ACBs can certify an EHR Module to either the 2014 Edition ''automated numerator recording'' certification criterion or the 2014 Edition ''automated measure calculation'' certification criterion.

To provide regulatory clarity, we proposed to revise § 170.550(f)(1) to specify this flexibility for the certification of EHR Modules to the 2014 Edition and proposed the same flexibility in § 170.550(g)(1) for MU EHR Modules certified to the Proposed Voluntary Edition ''automated numerator recording'' certification criterion and the ''automated measure calculation'' certification criterion. We also clarified that an EHR Module (or proposed ''MU EHR Module'' with regard to the Proposed Voluntary Edition) could be certified to only the ''automated measure calculation'' certification criterion (§§ 170.314(g)(2) or proposed 170.315(g)(2)) in situations where the EHR Module does not include a capability that supports a percentage-based MU objective and measure, but can meet the requirements of the ''automated measure calculation'' certification criterion (§§ 170.314(g)(2) or proposed 170.315(g)(2)). We noted that an example of this would be an ''analytics'' EHR Module where data is fed from other EHR technology and the EHR Module can record the requisite numerators, denominators and create the necessary percentage report as specified in the ''automated measure calculation'' certification criterion. In these situations, we stated that § 170.550(f)(1) or (g)(1) would not be implicated or need to be applied.

We proposed to revise § 170.314(g)(1) to be an optional certification criterion as a means of providing regulatory clarity for the certification of Complete EHRs to the 2014 Edition, which would implement the guidance provided in FAQ 28. In FAQ 28, we stated that EHR technology issued a 2014 Edition Complete EHR certification must be certified to § 170.314(g)(2) because it is a mandatory certification criterion consistent with the 2014 Edition Complete EHR definition requiring certification to all mandatory certification criteria for a particular setting (ambulatory or inpatient), but not § 170.314(g)(1) (even though it too was designated as a mandatory certification criterion) because a 2014 Edition Complete EHR would have demonstrated capabilities beyond those included in § 170.314(g)(1) by being certified to (g)(2).

We proposed that if were to retain the Complete EHR concept for the Proposed Voluntary Edition, we would take the same approach for Complete EHRs as specified in FAQ 28 and in our proposed regulatory changes to § 170.314(g)(1).

Comments. We received a few comments supporting the continued requirement for Complete EHRs to be certified to the ''automated measure calculation'' certification criterion (§ 170.314(g)(2)). We received one comment supporting our proposal to revise § 170.314(g)(1) to be an optional certification criterion as a means of providing regulatory clarity for the certification of Complete EHRs to the 2014 Edition.

Response. We have not finalized the proposals related to the Proposed Voluntary Edition because we have not adopted the Proposed Voluntary Edition. We have, however, finalized the proposals related to the 2014 Edition. We have designated the ''automated numerator recording'' certification criterion at § 170.314(g)(1) as an optional certification criterion, which will provide greater regulatory clarity for ONC–ACBs as they determine whether EHR technology meets the 2014 Edition Complete EHR definition and therefore must be certified to § 170.314(g)(2). Certification to § 170.314(g)(2) is required to meet the 2014 Complete EHR definition as it is a mandatory certification criterion. This approach is also supported by commenters. We have revised § 170.550(f)(1) to require ONC–ACBs to certify EHR Modules to either § 170.314(g)(1) or (2), rather than just requiring certification to § 170.314(g)(1). This will implement FAQ 28 guidance and flexibility as well as provide regulatory clarity.

We also maintain our clarification and guidance included in the Proposed Rule related to an EHR Module being able to be certified to only the ''automated measure calculation'' certification criterion (§ 170.314(g)(2)) in situations where the EHR Module does not include a capability that supports a percentage-based MU objective and measure, but can meet the requirements of the ''automated measure calculation'' certification criterion.

4. Patient List Creation Certification Criteria

In the Proposed Rule, we discussed how the 2014 Edition (and Proposed Voluntary Edition) ''patient list creation'' certification criterion includes capabilities that support two MU objectives, one with a percentage-based measure and one without (i.e., ''use clinically relevant information to identify patients who should receive reminders for preventive/follow-up care and send these patients the reminders, per patient preference'' (''patient

[17] *http://www.healthit.gov/policy-researchers-implementers/28-question-11-12-028.*

reminders'') [18] and ''generate lists of patients by specific conditions to use for quality improvement, reduction of disparities, research, or outreach,'' respectively). We clarified that in situations where EHR technology is presented for certification to the 2014 Edition (and Proposed Voluntary Edition) ''patient list creation'' certification criterion and *does not include* a capability to support ''patient reminders,'' it would not need to be certified to the ''automated numerator recording'' certification criterion (§ 170.314(g)(1)) nor the ''automated measure calculation'' certification criterion (§ 170.314(g)(2)) for ''patient reminders'' percentage-based measure capabilities.

Comments. We received a few comments supporting our clarification and guidance. An ONC–ACB further noted that, in its experience, there are only a ''handful'' of EHR technologies presented for certification for which this type of scenario would be applicable.

Response. We appreciate commenters' support and agreement with our clarification and guidance. While we have not adopted the proposed ''patient list creation'' certification criterion, our clarification and guidance remains applicable for the certification of EHR technology to the 2014 Edition ''patient list creation'' certification criterion (§ 170.314(a)(14)). As noted by the ONC–ACB, the clarification and guidance will be helpful in facilitating the proper certification of at least some EHR technology to the 2014 Edition ''patient list creation'' certification criterion.

5. ISO/IEC 17065

Section 170.503(b)(1) requires applicants for ONC-Approved Accreditor (ONC–AA) status to provide a detailed description of their experience evaluating the conformance of certification bodies to International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 65:1996 (''Guide 65''). Section 170.503(e)(2) requires the ONC–AA to verify that the certification bodies it accredits and ONC–ACBs conform to, at a minimum, Guide 65. The ISO issued ISO/IEC 17065: 2012 [19] (ISO 17065), which cancels and replaces Guide 65.

Because ISO has replaced Guide 65 with ISO/IEC 17065, we proposed to revise § 170.503(b)(1) and (e)(2) to replace the references to Guide 65 with ISO 17065. For § 170.503(b)(1), we proposed that the change would be effective as of the effective date of this final rule. We noted that we anticipated that the effective date of this final rule would occur after we select an accreditation body as the ONC–AA for the next three-year term as ANSI's [20] initial term expired in June 2014. Because of this, we noted that we would next need to assess applicants for ONC–AA status in early 2017 and by then we expected that any applicant would have experience evaluating the conformance of certification bodies to ISO 17065. For § 170.503(e)(2), we proposed to require compliance with ISO 17065 beginning in FY 2016 (in other words, as of October 1, 2015). We stated that this compliance date should provide sufficient time for certification bodies that are interested in serving as ONC–ACBs, as well as existing ONC–ACBs, to be accredited to ISO 17065 by the ONC–AA.

We also proposed to revise our references to ISO/IEC standards 17011, 17065 and Guide 65 in § 170.503 by removing or not including the date reference for each standard. The published date information for each standard will continue to be listed in § 170.599. This approach aligns with guidance we received from the Office of the Federal Register.

Comments. We received comments from the ONC–AA and ONC–ACBs. The comments from these organizations specifically supported our proposals transition from Guide 65 to ISO 17065 and to remove the date reference for each standard.

Response. We appreciate the comments of support for our proposals and also note that, as anticipated, an accreditation organization (ANSI) was selected to serve as the ONC–AA for a 3-year term that began in June 2014.[21] Based on comments received and the rationale cited in the Proposed Rule, we have finalized revisions to § 170.503(b)(1) and (e)(2) as proposed. We have also removed the date references for the standards in § 170.503 as proposed. In regard to removing the dates, we have also revised § 170.599(b) to provide clear attribution to the version of the ISO/IEC standards we are referring to in § 170.503. More specifically, we identify in § 170.599 that the ISO/IEC standards will be referred to as ''ISO/IEC 17011,'' ISO/IEC Guide 65,'' and ISO/IEC 17065'' when used in subpart E of Part 170. This approach is consistent with guidance from the Office of the Federal Register.

6. ONC Certification Mark

ONC has developed and administers the ''ONC Certified HIT'' certification and design mark (the ''Mark'').[22] The Mark, as used by an authorized user, certifies that a particular HIT product (Complete EHR, EHR Module, or other types of HIT for which the Secretary of HHS adopts applicable certification criteria, *see* 45 CFR 170.510) has been tested in accordance with test procedures approved by the National Coordinator; has been certified in accordance with the certification criteria adopted by the Secretary at 45 CFR part 170, Subpart C; and has met all other required conditions of the ONC HIT Certification Program at 45 CFR part 170, Subpart E.

We proposed to require ONC–ACBs to use the Mark in connection with HIT they certify under the ONC HIT Certification Program. More specifically, we proposed to revise § 170.523 (''Principles of Proper Conduct'') to require ONC–ACBs to display the Mark on all certifications issued under the ONC HIT Certification Program in a manner that complies with the Criteria and Terms of Use for the ONC Certified HIT Certification and Design Mark (''Terms of Use'').[23] In addition, we proposed to revise § 170.523 to require ONC–ACBs to ensure that use of the Mark by HIT developers whose products are certified under the ONC HIT Certification Program is compliant with the Terms of Use. We noted that, in the event that the Terms of Use are revised or updated, compliance with the most recent version would be required.

Comments. Commenters expressed agreement with our proposals citing to the consistency and clarity that a standard mark would provide in terms of identifying HIT certified under the ONC HIT Certification Program. One commenter requested clarification as to whether ONC–ACBs may also use their own mark in conjunction with the Mark, while another commenter requested clarity as to whether a HIT developer would be required to use the Mark.

Response. We thank commenters for their support. We have finalized the revisions to § 170.523 as proposed. As noted by commenters and in the

[18] The MU measure for this objective is: More than 10 percent of all unique patients who have had 2 or more office visits with the EP within the 24 months before the beginning of the EHR reporting period were sent a reminder, per patient preference when available.

[19] *http://www.iso.org/iso/catalogue_detail.htm?csnumber=46568.* ISO slide presentation on 17065: *http://www.iso.org/iso/ppt_presentation_17065.ppt.*

[20] American National Standards Institute, the ONC–AA.

[21] *http://www.hhs.gov/news/press/2014pres/05/20140513c.html.*

[22] *http://www.healthit.gov/policy-researchers-implementers/onc-hit-certification-program.*

[23] *http://www.healthit.gov/sites/default/files/hit_certificationterms_of_use_final.pdf.*

Proposed Rule, the required use of a singular identifying mark will provide consistency in the recognition of HIT certified under the ONC HIT Certification Program and mitigate any potential market confusion for purchasers between HIT products certified under the ONC HIT Certification Program and those certified under any other program. While every ONC–ACB will be required to display the Mark on all certifications issued under the ONC HIT Certification Program in a manner that complies with the Terms of Use, they will also be able to use their own marks in conjunction with the Mark as specified in the Terms of Use under the ''Accompanying Marks, Logos, and Symbols'' section. This would also hold true for a HIT developer that chose to use the Mark. To this point and to address the requested commenter clarification, an HIT developer is not required to use the Mark. However, if they choose to use the Mark, then the ONC–ACB that issued the certification to the HIT developer would be required to ensure that the use of the Mark by the HIT developer is compliant with the Terms of Use. Our expectation is that HIT developers will *want* to use the Mark as a way of clearly and easily identifying that their product was certified under the ONC HIT Certification Program.

C. Removal of the 2011 Edition EHR Certification Criteria From the CFR

We proposed to remove the 2011 Edition EHR Certification Criteria and related standards, terms, and requirements from the CFR. Specifically, we proposed to remove 45 CFR 170.302, 170.304, and 170.306. We also proposed to remove the standards and implementation specifications found in 45 CFR 170.205, 170.207, 170.210, and 170.299 that are *only* referenced in the 2011 Edition EHR certification criteria. In regard to terms, we proposed to retire the definitions found in 45 CFR 170.102 related to the 2011 Edition, including ''2011 Edition EHR certification criteria'' and ''Complete EHR, 2011 Edition.'' In regard to requirements, we proposed to remove § 170.550(e) and any other requirement in subpart E, §§ 170.500 through 170.599 that is specific to the 2011 Edition and does not have general applicability to other editions of certification criteria.

Comments. We received one comment supporting this ''administrative update.''

Response. In the Proposed Rule, we stated that EHR technology certified to 2011 Edition no longer meets the CEHRT definition. We also referenced recent rulemakings by the HHS Office of Inspector General and CMS around donations of EHR items and services that cited our expectations to retire old/no longer applicable certification criteria editions.[24] As noted in the Proposed Rule, we believe this approach will streamline our requirements and ensure there is no regulatory confusion involving administration of ONC's rules and the rules of other agencies' such as CMS's Physician Self-Referral Law exception and OIG's Anti-kickback Statute safe harbor for certain EHR donations. Therefore, consistent with EO 13563 instruction to ''determine whether any [agency] regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives,'' we are removing the 2011 Edition EHR certification criteria and related standards, terms, and requirements from the CFR.

Since publication of our Proposed Rule, we and CMS jointly issued a final rule entitled ''Medicare and Medicaid Programs; Modifications to the Medicare and Medicaid Electronic Health Record Incentive Programs for 2014; and Health Information Technology: Revisions to the Certified EHR Technology Definition'' (79 FR 52910). The final rule permits EPs, EHs, and CAHs to use EHR technology certified to the 2011 Edition or a combination of EHR technology certified to the 2011 Edition and 2014 Edition to meet the CEHRT definition in CY 2014 and FY 2014. To account for the permitted use of EHR technology certified to the 2011 Edition to meet the CEHRT definition in 2014 and the potential certification of EHR technology to the 2011 Edition through the end of CY 2014, the effective date for the removal of the 2011 Edition EHR certification criteria and related standards, terms, and requirements from the CFR will be March 1, 2015.

D. Removal of the Temporary Certification Program From the CFR

The temporary certification program sunset on October 4, 2012, and is no longer in existence (77 FR 54268). Accordingly, we proposed to remove from the CFR the associated regulations, consisting of subpart D (§§ 170.400 through 170.499).

Comments. We received no comments on this proposal.

Response. We are removing the temporary certification program regulations from the CFR on the effective date of this final rule.

IV. Not Adopted Proposals

This section of the preamble discusses proposals from the Proposed Rule that we have not adopted, including comments received on those proposals and our response to those comments. As noted in the Executive Summary, we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange; and administrative proposals (i.e., removal of regulatory text from the CFR) and proposals for the ONC HIT Certification Program that provide improvements.

A. Not Adopted EHR Certification Criteria and Certification Criteria Proposals Applicability—§ 170.300

Section 170.300 establishes the applicability of subpart C—Certification Criteria for Health Information Technology. We proposed to revise paragraph (d) of § 170.300 to add in a reference to § 170.315, which would clarify which specific capabilities within a certification criterion included in § 170.315 have general applicability (i.e., apply to both ambulatory and inpatient settings) or apply only to an inpatient setting or an ambulatory setting.

Comments. We did not receive any comments on this specific proposal.

Response. As noted in the Executive Summary, we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. Therefore, we have not revised paragraph (d) of § 170.300 to add in a reference to § 170.315. The optional certification criteria that we have adopted in this final rule will be part of the 2014 Edition and are included in § 170.314, which is already referenced in paragraph (d) of § 170.300.

Computerized Provider Order Entry—Medications

We proposed to adopt for the Proposed Voluntary Edition a CPOE

[24] CMS final rule ''Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Exception for Certain Electronic Health Records Arrangements'' (78 FR 78751).OIG final rule ''Medicare and State Health Care Programs: Fraud and Abuse; Electronic Health Records Safe Harbor Under the Anti-Kickback Statute'' (78 FR 79202).

certification criterion specific to medication ordering. The proposed criterion was structured substantially similar to the 2014 Edition CPOE certification criterion, except it did not reference laboratory and radiology/imaging orders. We did not request any specific public comments on this certification criterion.

Comments. One commenter recommended that we add functionality that would allow health care providers to electronically report adverse events related to medications directly to manufacturers and the Food and Drug Administration (FDA). Another commenter suggested that when providers order medication, labs and radiology that providers electronically send a CDA formatted document to the patient, where the capability exists.

Response. We appreciate these comments, but they are outside the scope of the proposed criterion. We have not adopted this certification criterion as part of the Proposed Voluntary Edition because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As discussed under section III.A.2 of this preamble, we have adopted this certification criterion without modification as a 2014 Edition optional certification criterion.

Computerized Provider Order Entry—Laboratory

We proposed to adopt for the Proposed Voluntary Edition a CPOE certification criterion specific to laboratory ordering. We proposed to adopt, for the ambulatory setting, the HL7 Version 2.5.1 Implementation Guide: S&I Framework Laboratory Orders from EHR, Release 1–US Realm, Draft Standard for Trial Use, November 2013 (LOI).[25] We also proposed to require the use of, at a minimum, the version of Logical Observation Identifiers Names and Codes (LOINC®) adopted at § 170.207(c)(2) (version 2.40) as the vocabulary standard for laboratory orders. Last, we proposed that laboratory orders must include all the information for a test requisition as specified at 42 CFR 493.1241(c)(1) through (c)(8). We stated that the use of these standards and compliance with these requirements should greatly improve the interoperability of laboratory orders sent from ambulatory EHR technology to a laboratory and laboratory compliance with the Clinical Laboratory Improvements Amendments (CLIA).

Comments. Commenters were generally supportive of adoption of interoperable laboratory standards, particularly the LOI IG, and aligning requirements with CLIA. Commenters did, however, express concern with the LOI IG, the use of LOINC® for all orders, and the lack of a proposal to adopt the Electronic Directory of Services (eDOS) IG. Commenters stated that the LOI IG was new, likely incomplete, and will require substantial updates over the next 12–18 months. Commenters suggested waiting for a more complete version of the LOI IG, including pilot testing of the IG. Commenters expressed considerable concern that without the eDOS IG it would be difficult to achieve optimal interoperability. Commenters stated that LOINC® does not cover all orderable tests and that testing and certification would need to accommodate this fact. Commenters suggested additional guidance was necessary for compliance with the proposed CLIA requirements.

Response. We have not adopted this certification criterion as part of the Proposed Voluntary Edition because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As discussed under section III.A.2 of this preamble, we have adopted this certification criterion without modification as a 2014 Edition optional certification criterion. We first note that we did not propose to adopt the eDOS IG because it was our understanding that the eDOS IG was still undergoing revisions at the time the Proposed Rule was being drafted. We also understood that the LOI IG was fairly new and we appreciate the stakeholder feedback on potential concerns with the LOI IG. We also thank commenters for their insight related to the use of LOINC® for all laboratory orders. While we have not adopted the LOI IG at this time, we plan to reconsider it for adoption in our next rulemaking along with the eDOS IG. We believe the time between now and our next final rule will permit many of the concerns with these IGs to be sufficiently addressed. Overall, the work towards laboratory interoperability and electronic exchange shows great promise, including the work on the Lab Results Interface (LRI) IG, Electronic Laboratory Reporting to Public Health (ELR) IG and harmonization of all laboratory IGs. The adoption of these standards for the ONC HIT Certification Program could help facilitate laboratory interoperability and electronic exchange among providers, assist laboratories with CLIA compliance. and reduce provider burden with respect to the availability and use of the eDOS IG. As such, we plan to revisit these standards in future rulemaking.

Computerized Provider Order Entry—Radiology/Imaging

We proposed to adopt for the Proposed Voluntary Edition a CPOE certification criterion specific to radiology/imaging. The proposed criterion was structured substantially similar to the 2014 Edition CPOE certification criterion, except it did not reference medications and laboratory orders. We did not request any specific public comments on this certification criterion.

Comments. A few commenters questioned the value of this certification criterion as is, while other commenters suggested that an appropriate IG be developed and adopted for this certification criterion.

Response. We have not adopted this certification criterion as part of the Proposed Voluntary Edition because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As discussed under section III.A.2 of this preamble, we have adopted this certification criterion without modification as a 2014 Edition optional certification criterion. We will consider comments on the value of the certification criterion without any associated standards or IGs and whether there are any appropriate standards or IGs to adopt as part of future rulemaking.

Drug-Drug, Drug-Allergy Interaction Checks

We proposed a ''drug-drug, drug-allergy interaction checks'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. However, we solicited comment on whether drug-drug interaction (DDI) or drug-allergy interaction (DAI) checks-capable EHR technology should be able to track

[25] *http://www.hl7.org/special/committees/projman/searchableprojectindex.cfm?action=edit&ProjectNumber=922.*

health professionals' responses to the DDI/DAI checks that are performed, and whether such a capability should track if and when the health professional viewed, accepted, declined, ignored, overrode, or otherwise commented on the product of a DDI/DAI check. We also sought comment on who should be permitted to review the data collected by the DDI/DAI check tracking capability, who should be able to adjust its configuration settings, whether the data tracked should be limited in scope or specificity, and whether EHR technology should be able to track when an adverse event occurs for which a DDI/DAI check was missed or ignored. In addition, we sought comment on whether a DDI/DAI tracking capability should only track inaction or responses related to certain drug-drug and drug-allergy reactions, such as only tracking DDI/DAI alerts that if missed or ignored would cause severe reactions in patients. Last, we sought comment on what factors, definitions, standards, and existing consensus should be considered in determining whether a likely DDI/DAI reaction should be considered severe.

Comments. Responses from commenters varied. Some commenters expressed strong support for response tracking for DDI and DAI, and suggested that a certification criterion also include response tracking for other interactions, such as drug/lab, drug/diagnosis, food allergy, drug-gene, therapeutic duplication, and environmental allergy interactions. One commenter suggested that response tracking certification exist for CDS interventions in general.

Of those commenters that opposed the inclusion of response tracking as a certification criterion, several themes surfaced. Some commenters noted that response tracking would be burdensome, require significant time and investment, and could conflict with existing system configuration settings already designed for tracking DDI/DAI provider responses. Other commenters noted that response tracking functionality should not be included in a certification criterion and should be developed in the private sector according to the needs of individual providers and their health IT developers. A few commenters noted that response tracking could add an additional layer of alerting and impact provider workflow. A few others noted that response tracking should apply specifically to active alerts and should not apply to passive alerts.

A few commenters noted that response tracking is not appropriate for an EHR system and that such information is stored and tracked within Risk Management Information Systems (RMIS) for liability purposes and for analysis related to efforts to minimize the risk of future adverse events.

We received a number of specific comments on the scope of response tracking. Commenters who supported response tracking noted the value such tracking provides to quality measurement, the improved usefulness of a DDI/DAI alert criterion that would result from response tracking, and the importance of such tracking being automated. One commenter noted that response tracking should track whether the DAI/DAI alert is ''displayed'' and not whether it is ''viewed,'' which the commenter suggested would impact the provider workflow by requiring provider action. Others noted that in addition to tracking the response of a provider, the factors that may have impacted a provider response would be important to track—such as relevant patient factors or system construction factors that can influence a provider's reaction to a specific alert. A similar concern was raised by another commenter who stated that provider response only provides part of the information needed, and noted that whether the provider is a seasoned health care professional or less experienced is an example of corollary information that could impact whether an ignored DDI/DAI alert is a concern.

We received a variety of comments on who should be able to review the responses of providers and who should be able to adjust tracking configuration. Some commenters noted that in order for this proposal to be operational and, if not already part of existing security protocols, EHR vendors may need to implement new security classes to control viewing privileges related to alerts. Some commenters noted that adjustment of the tracking configuration should be done by the care team and members of the ordering team, while other commenters noted that the ability to adjust configuration or review the response tracking results should be limited to a select few. Many commenters stated that the decision on who should be able to adjust the tracking configuration should be determined by the provider or the organization. One commenter stated that EHR systems also should allow an administrator to modify the workflow that a provider must take when certain DDI/DAI alerts appear.

As part of the request for comment, we asked whether EHR systems should be able to track when an adverse event occurs for a DDI/DAI alert that is ignored. Many commenters expressed concern regarding adverse event tracking. Some commenters stated that significant development would be required to enable this capability in EHR systems. Other commenters stated that the number of factors that can contribute to an adverse event would inhibit the usefulness of such a criterion. Conversely, we heard from several commenters that adverse event reporting related to DDI/DAI alerts plays an important role. Some commenters noted that providers should be able to make reports directly to manufacturers and the FDA about adverse events associated with medications. One commenter stated that in order for this criterion to be useful, an approach to adverse events similar to the Vaccine Adverse Event Reporting System would be needed.

Regarding what factors, definitions, standards, and existing consensus should be considered in determining whether a likely DDI/DAI reaction should be considered severe, some commenters noted that standard vocabularies should be used for exchanging drug-allergy information and that the DDI/DAI terminology should be standardized. Other commenters opposed limiting tracking to only DDI/DAI that are considered severe and suggested that the proposed tracking should apply to all DDI/DAI because there is little consensus on what characterizes a severe reaction. Another commenter stated that in lieu of defining the term ''severe,'' the EHR technology developer or DDI/DAI content provider should define the term. Another commenter stated that any life threatening interaction should be considered severe.

A few commenters stated that in the case of medication allergies, an assessment of severity would not be appropriate. Rather, a ''criticality assessment'' should be used.

We also received several comments on how to improve any future response tracking certification criterion. One commenter stated that we should consider how to leverage patient-generated health data to inform drug interaction and intolerance-related notifications (including over-the-counter medications). Another commenter suggested that compendia information should be updated monthly to ensure the efficacy of DDI/DAI alerts, which the commenter suggested would help ensure that providers are accessing up-to-date information about allergies and warnings, and would ensure that the list of FDA-approved treatments is current.

A few commenters stated that pharmacists can play an important role in DDI/DAI functionality. These

commenters stated that pharmacists should be able to review data collected by DDI/DAI response tracking, noting that pharmacists can help improve the DDI/DAI alert workflow by minimizing provider alert fatigue as well as mitigate against future adverse events through review of adverse outcomes. One commenter stated that pharmacy standards development organizations should be involved in the development of standards for any future response tracking certification criterion.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''drug-drug interaction, drug-allergy interaction'' certification criterion. We will, however, consider all comments regarding response tracking of DDI/DAI alerts for future rulemaking concerning a ''drug-drug interaction, drug-allergy interaction'' certification criterion.

Demographics

We proposed a ''demographics'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. The criterion included a requirement that EHR technology designed for the inpatient setting be capable of enabling a user to electronically record, change, and access the ''date of death.'' We previously included the capability to access the date of death as part of the 2011 Edition ''demographics'' certification criterion and inadvertently omitted it from the 2014 Edition. We also proposed to adopt a new preferred language standard because our constrained approach to the use of ISO 639–2 unintentionally excluded multiple languages that are currently in use, such as sign language and Hmong. Additionally, we noted that ISO 639–2 is meant to support written languages, which may not be the language with which patients instinctively respond when asked for their preferred language. To improve this situation, we proposed three options for which we solicited public comments: The full ISO 639–2, ISO 639–3, or Request for Comments (RFC) 5646 to be the preferred language standard for the proposed ''demographics'' certification criterion. To implement this proposal, we proposed to modify the regulatory text hierarchy in § 170.207(g) to designate the standard referenced by the 2014 Edition ''demographics'' certification criterion at § 170.207(g) to be at § 170.207(g)(1).

Comments. We received a few comments on our proposal related to ''date of death'' stating that there was value in such information, but that commenters were unaware of any EHR technology developers certified to the 2011 Edition who removed this capability. We received comments on the preferred language for the ''demographics'' certification criterion advocating for: No change in the standard, the full ISO 639–2, ISO 639–3, and RFC 5646. Commenters representing consumer groups and patients advocated for the inclusion of a standard that covered all languages and dialects. A commenter noted that, in California, both Hmong and Cantonese are Medicaid ''threshold languages,'' requiring additional language assistance services from Medicaid providers. Many commenters questioned the relative benefit of changing the standard (a few more languages) in relation to the cost and burden of switching standards. Commenters also emphasized the need for standards to have backwards compatibility with already adopted standards and not conflict with industry standards already adopted for the same purpose, such as those included in the Consolidated CDA and National Council for Prescription Drug Programs (NCPDP) standards.

Response. We have not adopted a ''demographics'' certification criterion. The insightful comments we received on the preferred language standard necessitate further evaluation of whether the preferred language standard should be changed, including assessment of the compatibility and alignment of alternative standards with already adopted standards and additional cost-benefit analysis of any potential change in the adopted preferred language standard. Further, based on comments, there appears to be no need to adopt a revised ''demographics'' certification criterion that simply includes the ''date of death'' functionality. In future rulemaking that may address the ''demographics'' certification criterion, we will reconsider the need for specifically including functionality related to ''date of death.'' We will also consider comments we received on preferred language standards and our subsequent research on the matter.

Vital Signs, Body Mass Index (BMI), and Growth Charts

We proposed a ''vital signs, body mass index, and growth charts'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. However, we solicited comment on whether to require EHR technology to record vital signs in standardized vocabularies (e.g., LOINC®, Systemized Nomenclature of Medicine Clinical Terms (SNOMED CT®), and The Unified Code of Units of Measure (UCUM)). We also solicited comments on two approaches if EHR technology were to be required to record vital signs in standardized vocabularies:

Option 1: Require EHR technology to record vital signs in standardized vocabularies natively within the EHR;

Option 2: Require EHR technology to record vital signs in standardized vocabularies only when data was exchanged.

Comments. The majority of commenters supported leaving this certification criterion unchanged and suggested waiting until the next edition to propose any changes. A commenter recommended linking weight information to drug formularies in order to assist licensed clinicians in selecting the appropriate dosage. Commenters also suggested that the calculation for creatinine clearance should appear in the header along with the BMI for the purposes of patient safety and proper dosing of medications. Another commenter recommended standardizing the use of international BMI as risk of health conditions may vary by race or ethnicity.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''vital signs, body mass index, and growth charts'' certification criterion. We will, however, consider comments regarding support for medication dosing and use of international BMI references for future rulemaking concerning a ''vital signs, body mass index, and growth charts'' certification criterion. We clarify that the comment solicitation regarding standardized vocabularies and

options for recording vital signs within the EHR was intended to inform a future edition of certification criteria, not the Proposed Voluntary Edition. Therefore, we will also consider the comments received on this topic as we develop proposals for future rulemaking.

Problem List

We proposed a ''problem list'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. The majority of commenters supported an unchanged criterion. One commenter suggested removing this criterion in future editions because lists in of themselves have no value, but the commenter noted that lists are useful within the context of CQMs, ToC, and VDT certification criteria. A few commenters stated that they support the use of SNOMED CT® coding for this criterion and not the use of International Classification of Diseases-10 (ICD–10) as an additional coding system because its use would require more mappings and added complexity when using the Consolidated CDA templates. One commenter recommended adopting the most recent releases of SNOMED CT® (International July 2013 and US Extension September 2013).

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''problem list'' certification criterion. We will, however, consider feedback suggesting that this criterion is unnecessary in of itself for future rulemaking.

In regard to comments on ICD–10, as we stated in the 2014 Edition Final Rule, we believe SNOMED CT® is more appropriate than ICD–10 for clinical purposes and provides greater clinical accuracy (77 FR 54210). Therefore, it was adopted for the 2014 Edition ''problem list'' certification criterion.

We confirm that the 2014 Edition ''problem list'' certification criterion requires the use of the SNOMED CT® July 2012 International Release and March 2012 US Extension as a minimum standard. Regarding the comment recommending that we adopt the updated SNOMED CT® versions, we will reassess whether a newer version of the minimum standard should be adopted in future rulemaking. As we stated in the 2014 Edition Final Rule, based on our experience, newer versions of the ''minimum standards'' code sets that we have adopted are issued more frequently than our current process can reasonably accommodate. We do not believe that permitting EHR technology to be upgraded and certified to newer versions of these code sets would normally pose an interoperability risk, and therefore we allow use of a newer version voluntarily for certification without adversely affecting the EHR technology's certified status unless the Secretary specifically prohibits the use of a newer version (77 FR 54268). Thus, EHR technology may be certified to newer versions of SNOMED CT®.

Medication List

We proposed a ''medication list'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. The majority of commenters supported an unchanged criterion. One commenter suggested removing this criterion in future editions because lists in of themselves have no value, but the commenter noted that lists are useful within the context of CQMs, ToC, and VDT certification criteria. A few commenters stated that medications can come from a number of sources, including over-the-counter, samples, and alternative medicines. These commenters recommended that a medication list include the most complete list possible to help minimize patient safety risks.

One commenter stated that the FDA is working to implement requirements in the Drug Supply Chain Security Act regarding standards for the interoperable exchange of information for tracing human, finished, and/or prescription drugs. The commenter recommended that we be aware of these efforts and align current and future EHR requirements with any future FDA requirements for standards-based identification of prescription drugs. Another commenter recommended that EHR technology be able to track DDI/DAI checks based on a patient's medication list.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''medication list'' certification criterion. We will consider feedback suggesting that this criterion is unnecessary in of itself for future rulemaking. We will also consider comments regarding the FDA's work to implement requirements in the Drug Supply Chain Security Act, EHR support of DDI/DAI checks, and the definition and inclusion of types of medications for future rulemaking.

Medication Allergy List

We proposed a ''medication allergy list'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion.

Comments. The majority of commenters supported an unchanged criterion. One commenter suggested removing this criterion in future editions because lists in of themselves have no value, but the commenter noted that lists are useful within the context of CQMs, ToC, and VDT certification criteria. Many commenters recommended that the medication allergy list should include other types of allergies and intolerances, including food and environmental allergies.

One commenter stated that the FDA is working to implement requirements in the Drug Supply Chain Security Act regarding standards for the interoperable exchange of information for tracing human, finished, and/or prescription drugs. The commenter recommended that we be aware of these efforts and align current and future EHR requirements with any future FDA requirements for standards-based identification of prescription drugs. Another commenter recommended that EHR technology be able to track DDI/DAI checks based on a patient's medication allergy list.

One commenter recommended the development of an ''idealized'' interoperable allergy value set that would encompass the same terminology code base and support documenting patient allergies and drug sensitivities. This commenter was concerned that currently active patient medication allergy and drug sensitivities are dominated by the use of multiple proprietary code sets. The commenter

stated that codified allergy and drug sensitivity information is commonly exchanged as free-text or when converted to interoperable code sets, the original meaning of the documented allergy is lost. The commenter stated that the National Library of Medicine (NLM)'s RxNorm source vocabulary concepts and cross-referenced vocabulary terms best meet the characteristics of the ''idealized'' allergy value set.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''medication allergy list'' certification criterion. We will consider feedback suggesting that this criterion is unnecessary in of itself and comments regarding the FDA's work to implement requirements in the Drug Supply Chain Security Act for future rulemaking. We note that we solicited specific feedback on vocabularies to code medication allergies and intolerances for a future edition of certification criteria and thank the commenters for their detailed feedback and recommendations on these topics. We will take these comments into consideration for future rulemaking.

Clinical Decision Support (CDS)

We proposed a ''clinical decision support'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion in several ways. First, we proposed to incorporate the guidance we provided in FAQ 39 [26] that EHR technology certified to the CDS criterion must demonstrate the capability to use at least one of the more specific data categories included in the ''demographics'' certification criterion (§ 170.315(a)(5)) (e.g., the sex or date of birth). We also proposed to incorporate guidance we provided in FAQ 34 [27] to clarify that the CDS criterion would not require compliance with the Infobutton-enabled capability for vital signs or medication allergies data. Additionally, we proposed to discontinue referencing ''laboratory values/results'' data as stakeholder feedback indicated that the Infobutton standard cannot support this specific data.

We proposed to include and adopt the HL7 Implementation Guide: Service-Oriented Architecture Implementations of the Context-aware Knowledge Retrieval (Infobutton) Domain, Release 1, August 2013 (at § 170.204(b)(3)) in place of the older version referenced by the 2014 Edition certification criterion.

We proposed to adopt two new IGs from the Health eDecisions (HeD) S&I Framework initiative that support shareable CDS. The first IG defines requirements for the contents of ''CDS Knowledge Artifacts'' [28] for event condition action rules, order sets, and documentation templates (HL7 Implementation Guide: Clinical Decision Support Knowledge Artifact Implementation Guide, Release 1 (January 2013) (''HeD standard'')). In addition to proposing to adopt this IG, we proposed to require EHR technology be able to electronically process a CDS artifact in the HeD standard. The second IG defines SOAP and REST web interface requirements needed to send patient data and receive CDS guidance when a request for clinical guidance is made to a CDS guidance supplier (HL7 Decision Support Service Implementation Guide, Release 1, Version 1 (December 2013)). We also proposed to require that EHR technology demonstrate the ability to make an information request, send patient data, and receive CDS guidance according to the interface requirements defined in the Decision Support Service IG.

To supplement the HeD proposals, we solicited comment on what we should focus on for testing and certification of CDS Knowledge Artifacts, decision support services, and user experience to-date with implementing the HeD standards.

Comments. Commenters overwhelmingly supported our proposed approach in FAQ 39 to require that EHR technology certified to a CDS criterion must demonstrate the capability to use at least one of the more specific data categories included in the ''demographics'' certification criterion (§ 170.315(a)(5)) (e.g., the sex or date of birth). Some commenters noted that our FAQs have been previously issued and that most EHR technology developers have already implemented the policy clarifications offered by the FAQs. Therefore, the commenters stated that there is no added value in codifying the FAQs.

Commenters also overwhelmingly supported the proposed approach in FAQ 34 to not require adherence to the Infobutton standard for medication allergies or vital signs. They also supported our proposal to not require adherence to the Infobutton standard for laboratory test values/results. A few commenters indicated that a more recent version of the Infobutton standard (Release 4 of the HL7 Infobutton URL-based Implementation Guide) does support laboratory test values/results.

We received support to adopt the updated HL7 Implementation Guide: Service-Oriented Architecture Implementations of the Context-aware Knowledge Retrieval (Infobutton) Domain, Release 1, August 2013. Commenters also recommended that we do not discontinue referencing the Infobutton URL-Based IG (HL7 Version 3 Implementation Guide: URL-Based Implementations of the Context-Aware Information Retrieval (Infobutton) Domain).

We received mixed feedback on the proposals to adopt the HeD standards for the two use cases. Some commenters supported adoption of the HeD standards in the Proposed Voluntary Edition, while others cautioned that the standards are immature and not well-tested. Those in support of adoption contended that providers and patients would benefit from standardized CDS that could help providers make informed decisions about their patients' care. Commenters also stated that adopting a standard would lessen the implementation burden on providers as CDS has normally been customized for each EHR system. A few organizations commented that they have already successfully piloted the HeD standards and are in production with a number of groups. Thus, they stated that the standards were mature and tested enough to require as part of voluntary certification.

A few commenters suggested further development of diagnostic imaging CDS and alignment with clinical recommendations for immunization-based CDS. One commenter recommended that providers be able to view the HIT developer, bibliographic citation, source of funding, and release/revision date of a CDS rule for full transparency. Other commenters noted that the regulation text language of the proposed CDS certification criterion was

[26] *http://www.healthit.gov/policy-researchers-implementers/39-question-04-13-039.*

[27] *http://www.healthit.gov/policy-researchers-implementers/34-question-12-12-034.*

[28] A CDS Knowledge Artifact is the encoding of structured CDS content as a rule to support clinical decision making in many areas of the health care system, including quality and utilization measures, disease outbreaks, comparative effectiveness analysis, efficacy of drug treatments, and monitoring health trends.

unclear and that the regulation text could be improved with more specificity.

The majority of commenters who opposed the HeD proposals expressed concern about the HeD standards immaturity and lack of testing. Some also argued that the standards would still be too immature to propose for the next edition of certification criteria. To support their claim, many pointed to the work of the S&I Clinical Quality Framework (CQF) initiative to harmonize and update HeD with standards for CQMs (e.g., the Health Quality Measures Format standard (HQMF)). Commenters were concerned that EHR technology developers would have to significantly upgrade their systems once the harmonized HeD and HQMF standards become available and that the amount of rework was not worth the short-term benefit. Some commenters stated that market demand should drive the standards and technology for shareable CDS rather than regulation. One commenter suggested that the two HeD use cases should be evaluated separately and not lumped together as the user experience to date may be different between the two.

For testing and certification, many commenters recommended a focus on a few simple and/or high impact or high clinical value Knowledge Artifacts and decision support services to simplify the development, testing, and certification processes. For example, one commenter recommended focusing testing for the first use case on event action condition rules as the commenter thought these are the most common type of Knowledge Artifact and most tested. A few commenters recommended that we and CMS consider allowing successful pilot testing of the HeD standards to count toward meeting MU requirements. Last, some commenters noted at least one case where an EHR accesses a CDS service based on the HeD standards outside of the EHR and recommended allowing the CDS service to be external to the EHR.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange.

We agree with commenters that our issued FAQs have addressed earlier concerns and that most EHR developers have already implemented the policy clarifications offered by the FAQs. Therefore, there is no added value in codifying the FAQs at this point in time. There is also no substantial value in adopting a criterion solely with an updated Service-Oriented Architecture IG when, as commenters noted, there is a new URL-based IG that we should also consider for adoption. We will consider the comments regarding the updated Infobutton Service-Oriented Architecture IG and updated Infobutton URL-Based IG for future rulemaking activities and appreciate the detailed responses commenters provided. To clarify, we did not propose to remove the Infobutton URL-Based IG (at § 170.204(b)(1)) from the 2014 Edition CDS certification criterion. Rather, we proposed to include the updated Service-Oriented Architecture IG as part of the voluntary proposed CDS certification criterion that we have not adopted. We also agree with commenters that more deliberation and clarity is needed regarding the HeD proposals. We will consider the comments on HeD standards maturity, appropriate use cases, and testing, as well as comments suggesting improved clarity is needed in the CDS certification criterion regulatory text in developing future proposals for rulemaking.

Electronic Notes

We proposed an ''electronic notes'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We included in the proposed certification criterion a capability to search for information across separate notes within EHR technology rather than just within one particular note. We stated that this expanded requirement was intended to reduce the time providers spend looking for specific patient information and noted that the requirement to search across notes was not limited to a specific method. In addition to this proposal, we requested comments regarding: Whether the proposed functionality should extend to all patient electronic notes stored in the EHR or just to a specific patient's electronic notes or specific types of patient notes; whether we should wait to include the proposed functionality in a future edition of certification criteria; and whether additional metadata should be required as part of electronic notes (such as the HL7 R2 header). We also asked for health care provider opinions on whether the availability of the proposed functionality (either searching across a specific patient's electronic notes stored in the EHR or all patients' electronic notes stored in an EHR) is so widespread that it would be unnecessary to require it as a condition of certification.

Comments. We received comments, including those from provider organizations, expressing support for expanding the search functionality both across a patient's notes and across all patients' notes in the EHR as a means of improving provider usability. We also received comments recommending that we not expand the search capability. These commenters argued that the functionality is not required for participation in a particular government program (e.g., the EHR Incentive Programs), it could stifle innovation, and market-driven approaches are sufficient to determine if additional search capabilities are essential or not. Some commenters supported including enhanced search functionality in the proposed certification criterion, while others thought we should wait for a future edition. A few comments supported metadata inclusion with the electronic note, while most comments saw no value in mandating the inclusion of metadata.

Response. We have not adopted the proposed certification criterion. Based on comments, we believe further evaluation is necessary as to whether an enhanced search capability should be included in an ''electronic notes'' certification criterion and for what purpose the certification of any enhanced search capability would serve. We will consider the comments received in developing proposals future rulemaking.

Drug Formulary Checks

We proposed a ''drug formulary checks'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. However, we solicited public comment on whether we should leave the criterion as-is (flexible and without reference to a standard) or if it would be appropriate for us to adopt a standard in the Proposed Voluntary Edition certification criterion for which compliance would be required. In the 2014 Edition Final Rule, we stated it was necessary to require the use of a particular standard for certification as our certification criterion was flexible and permitted EHR technology to access and store external drug formularies in support of MU. As described in more detail in the Proposed Rule (79 FR 10892), CMS recently finalized a proposal to recognize NDPDP Formulary and Benefit Standard v3.0 as a backwards compatible version of NCPDP Formulary and Benefit Standard 1.0 for

the period of July 1, 2014 through February 28, 2015, and to retire version 1.0 and adopt version 3.0 as the official Part D e-Prescribing standard on March 1, 2015 (78 FR 74787–74789).[29] As such, we stated in the proposed rule that it was an opportune time to solicit comment on whether to adopt a particular standard for the drug-formulary checks criterion.

We also noted the NCPDP Formulary and Benefit Standard v.4.0's [30] potential limitations as discussed by the HITSC, including that the version does not support expanded use cases such as real-time benefit checks.[31] Thus, we also solicited comment on whether there are other standards or solutions (e.g., NCPDP Telecommunication Standard) that could be used in conjunction with or in place of the NCPDP Formulary and Benefit Standard to address the potential limitations or expanded use cases identified by the HITSC.

Comments. We received mixed comments regarding the proposal to adopt a standard (namely the NCPDP Formulary and Benefit Standard v3.0) for the proposed certification criterion. Some commenters supported adopting the NCPDP Formulary and Benefit Standard v3.0 (''v3.0'') in this rule, but most of these commenters recommended its adoption for the next edition of certification criteria. Those in support of adopting v3.0 noted the potential to reduce file sizes, which is beneficial when checking thousands of drug formularies on a daily basis. Many recommended that we should also accept test results from the current Surescripts e-prescribing certification without additional testing requirements.

Some commenters were concerned about known problems with v3.0, and pointed to the NCPDP Formulary and Benefit Standard v4.0 (''v4.0''), which may fix some of these known problems. Other commenters were concerned about rework if we required v3.0 in the proposed certification criterion followed by requiring v4.0 in the next edition. One commenter stated that v4.0 is too unstable to require for certification at this point. Some commenters also stated that the industry should determine the EHR's drug formulary features and that we should not be prescriptive in naming a particular standard for adherence.

One ONC–ACB noted that, in their experience, the current drug-formulary check criterion is considered an ''easy'' pass during the certification process. The test procedure requires EHRs to simply show formulary query results, and therefore the commenter recommended that we consider expanding the test procedure to capture more of the real-world setup of the formulary at the patient or practice level. However, the ONC–ACB noted that this capability may be working fine and may not need further changes as they have never received any surveillance complaints regarding formulary features of certified EHR technologies.

Most commenters were in support of the expanded use case for real-time, patient-level formulary benefit checking. However, we received mixed opinions on the appropriateness of leveraging the NCPDP Telecommunication Standard in conjunction with the NCPDP Formulary and Benefit Standard v3.0 for this expanded use case. One commenter stated that some of the issues found with the NCPDP Formulary and Benefit Standard are due to payer implementations rather than issues with the standard itself. The commenter recommended that we review an NCPDP-authored white paper describing how payers and vendors should implement the Formulary and Benefit Standard for maximum benefit.[32]

Some commenters stated that it was inappropriate to use the NCPDP Telecommunication Standard for real-time, patient-level benefit checking as it was not developed with that use case in mind. Rather, it was developed to respond with coverage information for a pre-selected medication, not a complete range of treatment options. Additionally, commenters opined that use of the NCPDP Telecommunication Standard could result in delays, workflow issues during provider ordering, and additional EHR performance issues because the standard can take several minutes to return a response. In addition to the NCPDP Telecommunication Standard, commenters suggested that we consider the pros and cons of additional standards that could be leveraged for real-time benefit checking. These standards include the ASC X12/005010X279 Health Care Eligibility Benefit Inquiry and Response (270/271) standard and the Proposed Real Time Benefit Check (RTBC) transaction based on a previous version of NCPDP SCRIPT standard (also referred to by some commenters as the Surescripts Real-Time Benefit Check standard). Commenters also referred to different versions of the NCPDP Telecommunications Standard (e.g., B1 (Billing), D1 (Pre-termination of Benefits), D.0).

One commenter recommended that as we evaluate alternative standards for real-time benefit checking, we should also consider protections to ensure that direct communication between pharmacy benefit managers and providers does not lead to unwanted advertising or pop-up messaging intended to influence the prescription decision of a health care professional at the point of care. A few commenters also recommended that we consider proposals for automated electronic prior authorization of medications to allow a prescriber to initiate prior authorization electronically as part of future rulemaking.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We will consider comments regarding the pros and cons and maturity of the NCPDP Formulary and Benefit Standard v3.0 and v4.0 for future rulemaking. We will also examine whether we can learn from and/or leverage the processes of existing certification programs as well as improve the test procedure for this certification criterion as part of future rulemaking.

We thank commenters for their detailed responses about specific standards for the expanded use case of real-time, patient-level formulary and benefit checking, and will continue to examine the pros and cons of each to inform our future rulemaking. We will consider these comments and comments encouraging adoption of standards for electronic prior authorization for future rulemaking. Additionally, as part of our continued work, we will seek to understand the differences among the versions of the NCPDP Telecommunication Standard and

[29] CMS originally proposed retiring version 1.0 on July 1, 2014, but, in response to comment, subsequently decided to postpone the retirement date to March 1, 2015, to allow the industry adequate time to implement the necessary changes and testing to implement version 3.0 (78 FR 74789).

[30] V.4.0 has minor changes compared to v.3.0, including removal of values from an unused diagnosis code, typographical changes, and a change to the standard length of the name field. CMS has adopted v.3.0 (77 FR 74787–74789), which includes substantive changes from previous versions.

[31] The HITSC has discussed these potential limitations. Please refer to Clinical Operations Workgroup Update to the HITSC on June 19, 2013. *http://www.healthit.gov/FACAS/sites/faca/files/clinical_operations_wg_update_062013_0.pdf*

[32] *http://www.ncpdp.org/Education/Whitepaper* ''Challenges and Opportunities for Stakeholders Regarding ePrescribing Technologies and Formulary Compliance''.

between the RTBC transaction with the Surescripts Real-Time Benefit Check standard. As to the comment suggesting that we prohibit unwanted advertising or pop-up messaging in communications between providers and pharmacy benefit managers, we believe this request falls outside the scope of the ONC HIT Certification Program.

Smoking Status

We proposed a ''smoking status'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. We received comments expressing support for this certification criterion as unchanged. A few commenters noted that there is misalignment with the code sets adopted for the 2014 Edition and proposed ''smoking status'' certification criteria and the Consolidated CDA Release 2.0 and e-clinical quality measures (eCQMs). A few commenters also suggested that we consider requiring the capture of additional forms of tobacco use, such as smokeless tobacco and betel nut use.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''smoking status'' certification criterion. We note that we have also not adopted the proposed Consolidated CDA Release 2.0 as discussed under the ToC certification criterion in this section (IV.A). We will, however, take the comments about expansion of the smoking code set and alignment with the Consolidated CDA Release 2.0 and eCQMs under consideration for future rulemaking concerning a ''smoking status'' certification criterion and the Consolidated CDA standard.

Image Results

We proposed an ''image results'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. We received a small number of comments on this proposed unchanged criterion. A majority of the comments received on this proposal simply indicated their support for keeping this certification criterion as-is. However, some commenters offered additional suggestions, including one that suggested we remove this certification criterion in the next edition. This commenter did not believe the functionality expressed in the certification criterion would be relevant until a quality or incentive program existed that defined clear objectives for its use as well as the requirement of consistent vocabulary and interoperability support through common standards. Another commenter recommended that images be of diagnostic quality. Other commenters suggested that we incorporate the adoption of the Digital Imaging and Communication in Medicine (DICOM) standards in future editions. One commenter suggested that future editions should go beyond the ''accessibility'' of images to focus on the transmission of images. Commenters also stated that the interoperability of imaging among different EHR systems must be supported through standards.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''image results'' certification criterion. The 2014 Edition certification criterion was expressly adopted to support the correlated MU objective and associated measure, which focuses on the accessibility of electronic imaging results through CEHRT. We point readers to the 2014 Edition Final Rule (77 FR 54173) in which we concluded ''that the adoption of the DICOM standard (or any other standards) was unnecessary to enable users with electronic access to images and their narrative interpretations.'' We will take the DICOM suggestion as well as those comments that encouraged a broader certification criterion into consideration for future rulemaking, if the intended purpose for which this certification criterion was adopted changes or new functionality for testing and certification appears necessary.

Family Health History

We proposed a ''family health history'' (FHH) certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to adopt the HL7 Pedigree IG, HL7 Version 3 Implementation Guide: Family History/Pedigree Interoperability, Release 1 and to include only the HL7 Pedigree standard and the new IG in this certification criterion, and no longer permit demonstrating the use of only SNOMED CT® to code family health history as a means of meeting this certification criterion.

Comments. Some commenters expressed general agreement with the proposal, noting that the proposed approach should improve interoperability by moving to one standard and patient care through use of a more comprehensive standard. Many commenters were against moving solely to the HL7 Pedigree standard. Commenters argued that there was a high burden in shifting to HL7 Pedigree, particularly after just adopting SNOMED CT® for FHH. Commenters also expressed concern about Consolidated CDA compatibility and, as they described it, HL7 Pedigree's nominal benefit in terms of genomics. Commenters also recommended identifying an appropriate use case for moving solely to HL7 Pedigree, noting that HL7 Pedigree relies on SNOMED CT® for coding problems and problems is the predominate use case for coding FHH among most providers.

Response. We have not adopted the proposed FHH certification criterion. The comments received suggest further evaluation is needed as to whether moving to solely the HL7 Pedigree standard for FHH serves an appropriate use case for certification and whether the benefits exceed any potential costs and burden for developers and providers.

Patient List Creation

We proposed a ''patient list creation'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to include text in the proposed ''patient list creation'' certification criterion clarifying that EHR technology must demonstrate its capability to use at least one of the more specific data categories included in the proposed ''demographics'' certification criterion (e.g., sex or date of birth), which

incorporated the guidance provided in FAQ 39.[33]

Comments. We received only a few comments on this proposal. Commenters expressed support for this proposal. Commenters also stated that the certification criterion was essentially the ''same'' as the 2014 Edition by incorporating FAQ 39 because the FAQ applies for certification to the 2014 Edition certification criterion. One commenter suggested that instead of requiring the use of ''at least one'' demographic data element in the creation of patient lists that we require ''at least two'' demographic data elements.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would simply incorporate guidance that EHR technology developers are already following for certification to the 2014 Edition ''patient list creation'' certification criterion.

The required use of a minimum of two demographic elements was not proposed. Therefore, we have insufficient stakeholder feedback on the potential requirement's benefit versus its burden. We will, however, consider this suggestion in relation to future rulemaking activity concerning a ''patient list creation'' certification criterion.

Patient-Specific Education Resources

We proposed a ''patient-specific education resources'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to adopt this certification without the requirement that EHR technology be capable of electronically identifying patient-specific education resources based on ''laboratory values/results'' due to stakeholder feedback indicating that the Infobutton standard does not support this level of data specificity. We proposed to adopt the HL7 Implementation Guide: Service-Oriented Architecture (SOA) Implementations of the Context-aware Knowledge Retrieval (Infobutton) Domain, Release 1, August 2013, which is an updated version of the IG we adopted for the 2014 Edition. To clearly distinguish this IG in the regulation text from the prior version, we proposed a technical amendment to § 170.204(b)(2).

We proposed to revise the regulation text to be more consistent with the intent and interpretation of the 2014 Edition certification criterion regulation text that we expressed in the 2014 Edition Final Rule.[34] We noted that the text of the proposed certification criterion made clear that the EHR technology must demonstrate the capability to electronically identify patient-specific education resources using Infobutton and an alternative method that does not rely on Infobutton. We also noted that the guidance we provided in FAQ 40[35] would still be applicable to the proposed ''patient-specific education resources'' certification criterion.

We requested comment on whether we should adopt a different approach related to the methods EHR technology uses to electronically identify patient-specific education resources for the proposed certification criterion, a potential future ''patient-specific education resources'' certification criterion, or both. The 2014 Edition and proposed certification criterion require EHR technology to demonstrate the capability to electronically identify for a user patient-specific education resources using Infobutton *and an alternative method*. We sought comment on whether we should: (1) Maintain this approach; (2) require EHR technology to demonstrate only the use of Infobutton, but permit EHR technology to be certified to other methods upon an EHR technology developer's request for the purpose of an EP, EH, or CAH being able to use the alternative certified method for MU (to count such use toward meeting the measure); or (3) certify only the use of Infobutton and consult with CMS regarding a meaningful use policy change that would permit the use of any method (certified or not) to electronically identify patient-specific education resources, provided that the EP, EH, or CAH has EHR technology certified to perform the Infobutton capability.

We also sought comment on whether we should require that EHR technology be capable of providing patient-specific education resources in a patient's preferred language in the proposed certification criterion, in a potential future certification criterion, or in both.

Comments. We received comments supporting removal of the laboratory values/results data element, adoption of the updated SOA IG, and the proposed clarifying regulation text. We received comments supporting both options (1) and (3) related to the methods EHR technology must demonstrate for providing patient-specific education resources. Most commenters preferred option (3). No commenters expressed support for option (2). Consumer and patient advocacy groups supported providing patient-specific education resources in a patient's preferred language, while EHR technology developers did not support this proposal due to the burden they stated it would create because of the great number of potential languages and the lack of content resources for all potential languages. These commenters also noted that burden would far exceed the benefits (e.g., the number of patients requesting patient-specific education resources in a preferred language).

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We will consider the comments on the specific proposed changes to the certification criterion as well as the comments on the methods EHR technology must demonstrate for providing patient-specific education resources and the use of preferred language in providing those resources for future rulemaking concerning a ''patient-specific education resources'' certification criterion.

Electronic Medication Administration Record

We proposed an ''electronic medication administration record'' (eMAR) certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. The majority of commenters supported an unchanged criterion. One commenter suggested removing this criterion in future editions because the market drove availability and adoption of this functionality before it was introduced in the 2014 Edition. This commenter also opined that the functionality could be

[33] *http://www.healthit.gov/policy-researchers-implementers/39-question-04-13-039.*

[34] 77 FR 54216.

[35] *http://www.healthit.gov/policy-researchers-implementers/40-question-04-13-040.*

better improved as part of or in the context of the CDS criterion. Another commenter stated that CDS at the point of medication administration would serve as an additional quality check. A commenter stated that a bar code administration process is needed to fulfill this requirement. A commenter also suggested that a distinction be made for data models that include *pro re nata* (PRN) medications that are prescribed ''as needed'' and may not actually be given on a regular basis. The commenter stated that these medications may be included in the denominator even though they may never be included in the numerator, and thus the commenter opined that PRN medications should be treated differently than other medications.

One commenter stated that the FDA is working to implement requirements in the Drug Supply Chain Security Act regarding standards for the interoperable exchange of information for tracing human, finished, and/or prescription drugs. The commenter recommended that we be aware of these efforts and align current and future EHR requirements with any future FDA requirements for standards-based identification of prescription drugs.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We will consider, in regards to future rulemaking, feedback that this criterion is unnecessary in of itself, comments regarding the FDA's work to implement requirements in the Drug Supply Chain Security Act, comments providing guidance for fulfilling this requirement, and comments noting the distinction between PRN medications and other medications given on a regular basis.

Advance Directives

We proposed an ''advance directives'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters expressed support for the proposed unchanged certification criterion. Some commenters suggested, however, that this certification criterion be further enhanced by requiring HIT certified to this certification criterion to be able to record the electronic location of an advance directive, provide a link or instructions to the location of an advance directive, provide the content of an advance directive, and include other care planning documents such as a Physicians Order for Life-Sustaining Treatment (POLST).

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''advance directives'' certification criterion. We will, however, consider whether this certification criterion should be enhanced in any of the ways mentioned by commenters as part of future rulemaking activity concerning an ''advance directive'' certification criterion.

Implantable Device List

We proposed to adopt a new certification criterion for EHR technology to demonstrate that it is able to record and display a unique device identifier (UDI) [36] and other information about a patient's implantable devices. We noted that this proposal represented a first step towards enabling EHR technology to facilitate the widespread capture and use of UDI data to prevent device-related medical errors, improve the ability of hospitals and clinicians to respond to device recalls and device-related patient safety information, and achieve other important patient safety and public health benefits consistent with the fundamental aims of the HITECH Act and the July 2, 2013 HHS Health Information Technology Patient Safety Action and Surveillance Plan.[37] We also provided a short summary of the FDA's regulatory activity associated with the UDI.

In our proposal, we explained our belief that EHR technology will play a key role in the widespread adoption and utilization of UDIs and that EHRs' use of UDIs can help reduce device-related medical errors and provide other significant patient safety, health care quality, and public health benefits. For example, EHR technology could be leveraged in conjunction with automated identification and data capture (AIDC) technology or other technologies to streamline the capture and exchange of UDIs and associated device data in clinical and administrative workflows. We also noted that patients' UDI data in EHR technology could pave the way for new CDS and help health care providers more rapidly and accurately identify a patient's devices and key information about the safe and effective use of such devices.

As part of our proposal, we recognized that additional standards and technical specifications would be required to support the full range of contemplated capabilities and uses, and that efforts to identify or develop these standards are already underway. Nevertheless, we stated our belief that specifying some baseline functionality as part of a certification criterion would be important in order for EHR technology developers to consider the functionality necessary to capture, store, and retrieve UDIs and other contextually relevant information associated with a patient's medical devices, specifically implantable devices.

Our proposal focused on a certification criterion that would assess an EHR technology's ability to record UDI information about implantable devices. More specifically, we proposed that EHR technology would have to show that it could enable a user to electronically record the UDI of an implantable device and other relevant information (such as a procedure note or additional information about the device) as part of a patient's ''implantable device list.'' We also proposed that EHR technology would need to allow a user to electronically access and view a patient's list of UDIs and other relevant information associated with a patient's implantable devices. Our last proposal focused on an EHR technology's ability to parse the UDI in order to extract and allow a user to view the ''device

[36] A UDI is a unique numeric or alphanumeric code that consists of two parts: (1) A device identifier (DI), a mandatory, fixed portion of a UDI that identifies the labeler and the specific version or model of a device, and (2) a production identifier (PI), a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of a device: The lot or batch number within which a device was manufactured; the serial number of a specific device; the expiration date of a specific device; the date a specific device was manufactured; the distinct identification code required by 21 CFR 1271.290(c) for a human cell, tissue, or cellular and tissue-based product (HCT/P) regulated as a device. *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/UniqueDeviceIdentification/.*

[37] *http://www.healthit.gov/sites/default/files/safety_plan_master.pdf*

identifier'' and ''production identifier'' portions of the UDI.

Combined with this specific certification criterion's proposal, we also proposed that the UDI would need to be included as part of a Consolidated CDA in each of the following proposed criteria:

- § 170.315(b)(1)—Transitions of care;
- § 170.315(b)(6)—Data portability;
- § 170.315(e)(1)—View, download, and transmit to 3rd party; and
- § 170.315(e)(2)—Clinical summary.

Finally, we proposed to modify § 170.102 to include new definitions for ''implantable device,'' ''unique device identifier,'' ''device identifier,'' and ''production identifier'' in order to prevent any misinterpretation and ensure that each term's specific meaning reflected the same meaning given to them in the Unique Device Identification System Final Rule and in 21 CFR 801.3. We also sought public comment on issues outside the scope of the Proposed Rule in order to inform future rulemaking considerations, which we noted in the Proposed Rule would not be responded to in this final rule.

Comments. Many commenters supported the overall intent behind the proposed certification criterion. These commenters recognized its potential benefits to patient safety and supported the adoption of a certification criterion focused on implantable device list functionality. Some commenters (including those that conceptually supported the proposed criterion) contended that the proposed certification criterion was complex, included new workflow considerations and, from a timing perspective, that it would be premature to adopt a certification criterion including the proposed functionality in this final rule. Instead, they suggested that we wait for the next rulemaking (the rulemaking we expressed our intention to issue with CMS to accompany policy updates to the EHR Incentive Programs) as that would provide EHR technology developers more time to design their systems as well as time for the FDA to continue to make progress on the broader technical infrastructure necessary to comprehensively support the UDI.

Other commenters, mostly EHR technology developers, suggested that the proposed criterion would not be applicable or relevant to the ambulatory setting (due to where implantable device UDI data would be most routinely captured in the inpatient setting) and requested that we scope this criterion to be specific to the inpatient setting. A few commenters suggested that this certification criterion might be ill-suited for both the ambulatory and inpatient settings because the capture of implantable device identifiers would take place in surgical HIT systems. Additionally, some commenters suggested limiting the scope of the certification criterion to focus just on storing only the UDI number as structured data and include the criterion in a future edition of certification criteria without any of the added functional requirements proposed in the Proposed Rule. Another commenter suggested expanding the scope of the certification criterion to include all devices as opposed to the implantable device scope we had included in our proposal, as greater alignment should exist between EHR technology and other technologies used to support supply chain management.

Commenters stated that we had not clearly identified specific use cases that the proposed certification criterion was meant to support. They requested greater clarity in order to better understand how the UDI data was to be used. In that regard, some commenters expressed concern that including the UDI data as part of information exchange transactions (specifically in the Consolidated CDA only) would be premature and suggested that we work with other standards development organizations (such as HL7, NCPDP, and X12) to clarify when and to whom the UDI would need to be communicated. Along different lines, one commenter suggested that we modify the proposal to ''electronically record the UDI'' to focus on the EHR technology recording the UDI in its complete and parsed state and similarly presented to users in an understandable manner. Another commenter suggested that EHR technology have the capability to generate patient lists by a particular device.

Several commenters requested that we require as part of the certification criterion the use of AIDC technology, while another commenter acknowledged that the system behavior for EHR technology could be similar to that described in the 2014 Edition eMAR certification criterion. These commenters reasoned that an EHR user should not have to manually enter the UDI as it would be inefficient and that the UDI's length could increase the risk of harm due to inaccurate data entry. At least one commenter indicated that financial constraints surrounding AIDC technology could hamper investments in such technology and cause its use to be delayed.

Response. We have not adopted this certification criterion. We believe additional work is necessary to further refine our proposal based on public comments. We very much appreciate the detailed comments submitted, including those that pointed to areas where we need to provide additional detail and clarity. We believe that our next rulemaking can provide such detail and clarity, and intend to propose a UDI-focused certification criterion that reflects the input provided.

Transitions of Care

We proposed to make several changes to the ToC certification criterion, including adopting an updated version of the Consolidated CDA, certain data quality constraints on the creation of Consolidated CDAs to improve patient matching, a proposed ''performance standard'' that would have required EHR technology to successfully electronically process validly formatted Consolidated CDAs no less than 95% of the time, and the inclusion of UDI information.

Updated Consolidated CDA Standard

We proposed to incorporate an updated version of the Consolidated CDA Standard, HL7 Implementation Guide for CDA Release 2: Consolidated CDA Templates for Clinical Notes (U.S. Realm), Draft Standard for Trial Use, Release 2.0 (''Release 2.0''), which was balloted in the summer of 2013. We proposed to include Release 2.0 in four certification criteria: ToC, VDT, clinical summary, and data portability.

Comments. We received many comments on this proposal. The majority of commenters, especially those from EHR technology developers, developer associations, and certification bodies, did not support this proposal. Commenters voiced concerns that Release 2.0 was so new that many stakeholders had not had the chance to review it and it had not been sufficiently piloted. In addition, commenters pointed out a technical problem with the update, known as ''bilateral asynchronous cutover'' wherein Release 2.0 is not backwards compatible with previous versions of the Consolidated CDA and therefore a provider with a 2014 Edition certified product could not receive a document conformant to the Release 2.0 standard. These commenters supported considering Release 2.0 for future editions of our certification rules. Consumer advocacy groups supported the proposal, noting that the additional functionality included in Release 2.0 such as new structural elements for care plans, patient goals, and health

outcomes were important to longitudinal health and care planning and therefore should be included.

Response. We have not adopted Release 2.0 for any certification criteria in this final rule. We appreciate the detailed feedback we received from the developer community and agree that more work remains to address some of the challenges expressed by stakeholders. We remain interested in moving to Release 2.0 and acknowledge that pilot testing is occurring. We will continue to monitor the pilot testing and any other developments concerning Release 2.0 and will consider them in determining whether to include Release 2.0 in a future rulemaking.

ToC Interoperability and MU Stage 2 ''Cross-Vendor'' Exchange

We proposed to create a new ''cross-vendor'' exchange requirement. We proposed to require EHR technology certified to the ToC certification criterion to demonstrate that it can successfully electronically process validly formatted Consolidated CDAs no less than 95% of the time.

Comments. We received many comments on this proposal. Overall, commenters did not support our proposal. Commenters voiced concerns about the testability of this requirement. Commenters also questioned the likelihood that the proper set of testing documents could be collected, which would prevent efficient testing and development. Commenters questioned how we determined the 95% threshold and requested we provide evidence supporting that limit. Commenters stated that the 95% threshold would be impractical, time consuming, and expensive to implement, given the wide variation in Consolidated CDA implementation. Commenters also noted that the proposal was vague and confusing, and sought additional information about various portions of the proposal, including what it means to ''electronically process.'' Commenters supported constraining the Consolidated CDA as a better way to achieve our stated goals.

Response. Given our approach in this final rule to only adopt a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and include revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange, we have not finalized this proposal. We agree that a more constrained Consolidated CDA is an equally implementable approach to reducing the implementation ambiguity and flexibility afforded in the current Consolidated CDA. We encourage industry stakeholders to take such steps. We will re-consider this proposal and the comments received for future rulemaking.

''Create'' and Patient Matching Data Quality

We proposed to include a limited set of standardized data (79 FR 10900) as a part of the ''create'' portion of the Proposed Voluntary Edition ToC criterion to improve the quality of the data included in outbound summary care records. We also sought comment on additional data to include and other constraints that could be applied to this data to improve its quality.

Comments. Overall, the vast majority of commenters supported the policy that standardized patient identifying attributes should be required and captured by certified EHR technology for use in relevant exchange transactions. Commenters overwhelmingly supported the inclusion of the proposed constrained specifications for last name/family name, suffix, first/given name, middle/second name, date of birth, current address and historical address, phone number, and sex in support of patient matching.

We received an especially large amount of feedback regarding the address proposal. Commenters suggested that we delay support for international standards for address until future editions of certification criteria. Commenters also provided feedback that the United States Postal Service format specifications are not in sync with other MU requirements, such as the LRI and LOI IGs, and recommended further review of the appropriate address standardization. Commenters also recommended the inclusion of a field for ''former name'' as many patients change their names for purposes beyond marriage.

Commenters noted that some of the proposed data elements would come from practice management systems that EHRs do not control, including maiden name, historical address and phone number (including multiple phone numbers), and recommended these fields be made optional. Some commenters stated that the proposed standardization was premature, raising usability and privacy concerns and urging us to do further analysis.

Response. Given our approach in this final rule to only adopt a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and include revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange, we have not adopted this proposal. We will consider comments regarding patient matching functionality for future rulemaking.

Unique Device Identifier Information

We proposed to include UDIs for a patient's implantable device within a created Consolidated CDA formatted document.

Comments. As noted in the UDI section, commenters stated that it was premature to include implantable device information in Consolidated CDA formatted documents and raised questions about the Consolidated CDA's ability to support such information.

Response. We have not finalized our proposal to include the UDI information in a Consolidated CDA formatted document given our decision not to adopt a UDI certification criterion at this time. We appreciate the comments from stakeholders and will consider them for future rulemakings.

Electronic Prescribing (e-prescribing)

We proposed an ''e-prescribing'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. The majority of commenters supported an unchanged criterion. One commenter suggested merging this criterion with the CPOE—medications certification criterion. Multiple commenters recommended that we adopt the NCPDP ''SCRIPT Implementation Recommendations'' guidance document that provides clarity on how to populate e-prescribing transactions.[38] One commenter endorsed the inclusion of RxNorm drug identifiers to provide quality controls for drug identification and promote interoperable exchange of medication information. This commenter recommended use of RxNorm in place of a representative National Drug Code (NDC). One commenter suggested that we consider requiring transmission of in-language prescription labels to prevent inappropriate misuse of prescriptions.

A commenter noted that the FDA is working to implement requirements in the Drug Supply Chain Security Act regarding standards for the interoperable exchange of information for tracing human, finished, and/or prescription drugs. The commenter recommended that we be aware of these

[38] The most recent version of this document is Version 1.26 May 2014.

efforts and align current and future EHR requirements with any future FDA requirements for standards-based identification of prescription drugs.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We will consider comments including those on vocabularies, the NCDPD SCRIPT implementation guidance, prescription labeling, and the FDA's work to implement the requirements in the Drug Supply Chain Security Act for future rulemaking activity concerning an ''e-prescribing'' certification criterion.

Incorporate Laboratory Tests and Values/Results

We proposed an ''incorporate laboratory tests and values/results'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. Specifically, we proposed to include in the criterion the HL7 Version 2.5.1 Implementation Guide: Standards and Interoperability Framework Laboratory Results Interface, Release 1 (U.S. Realm) (S&I Framework LRI) with Errata.[39] We also proposed more specific requirements for how EHR technology must be capable of electronically displaying the information included in a test report. As stated in the Proposed Rule, this specificity would improve the consistency with how laboratory tests and values/results are displayed, which would also assist laboratories with CLIA compliance. We proposed to require EHR technology to be capable of displaying the following information included in laboratory test reports it receives: The information for a test report as specified in 42 CFR 493.1291(a)(1) through (a)(3) and (c)(1) through (c)(7); the information related to reference values as specified in 42 CFR 493.1291(d); the information for alerts and delays as specified in 42 CFR 493.1291(g) and (h); and the information for corrected reports as specified in 42 CFR 493.1291(k)(2).

Comments. Commenters were generally supportive of adoption of interoperable laboratory standards, particularly the LRI IG with errata, and with aligning requirements with CLIA. Commenters did, however, express concerns. Commenters recommended that major errata in the proposed LRI IG be tested further before normative balloting, stating that this would give laboratories and HIT developers more awareness of significant changes and time to implement and test the changes before the IG becomes normative. EHR technology developers expressed concerns with specific requirements for EHRs to display information that they stated would routinely be captured in a laboratory information system or other system and not available to EHRs. Commenters also strongly recommended that there should be harmonization across all IGs (e.g., LRI, LOI, ELR, eDOS, CDA and other IGs) for consistent process, behavior, terminology, and usage.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We believe, however, that there is great promise and value in the LRI IG in terms of improving the interoperability of laboratory test results/values, the electronic exchange of laboratory test results/values, and compliance with CLIA for laboratories. We believe work is currently being done to address the concerns of commenters, such as addressing interoperability concerns and ambiguities with the LRI IG with errata, testing use of the LRI IG, developing implementation guidance for EHR functionality, and harmonizing all laboratory standards and IGs. Accordingly, while we have not adopted the proposed certification criterion at this time or the LRI IG with errata, we intend to revisit this certification criterion and the use of an updated LRI IG along with CLIA requirements in a future rulemaking.

Transmission of Electronic Laboratory Tests and Values/Results to Ambulatory Providers

We proposed a ''transmission of electronic laboratory tests and values/results to ambulatory providers'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. Specifically, we proposed to include in the criterion the HL7 Version 2.5.1 Implementation Guide: Standards and Interoperability Framework Laboratory Results Interface, Release 1 (U.S. Realm) (S&I Framework LRI) with Errata.[40] We also proposed to include new functionality that would improve the consistency with how laboratory tests and values/results are sent, received, and displayed. As stated in the Proposed Rule, this would assist laboratories with CLIA compliance. We proposed to require EHR technology to be capable of including in the laboratory test reports it creates for electronic transmission: The information for a test report as specified in 42 CFR 493.1291(a)(1) through (a)(3) and (c)(1) through (c)(7); the information related to reference values as specified in 42 CFR 493.1291(d); the information for alerts and delays as specified in 42 CFR 493.1291(g) and (h); and the information for corrected reports as specified in 42 CFR 493.1291(k)(2).

To make the CFR easier to follow for readers, we proposed to adopt the updated S&I Framework LRI at § 170.205(j)(2), which would require the modification of the regulatory text hierarchy in § 170.205(j) to designate the standard referenced by the 2014 Edition version of this certification criterion at § 170.205(j) to be at § 170.205(j)(1).

Comments. The comments we received on this proposed certification criterion were substantially similar to the comments we received on the ''incorporate laboratory tests and values/results'' certification criterion discussed above. We refer readers to those comments.

Response. We have not adopted this certification criterion. Our rationale for not adopting this certification criterion is the same as that provided for the ''incorporate laboratory tests and values/results'' certification criterion discussed above. We refer readers to that response.

Data Portability

We proposed a ''data portability'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to include in the certification criterion the Consolidated CDA Release 2.0 and UDIs for a patient's implantable device within a created Consolidated CDA formatted document.

Comments. The comments we received regarding the Consolidated CDA Release 2.0 in response to this criterion were similar to those received on the other four criteria that we proposed to incorporate it within. The majority of commenters thought it was premature to adopt Release 2.0 and that

[39] *http://www.hl7.org/implement/standards/product_brief.cfm?product_id=279.*

[40] *http://www.hl7.org/implement/standards/product_brief.cfm?product_id=279.*

Release 2.0 would create backwards compatibility issues with previous versions of the Consolidated CDA, thus preventing the receipt of the new version. Commenters recommended we do not include it in the data portability certification criterion at this time. Commenters also stated that it was premature to include patient implantable device information (i.e., UDIs) in Consolidated CDA formatted documents.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As discussed under the ToC certification criterion in this section (IV.A) of the preamble, we have not adopted the Consolidated CDA Release 2.0. As discussed under the ''implantable device list'' certification criterion in this section (IV.A) of the preamble, we have not adopted that proposed certification criterion. We will, however, in relation to future rulemaking activity, consider the comments received concerning a ''data portability'' certification criterion, the Consolidated CDA Release 2.0, and a patient's implantable device list and associated UDIs.

Clinical Quality Measures—Capture and Export

We proposed a ''clinical quality measures—capture and export'' certification criterion as part of the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did, however, solicit public comment on the potential usefulness of broadening the export requirement to include a QRDA Category II formatted data file.

Comments. We received a few comments that the immunization CQMs do not match well with the Advisory Committee on Immunization Practice's recommendations. A commenter suggested that we should not update the standards we adopted for CQMs in the 2014 Edition until the industry has had sufficient time to adjust to the current standards. One commenter suggested that we and CMS revise the current eCQM process and provide a database configuration that all EHR technology developers, EPs, EHs, and CAHs would install. The commenter stated that the configuration would be able to take raw data and produce the desired output for each eCQM and QRDA submission, thereby reducing the burden on EHR technology developers to adapt to changes in the database schema and data collection.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''clinical quality measures—capture and export'' certification criterion. Our request for comment on the potential usefulness of broadening the export requirement to also include a QRDA Category II formatted data file was to inform our decision-making for future rulemaking. We will take comments received on this topic into consideration with the comments received regarding clinical recommendations, standards maturity, and the current eCQM process for future rulemaking concerning CQMs.

Clinical Quality Measures—Import and Calculate

We proposed a ''clinical quality measures—import and calculate'' certification criterion as part of the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. One commenter stated that this criterion requires a level of patient matching that does not currently exist. This commenter encouraged the creation of a national patient identification number.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''clinical quality measures—import and calculate'' certification criterion. We thank commenters and understand the importance of matching clinical quality data with the right patient. We note that we solicited comments on patient matching in the Proposed Rule and discuss this topic in more detail under the ''ToC'' certification criterion in this section (IV.A) of the preamble. However, we note that we have not adopted patient matching requirements in this final rule given our rulemaking approach and will consider comments on the topic for future rulemaking.

Clinical Quality Measures—Electronic Submission

We proposed a ''clinical quality measures—electronic submission'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. A few commenters noted the discrepancies between the QRDA Category I and III standards referenced in the 2014 Edition and the subsequently issued CMS QRDA Category I and III IGs dictating the ''form and manner'' of eCQM submission to CMS, as required for participation in the Physician Quality Reporting System and Inpatient Prospective Payment System programs. Commenters noted that the CMS QRDA IGs issued in 2013 had some conflicts with the base QRDA Category I and III standards named in the 2014 Edition. Commenters also stated that the CMS QRDA IG publication dates (April 1, 2013 for EHs, June 1, 2013 for EPs) did not provide sufficient time for EHR updates, testing, and rollout to providers. Therefore, these commenters suggested we remove the language in paragraph (ii) of this criterion requiring the electronic data file can be electronically accepted by CMS.

Two commenters recommended that we not adopt standards that are in draft standard for trial use (DSTU) form and wait until they become normalized standards. These commenters noted that the QRDA Category I and III standards adopted in the 2014 Edition are still DSTUs. One commenter added that no regulatory action has been taken to incorporate the errata to the QRDA Category I and III standards since their release in 2013. Another commenter stated that the QRDA Category I and III standards are not widely used to transmit data.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR

certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''clinical quality measures—electronic submission'' certification criterion. We will consider comments received on this criterion regarding QRDA standards maturity and program-specific QRDA IGs for future rulemaking concerning CQMs.

Clinical Quality Measures—Patient Population Filtering

We proposed a new ''clinical quality measures—patient population filtering'' certification criterion for the Proposed Voluntary Edition that would require filtering of CQMs by patient population characteristics. Certain CMS reporting programs such as the Comprehensive Primary Care initiative and Pioneer Accountable Care Organization model may determine financial incentives or bonus payments based on the performance of an entity other than the individual provider. To support CQM reporting for these groups, we proposed to require EHR technology be able to record structured data for the purposes of being able to filter CQM results to create different patient population groupings by one or more of a combination of the following patient characteristics:

- Practice site and address;
- Tax Identification Number (TIN), National Provider Identifier (NPI), and TIN/NPI combination;
- Diagnosis (e.g., by SNOMED CT code);
- Primary and secondary health insurance, including identification of Medicare and Medicaid dual eligibles; and
- Demographics including age, sex, preferred language, education level, and socioeconomic status (SES).

To inform our proposal, we solicited comment on whether current CQM standards (e.g., QRDA Category I and Category III) can collect metadata for the characteristics listed above, and filter and create a CQM report for a particular characteristic or combination of characteristics. We also solicited comment on vocabulary standards that could be used to record the characteristics proposed above.

Comments. We received mixed comments on the proposal to adopt a new certification criterion to support filtering of CQMs by patient characteristics. Those commenters in support of the proposal stated that the added functionality included in the certification criterion would help address health disparities and social determinants of health. Some commenters believed that collecting the data in a structured way would allow data to be filtered. One commenter pointed to the National Quality Forum's draft report on ''Risk Adjustment for Socioeconomic Status or Other Socioedemographic Factors,'' which recommends stratification of measures on the basis of relevant socio-demographic factors when the intended purpose is to identify and reduce disparities.[41] Additionally, commenters stated that the proposal would help providers participating in programs where the reporting is at an aggregate, rather than individual, provider level. Some commenters noted that the use case for this functionality was not made clear in the preamble.

A few commenters pointed out that race and ethnicity were not included in the proposed list of characteristics and strongly urged us to consider including race and ethnicity. Commenters also suggested the inclusion of practice type, practice specialty, sexual orientation and gender identity, and disability status in the list of characteristics required for filtering. Some commenters suggested that we perform a full inventory of the possible data elements that CQMs could be filtered by before proposing a list.

We also received comments expressing concern about the level of work required to build the proposed functionality into EHRs. Commenters pointed out that some of the proposed data elements are typically found within administrative systems (e.g., practice address and insurance data) while other data is found within clinical systems such as the EHR. Commenters opined that while some systems can easily merge administrative and clinical data, not all systems currently have this capability and thus the ability to support this proposed criterion varies. Many commenters noted that proposed characteristics, such as age, sex, diagnosis, NPI, and TIN, are being collected in standardized ways within EHRs, but that there are not standard vocabularies or definitions for other data elements such as education and SES. One commenter recommended using a standard for collecting education based on the standard used by the National Center for Health Statistics. Some commenters were concerned about the complexity of establishing a definition and standard for SES as it could factor in information on occupation, education, income, wealth, and place of residence. Commenters stated that this kind of data is not typically collected in a clinical setting. Additionally, SES could change over time and thus the inputs may change, adding further complexity.

Regarding standards for quality measurement, some commenters remarked that the QRDA standards can currently capture the data elements needed to filter CQMs by certain patient population characteristics, although not all data elements in standardized form as noted above. Commenters stated that the HQMF standard can currently support filtering by patient characteristics but not by other provider or location variables such as address, TIN, and NPI. Additionally, a commenter stated that HQMF does not have the ability to indicate the level at which a measure needs to be evaluated and summarized. The commenter contended that this could affect whether patients are identified in the initial patient population for group reporting or not, and would impact whether the patient is filtered or not.

Response. Given the feedback we received, we believe additional work is needed to further refine our proposal. Therefore, we have not adopted this certification criterion. We clarify that we envision two *types* of uses for this functionality: 1) Filtering of CQM results to support the identification of health disparities, to help providers identify gaps in quality, and to support a provider in delivering more effective care to sub-groups of their patient populations, and 2) to support administrative and group/ACO reporting of CQMs where the unit of measurement is not the individual provider. We are considering whether this functionality could be a standalone certification criterion or an additional functionality included in a new version of the ''clinical quality measures—import and calculate'' certification criterion at § 170.314(c)(2). As we have considered stakeholder feedback on the workflow to filter CQMs, EHRs may need to first calculate the CQM and then be able to stratify/filter results by certain characteristics.

We agree with commenters that there are standardized vocabularies to collect some of the data elements we proposed, but not all. We recognize that more work is needed to identify standards for other data elements we proposed. We also recognize that the list we proposed is not a complete set, and that there are additional data elements the stakeholders may wish to filter by. We appreciate the comments regarding standards for quality reporting (e.g.,

[41] *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=75398.*

QRDA and HQMF), and will use this feedback to inform our future rulemaking. We will also take into consideration comments on the level of filtering and summarization of CQMs for group and ACO reporting.

Authentication, Access Control, and Authorization

We proposed an ''authentication, access control, and authorization'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did, however, solicit comments on the issue of two-factor authentication to support two use cases: E-prescribing of controlled substances; and remote provider access. In 2010, the Drug Enforcement Agency (DEA) removed the federal ban on e-prescribing controlled substances. The DEA requires the use of two-factor authentication protocol when e-prescribing. In 2012, the HITPC recommended that we adopt multi-factor authentication by providers remotely accessing protected health information. We asked the public to respond to two questions:

(1) Should we adopt a general two-factor authentication requirement for certification?

(2) Were the HITPC's recommendations appropriate and actionable?

Comments. All commenters supported the certification criterion as unchanged. Commenters did not support a broad two-factor authentication requirement for certification. The majority of the commenters did, however, support the inclusion of two-factor authentication functionality for the specific purpose of e-prescribing controlled substances. Some commenters noted that the DEA's requirements were more complex than basic two-factor authentication and urged us to consult with the DEA before creating a criterion to support this use case. Commenters were divided in their support for requiring two-factor authentication for remote access for providers. Commenters agreed that the HITPC's recommendations regarding remote access for providers were actionable. However, comments varied with regard to whether the recommendation was appropriate for remote access. Specifically, commenters were concerned that differences in EHR systems (i.e., cloud-based versus practice-installed) created ambiguity as to when the requirement would apply and sought clarity in the term ''remote access.'' In addition, commenters voiced concern about the potential criterion becoming too prescriptive, with many commenters urging us to propose a criterion that required EHRs to support these use cases without describing how they did so. Commenters further noted concern about the ability to test two-factor authentication.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''authentication, access control, and authorization'' certification criterion. We will consider comments regarding the use of two-factor authentication to support e-prescribing of controlled substances and remote access for providers in future rulemaking concerning an ''authentication, access control, and authorization'' certification criterion.

Auditable Events and Tamper-Resistance

We proposed an ''auditable events and tamper-resistance'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed this certification criterion in response to a report by the OIG entitled, ''Not All Recommended Safeguards Have Been Implemented in Hospital EHR Technology'' (OEI–01–11–00570).[42] We proposed to require EHR technology to prevent all users from being able to disable an audit log. We asked for public comment on the impact and potential unintended consequences of such a change and for specific examples where disabling an EHR technology's audit log is warranted.

Comments. The majority of commenters, including EHR technology developers, EHR developer associations, and the HITSC, did not support preventing all users from being able to disable the audit log. Commenters stressed that there were valid and important reasons for users to disable the audit log, including allowing a system administrator to disable the audit log for performance fixes, stability, disaster recovery, and system updates or allowing a system administrator to disable it when there is rapid server space loss which is hindering a provider from accessing needed clinical information in a timely manner. Commenters stated that the majority of EHR developers do not currently allow audit logs to be disabled. Commenters also stated that preventing the disabling of the audit log was a best practice, but should not be included in the certification criterion because of cases of emergency or disaster that would necessitate disabling of the audit log. Other commenters, including providers, provider associations, consumer advocates, and EHR technology developers, supported the OIG recommendation. Consumer advocates and others commented that preventing the audit log from being disabled would improve consumers' trust. A minority of commenters supported identifying a baseline set of auditable actions that should be prevented from being disabled. The baseline set included additions, deletions, and other changes.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. Additionally, in response to the significant and detailed feedback we received recommending that we do not finalize our proposal, we will further evaluate whether it is appropriate to implement the OIG report's recommendation. As many commenters noted, there are valid reasons that require a limited number of EHR users to be capable of disabling the audit log. We will continue to engage with stakeholders regarding audit log functionality, and will consider stakeholder feedback in regard to future rulemaking concerning an ''auditable events and tamper-resistance'' certification criterion.

Audit Report(s)

We proposed an ''audit report(s)'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion as part of the Proposed Voluntary Edition.

Comments. Commenters supported the proposed certification criterion as unchanged.

Response. We thank commenters for their support of this proposed unchanged certification criterion. We have not, however, adopted this

[42] *https://oig.hhs.gov/oei/reports/oei01-11-00570.pdf.*

certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''audit report(s)'' certification criterion.

Amendments

We proposed an ''amendments'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters supported the proposed certification criterion as unchanged. Some commenters noted the importance of this certification criterion and recommended records tag patient-generated amendments to denote the appropriate provenance.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''amendments'' certification criterion. We will, however, consider the comments about data provenance of amendments for future rulemaking activity concerning an ''amendments'' certification criterion.

Automatic Log-Off

We proposed an ''automatic log-off'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters supported the proposed certification criterion as unchanged.

Response. We thank commenters for their support. However, we have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''automatic log-off'' certification criterion.

Emergency Access

We proposed an ''emergency access'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters supported the proposed certification criterion as unchanged. One commenter expressed concerns that untrained users could make a mistake in a complex EHR system related to access.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''emergency access'' certification criterion. In response to the comment on ''untrained'' users, we note that the 2014 Edition certification criterion (and the proposed ''emergency access'' criterion) requires EHR technology to be able to designate a ''set of users.'' A provider would determine appropriate users and access to their system in conjunction with the EHR technology developer, which is not part of the certification process under the ONC HIT Certification Program.

End-User Device Encryption

We proposed an ''end-user device encryption'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters supported the proposed certification criterion as unchanged.

Response. We thank commenters for their support. However, we have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''end-user device encryption'' certification criterion.

Integrity

We proposed an ''integrity'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters supported the proposed certification criterion as unchanged.

Response. We thank commenters for their support. However, we have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''integrity'' certification criterion.

Accounting of Disclosures

We proposed an ''accounting of disclosures'' certification criterion for the Proposed Voluntary Edition that was unchanged substantively as compared to the 2014 Edition certification criterion. We did, however, propose to remove the ''optional'' designation from this certification criterion for the Proposed Voluntary Edition because such a designation would no longer be necessary with the proposed discontinuation of the Complete EHR concept.

Comments. All of the comments received supported leaving the certification criterion unchanged. Commenters overwhelmingly recommended that we do not remove the optional designation regardless of

other proposed changes. Commenters suggested removing the optional designation would create confusion in the marketplace and require significant additional development work.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We note that commenters apparently misunderstand the purpose of designating certification criteria as optional. As we explained in the Proposed Rule (79 FR 10918), the designation of ''optional'' for certification criteria was developed to accommodate the Complete EHR definition (i.e., cases where EHR technology would otherwise have to be certified to a criterion solely because it is required in order to satisfy the Complete EHR definition and certification). Complete EHR certification is still permitted to the 2014 Edition. Therefore, as proposed, it would make no sense to adopt this certification criterion as part of the 2014 Edition as it is substantively the same as the current 2014 Edition ''accounting of disclosures'' certification criterion and, without the optional designation, it would directly contradict the current 2014 Edition ''accounting of disclosures'' certification criterion and EHR technology would be required to certify to it for a Complete EHR certification.

View, Download, and Transmit to 3rd Party

The summary of the proposals in the Proposed Rule recited in this section only summarize and include the ''comments'' and ''response'' for the proposals that we have not adopted in this final rule. For the VDT proposal made in the Proposed Rule and adopted in this final rule, including a summary of what was proposed for that proposal, please see section III.A.2 of this preamble.

We proposed to revise the VDT criterion in a number of ways, including: Clarifying introductory text in order to clearly specify that this criterion expressed patient facing capabilities for patient use; decoupling the content and transport requirements and in tandem proposing a revision that would more clearly express EHR technology's ability to support a patient's ability to choose the destination or to whom they wanted to send their health information; updating the Consolidated CDA version with the corresponding inclusion of UDI information; increasing the Web Content Accessibility Guidelines (WCAG) level to level AA; and revising the activity history log requirement to record two additional data elements (the addressee to whom an ambulatory summary or inpatient summary was transmitted and whether that transmission was successful).

Comments. Commenters generally supported clarifying the introductory text of VDT. Commenters stressed the importance of allowing authorized representatives the ability to perform the VDT functionality. Some EHR technology developers opposed revisions related to the clarification around a patient's ability to ''download'' a human readable file, a Consolidated CDA file, or both. A commenter representative of the majority of EHR technology developers indicated that the revised criterion is overly prescriptive and not in sync with actual software development. The commenter stated that EHR technology developers enable users to download the XML version and the style sheet together, since the style sheet is applied to the XML to provide the human-readable information. The commenter concluded that most patients would find making a choice confusing and did not believe that patients would benefit from this proposal.

With respect to our proposal for EHR technology to enable a patient to choose the destination or whom they wanted to send their health information via Direct, many commenters opposed or raised concerns about this proposal. Most of these commenters were EHR technology developers who identified a number of technical concerns with the proposal. They stated that:

- EHR technology cannot guarantee that any message sent to a Direct address specified for transmission will reach the endpoint. Each HISP has rules beyond the EHR's control specifying their exchange with other HISPs.
- The ability of a patient to enter a third party destination of their choice (i.e., initiate a direct exchange using a valid direct exchange address) would imply that the EHR technology has the ability to determine if the address entered is valid. When a patient enters an address, the EHR technology would not know if it is valid and with the separation of content from transport, the EHR technology would no longer control the Domain Name System/Lightweight Directory Access Protocol (DNS/LDAP) look up to ensure that the certificate is valid and included within the sender's HISP trust circle.
- Patients have not, and will not any time soon, be given Direct addresses because it is too great an expense.

We received many comments on our proposal to update the Consolidated CDA version to Release 2.0. The majority of commenters, especially those from EHR technology developers, HIT developer associations, and certification bodies, did not support this proposal. Commenters voiced concerns that Release 2.0 was so new that many stakeholders had not had the chance to review it and it had not been sufficiently piloted. In addition, commenters pointed out a technical problem with the update, known as ''bilateral asynchronous cutover'' wherein Release 2.0 is not backwards compatible with previous versions of the Consolidated CDA and therefore a provider with a 2014 Edition certified product could not receive a document conformant to the updated Consolidated CDA standard. These commenters supported considering Release 2.0 for future editions of our certification criteria. Consumer advocacy groups supported the proposal, noting that the additional functionality included in Release 2.0, such as new structural elements for care plans, patient goals, and health outcomes, were important to consumers and care planning.

We received mixed comments on our proposal to move to WCAG Level AA, including many from EHR technology developers. Some opposed the increased level citing the cost and burden to reach Level AA. Conversely, other EHR technology developers supported the move and offered no concerns. In both cases, EHR technology developers noted that WCAG conformance tools are somewhat sparse and that they have had difficulty finding viable tools. Of the few comments on whether a hybrid of Level A and Level AA would be preferred, the comments opposed this type of approach because it would lead to variability and inconsistency.

Most commenters supported the inclusion of the intended recipient in the activity history log. Commenters voiced concern about requiring a history log to record whether the transmission was successful, noting that EHRs do not have information on what happens to a message once it leaves the EHR and is processed by the HISP. Commenters stated that prior to being able to make this information patient accessible, standards development would be necessary to support this use case. Some commenters agreed that activity history logs should record and include both new data points and stated that this

transaction history provides important information about care coordination that patients should be able to access.

Response. We appreciate the detailed feedback we received on many of the VDT proposals. While we are not revising the 2014 Edition VDT to include the proposed clarifying regulation text, we note for commenters that the requirement to provide patients with the ability to download a human readable version, a Consolidated CDA version, or both, *already exists within the 2014 Edition VDT certification criterion.* As discussed in the Proposed Rule, the clarification was not a modification of existing policy. Rather, it was an attempt at more clearly articulating existing policy to avoid any confusion. As EHR technology developers indicated, we have long-standing policy that permits them to satisfy this approach through the use of a style sheet, which would be an acceptable approach because it would give a patient both human readable and Consolidated CDA versions.

We have also decided to leave the 2014 Edition certification criterion unmodified with respect to our proposal to enable a patient to choose the destination or whom they wanted to send their health information via Direct. We will consider the technical challenges raised by EHR technology developers. In the case of the Consolidated CDA update, we have already discussed our decision not to adopt this proposal in the discussion on the ToC criterion (Section IV.A) and do not adopt it for the VDT certification criterion for the same reasons. In response to comments, we will continue to evaluate the WCAG level and suitable testing approaches. Last, we will continue to evaluate comments on our proposal to expand the activity history log and its connection to some of the technical challenges identified by comments.

Overall, given our approach in this final rule to only adopt a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and include revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange, we have not adopted any of the proposals discussed in this section.

Clinical Summary

We proposed a ''clinical summary'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to reflect the clarifications we provided in FAQ 33 [43] (i.e., require the use of LOINC® for diagnostic tests pending and future scheduled tests to the degree such test could be coded in LOINC®), to *require* the use of CVX codes for immunizations, and reference the Consolidated CDA Release 2.0 (including UDI(s) for a patient's implantable device(s) as data within a created Consolidated CDA formatted document) in the proposed certification criterion. We requested comment on whether LOINC® can be used to represent all possible diagnostic tests pending and future scheduled tests.

We also reiterated the situational dependency (office visit-dependent) of certain data that the EHR technology must be able to provide, and limit, in the clinical summary to meet the proposed certification criterion as well as the 2014 Edition ''clinical summary'' certification criterion. We stated that although the regulation text for medications, diagnostic tests pending, and future scheduled tests may seem redundant with the Common MU Data Set, this data along with immunizations is specified separately because EHR technology must have the capability to limit this data in a clinical summary it creates to only those medications and immunizations administered during the visit and/or the diagnostic tests pending and future scheduled tests after the visit. We clarified that in terms of customization of the clinical summary, this permits the user to limit this data in the clinical summary if so desired. We further clarified that while providing historical data for medications, immunizations, and diagnostic tests in the clinical summary may be of benefit in certain instances, EHR technology is not required to have these capabilities to meet the certification criterion. Last, we noted that this certification criterion, like the 2014 Edition ''clinical summary'' certification criterion, was designed to support the associated MU objective and measure that seeks to provide a patient with a record of the office visit and specific lab tests or specific follow-up actions and treatment related to the office visit.

Comments. We received many comments supporting the required use of CVX and LOINC®. A few commenters opposed the use of LOINC® codes, while others suggested the use be required ''where applicable'' because LOINC® cannot currently cover all possible tests. We received comments for and against the use of the Consolidated CDA Release 2.0 and the inclusion of UDI(s). Commenters also expressed varying opinions on the data that should be included in a clinical summary. Some commenters suggested that EHR technology allow for complete customization of the data. Others commenters recommended not including historical information or code sets in the clinical summary (which they claimed were confusing to patients).

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We also note that we have not adopted the proposed Consolidated CDA Release 2.0 as discussed under the ToC certification criterion and the ''implantable device list'' certification criterion in this section of the preamble (IV.A). We expect EHR technology developers to follow FAQ 33 for certification to the 2014 Edition ''clinical summary'' certification criterion and we continue to encourage, but not require, the use of CVX codes for immunizations. The data element requirements for certification to the 2014 Edition ''clinical summary'' certification criterion remain the same as does the ''situational dependency'' guidance we provided in the Proposed Rule and have recited above. We will, however, take into consideration the comments we received about the data that should be in a clinical summary and how it should be expressed for future rulemaking activity concerning a ''clinical summary'' certification criterion.

Secure Messaging

We proposed a ''secure messaging'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. The majority of commenters supported adopting this certification criterion as unchanged. However, a few commenters recommended that we take steps to allow a patient's authorized representative to send and receive secure messages on the patient's behalf as part of the Proposed Voluntary Edition. In addition, one commenter suggested that this criterion should utilize the same ''decoupling'' of content and transport requirements as

[43] *http://www.healthit.gov/policy-researchers-implementers/33-question-12-12-033.*

was proposed for the ToC certification criterion.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''secure messaging'' certification criterion. We also note that the comment about decoupling is unclear. This certification criterion does not establish message content requirements so we are not certain about what the commenter thinks should be decoupled. Further, any method of transport that meets the security requirements of the proposed criterion would have been permitted, as it is currently permitted with the 2014 Edition ''secure messaging'' certification criterion.

Public Health Certification Criteria

We received comments related to the public health certification criteria, but not specific to the proposed criteria or our proposals. We summarize and respond to these comments below.

Comments. We received a comment in favor of bidirectional exchange between EHRs and clinical registries. The commenter encouraged us to consider certification requirements to promote bidirectional data exchange and data standardization between EHRs and clinical data registries, such as certification of clinical data registries. The commenter stated that this would assist physicians and health care systems as well as align with payment programs that utilize clinical data registries (e.g., PQRS). The commenter also suggested that we consider utilizing existing national standards being used for EHRs.

Response. We appreciate the feedback and will consider the suggestions on standards and to require certification of clinical data registries for future rulemaking.

Immunization Information

We proposed an ''immunization information'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. The majority of commenters supported an unchanged criterion. One commenter suggested that we not adopt this criterion, or similar criteria in future editions, because the ''transmission to immunization registries'' criteria sufficiently addressed the interoperability aspects of the immunization information.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''immunization information'' certification criterion. We appreciate the feedback suggesting that this criterion is unnecessary as the ''transmission to immunization registries'' certification criterion addresses the functionality required by this criterion. We will consider this feedback for future rulemaking concerning an ''immunization information'' certification criterion.

Transmission to Immunization Registries

We proposed a ''transmission to immunization registries'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to include in this criterion the updated IG for immunization messaging: HL7 Version 2.5.1: Implementation Guide for Immunization Messaging, Release 1.5. The updated IG focuses on known issues from the previous release and revises certain HL7 message elements to reduce differences between states and jurisdictions for recording specific data elements.

Comments. The majority of commenters supported adoption of the updated IG for immunization messaging. These commenters stated that the updated IG provides additional clarification and guidance for better interoperability between EHRs and immunization registries. Commenters in opposition to adopting the updated IG were concerned about needing to support two versions of an IG at the same time. Some commenters were also concerned about backwards compatibility with the version currently required in the 2014 Edition. Commenters who were generally opposed to the proposed voluntary and more incremental rulemaking approach also contended that the updated IG did not offer much value for the work that would be required to update systems.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We appreciate the feedback commenters provided regarding the updated IG and will consider the comments received for future rulemaking concerning a ''transmission to immunization registries'' certification criterion.

Transmission of Reportable Laboratory Tests and Values/Results

We proposed a ''transmission of reportable laboratory tests and values/results'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to include in this criterion the updated IG for reporting laboratory tests and values/results to public health agencies (HL7 Version 2.5.1: HL7 Version 2.5.1 Implementation Guide: Electronic Laboratory Reporting to Public Health, DSTU, Release 2 (US Realm), 2013). The updated IG addresses technical corrections and clarifications for interoperability with laboratory orders and other laboratory domain IGs. To properly codify this proposal in regulation, we proposed to modify the regulatory text hierarchy in § 170.205(g) to designate the standard and implementation specifications referenced by the 2014 Edition ''transmission of reportable laboratory tests and values/results'' certification criterion at § 170.205(g)(1) instead of its current designation at § 170.205(g).

Comments. We received mixed feedback on the proposal to adopt the updated IG for reporting laboratory tests and values/results to public health agencies. Some commenters were in favor of adopting the updated IG. Other commenters stated that many state public health agencies and EHR technology developers are still working to implement the version we adopted in the 2014 Edition, and thus contended it is too early to require compliance with an updated IG.

A few commenters supported SNOMED-encoded observations values, where applicable, because of the

potential value add to reportable laboratory results for public health. Two commenters stated that we incorrectly referenced the author of the updated IG in the preamble of the Proposed Rule. These commenters recommended that we correct the author reference from CDC to the HL7 Public Health and Emergency Response Workgroup. These commenters also recommended we update the title of the IG to ''HL7 Version 2.5.1 Implementation Guide: Electronic Laboratory Reporting to Public Health, R2, US Realm—Draft Standard for Trial Use'' in order to encompass all current and subsequent releases. One commenter recommended we update the minimum code versions for LOINC® and SNOMED CT®.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange.

We agree with the correction of the author of the updated IG and believe that the CDC worked in conjunction with the HL7 Public Health Emergency Response Workgroup to develop the updated IG. For future rulemaking, we will consider the comments received regarding the maturity and version/naming of the updated IG. Regarding the comments recommending that we adopt the updated LOINC® and SNOMED CT® standards, we will reassess whether newer versions of the minimum standards should be adopted in future rulemaking. As we stated in the 2014 Edition Final Rule, based on our experience, newer versions of the ''minimum standards'' code sets that we have adopted are issued more frequently than our current process can reasonably accommodate. We do not believe that permitting EHR technology to be upgraded and certified to newer versions of these code sets would normally pose an interoperability risk, and therefore we allow use of a newer version voluntarily for certification without adversely affecting the EHR technology's certified status unless the Secretary specifically prohibits the use of a newer version (77 FR 54268). Thus, EHRs may be certified to newer versions of LOINC® and SNOMED CT®.

Cancer Case Information

We proposed a ''cancer case information'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. The majority of commenters supported an unchanged criterion. One commenter suggested removing this criterion in future editions because they recommend a focus on privacy and security, interoperability, and quality reporting, and thus contended that this criterion is not necessary. Another commenter recommended that we consider privacy issues so that patients are not inappropriately penalized by insurance companies or employers for having cancer or a preexisting condition.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''cancer case information'' certification criterion. We will consider the feedback regarding the necessity of this criterion and privacy concerns for future rulemaking concerning a ''cancer case information'' certification criterion.

Transmission to Cancer Registries

We proposed a ''transmission to cancer registries'' certification criterion for the Proposed Voluntary Edition that was revised in comparison to the 2014 Edition certification criterion. We proposed to include in this criterion an updated IG (Implementation Guide for Ambulatory Healthcare Provider Reporting to Central Cancer Registries, HL7 Clinical Document Architecture (CDA), Release 1.1, March 2014) to address technical corrections and clarifications for interoperability with EHRs and cancer registries. We also proposed to make a technical amendment to the regulation text for the 2014 Edition certification criterion so that it continues to point to the appropriate standard [44] in the regulatory text hierarchy at § 170.205(i), while accommodating our Proposed Voluntary Edition proposal. Specifically, we proposed to modify the 2014 Edition certification criterion to reference § 170.205(i)(1) to establish the regulatory text hierarchy necessary to accommodate the standard and IG referenced by the Proposed Voluntary Edition certification criterion.

Comments. We received mixed feedback on the proposal to adopt the updated cancer transmission IG. Some commenters supported adopting the updated IG and also commented that they look forward to more generalizable CDA-based case reporting in the future. Other commenters were concerned about the differences in state requirements that lead to custom interface development before achieving bidirectional exchange. Some suggested we wait until the next edition to propose adopting the updated IG because there has not been sufficient time for implementation experience.

Some commenters stated that, in their experience, the adoption of the cancer transmission IG required in the 2014 Edition is low, and therefore they did not foresee that many would adopt an updated version. One commenter noted that there is a proposed HL7 project to more closely align the CDA-based cancer reporting IG with the Consolidated CDA standard. We also received comments stating that we should consult with existing registries for guidance on the appropriate standards to adopt. One commenter recommended that the updated IG should include data elements for transmission of grade and pathological TNM Stage,[45] as it is difficult to report to state cancer agencies if cancer synoptics are not in a structured data format and can be prone to manual data entry errors.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We agree that we should evaluate the maturity of the updated IG, its required data elements, efforts to move to the Consolidated CDA standard, and standards used by current registries to inform our future rulemaking concerning a ''transmission to cancer registries'' certification criterion.

[44] *Standard.* HL7 Clinical Document Architecture (CDA), Release 2.0, Normative Edition (incorporated by reference in § 170.299). *Implementation specifications.* Implementation Guide for Ambulatory Healthcare Provider Reporting to Central Cancer Registries, HL7 Clinical Document Architecture (CDA), Release 1.0 (incorporated by reference in § 170.299).

[45] The TNM Classification of Malignant Tumours (TNM) is a cancer staging system that describes the extent of a person's cancer.

Automated Numerator Recording

We proposed to adopt an unchanged ''automated numerator recording'' certification criterion as compared to the 2014 Edition certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters expressed support for the proposed unchanged certification criterion. Commenters also expressed concern over the burden involved in meeting MU measurement requirements (e.g., time consuming and affects efforts to improving clinical functionality and usability). One commenter suggested that this criterion either be removed or be made more granular and defined sufficiently. In terms of more granularity, the commenter suggested that each numerator recording requirement for a capability (e.g., CPOE or VDT) should be specified in the ''automated numerator recording'' certification criterion.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''automated numerator recording'' certification criterion. We will, however, consider whether additional specificity is appropriate for the ''automated numerator recording'' certification criterion and further evaluate the costs and benefits of this certification requirement for future rulemaking activity concerning an ''automated numerator recording'' certification criterion.

Automated Measure Calculation

We proposed to adopt an unchanged ''automated numerator recording'' certification criterion as compared to the 2014 Edition certification criterion. We proposed to apply guidance for certification to the 2014 Edition ''automated measure calculation'' certification criterion included in the 2014 Edition Final Rule to the proposed certification criterion (79 FR 10911). We also proposed that the interpretation of the 2014 Edition ''automated measure calculation'' certification criterion in FAQ 32 [46] would apply to the proposed certification criterion. We did not request any specific public comments on this certification criterion.

Comments. Commenters expressed support for the proposed certification criterion as unchanged. A couple of commenters stated this certification criterion helped providers and lessened their MU reporting burden. EHR technology developers stated that this criterion represents one of the largest areas of development investment of all of the MU certification requirements. The commenters noted that it is common to invest more effort in measuring a particular MU requirement than developing the associated capability. One commenter suggested that this criterion be made more granular. The commenter suggested that each measure requirement for a capability (e.g., CPOE or VDT) should be specified in the ''automated measure calculation'' certification criterion. Another commenter recommended making available different testing methods for this certification criterion, including scenario-based testing options.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''automated measure calculation'' certification criterion. We will, however, consider whether additional specificity is appropriate for ''automated measure calculation'' certification criteria, further evaluate the development effort associated with this certification criterion, and consider any potential alternative testing methods now and in relation to future rulemaking activity concerning an ''automated measure calculation'' certification criterion.

Safety-Enhanced Design

We proposed a ''safety-enhanced design'' (SED) certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did, however, solicit public comment regarding whether we should modify the certification criterion. Specifically, we requested comment regarding whether:

- The scope of SED should be expanded to include additional certification criteria;
- Formative usability tests should be explicitly required, or used as substitutes for summative testing;
- There are explicit usability tests that should be required in addition to summative testing; and
- There should be a minimum number of test subjects explicitly required for usability testing.

Comments. We received many comments in response to our request for comments. Commenters suggested expanding the certification criteria covered in this criterion to criteria covering laboratory exchange, problems, and other areas. Conversely, other commenters recommended not expanding the certification criteria covered by the SED criterion. Commenters were both for and against using actual formative usability tests with some suggesting testing to certain usability standards. Some commenters also suggested that there be a minimum number of test subjects, with a few commenters emphasizing that the test subjects and process should be objective.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''safety-enhanced design'' certification criterion. We will, however, consider all the thoughtful comments we received regarding expanding the scope and testing of the SED certification criterion in relation to future rulemaking activity concerning a SED certification criterion.

We note that we have revised the 2014 Edition SED certification criterion (§ 170.314(g)(3)) to include the three optional CPOE certification criteria and the optional CIRI certification criterion. We discuss these revisions in further detail under the discussions of CPOE and CIRI in section III.A.2 of this preamble.

Quality Management System

We proposed a ''quality management system'' certification criterion for the Proposed Voluntary Edition that was unchanged as compared to the 2014 Edition certification criterion. We did

[46] *http://healthit.gov/policy-researchers-implementers/32-question-11-12-032.*

not request any specific public comments on this certification criterion.

Comments. Commenters expressed support for the proposed certification criterion as unchanged. One commenter suggested that we remove this certification criterion for the proposed edition and any future editions until the Food and Drug Administration Safety and Innovation Act (FDASIA) health care IT regulatory framework has been established and implemented.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As proposed, this certification criterion would offer no value as an optional 2014 Edition certification criterion because it would be the same as the current 2014 Edition ''quality management system'' certification criterion. As with all stakeholder feedback, we appreciate the comments submitted, including the recommendation to remove this certification criterion from future editions. We will consider the FDASIA Health IT Report,[47] including a published final report, in future rulemaking activity concerning a ''quality management system'' certification criterion.

Non-Percentage-Based Measures Report

We proposed a new ''non-percentage-based measures report'' certification criterion for the Proposed Voluntary Edition. Specifically, we proposed to adopt a new certification criterion that would apply to EHR technology presented for certification that includes certain ''non-percentage-based capabilities'' (i.e., capabilities that support MU objectives for which the corresponding MU measure is not percentage-based). In the 2014 Edition NPRM (77 FR 13842), we proposed a certification criterion for ''non-percentage-based measure use report,'' but subsequently did not adopt the criterion in the 2014 Edition Final Rule based on commenters' concerns that additional specificity would be needed to make the proposed criterion more effective. In the Proposed Rule, we stated that we continue to believe that EPs, EHs and CAHs could benefit from EHR technology that could electronically report non-percentage-based MU objectives and measures, and we have also received feedback from OIG and comments in response to a MU Stage 3 Request For Comment[48] echoing this need.

Therefore, we proposed a new criterion that is more specific than the one proposed in the 2014 Edition NPRM and recognizes that certain aspects of ''use'' associated with non-percentage-based measures will occur in different ways based on the particular EHR capability involved. The proposed certification criterion would require that an EHR technology presented for certification be capable of electronically generating a report that shows a user had used (or interacted with) the EHR technology capability associated with a non-percentage-based MU measure during an EHR reporting period. This means that, at a minimum, the EHR technology would need to be capable of determining an EHR reporting period (date range) and be able to record some evidence of use (e.g., transaction, user action, intervention/reminder) during the reporting period. We requested public comment on whether we should make the regulatory text for this certification criterion more specific or if we should maintain the word ''evidence'' and use this final rule's preamble to provide more examples of what evidence would be acceptable. If we were to make the regulatory text more specific, we proposed two options, but also solicited comment on other potential language that would make satisfying this criterion clearer.

- *Option 1:* Require the EHR technology to record evidence of use each time a particular capability was used during the reporting period.
- *Option 2:* Require the EHR technology to record evidence of use at the beginning, during, and end of the reporting period.

We believe the proposed criterion provides EHR technology developers with substantial flexibility to create innovative approaches to document evidence of use. The proposed criterion would apply to only those non-percentage-based measures for which this pertinent information would be available to the EHR technology based on the nature of the capabilities and the ways in which a user could be expected to interact with them. To illustrate which certification criteria support one or more non-percentage-based measures, we provided a table (79 FR 10912) in the Proposed Rule. As described in the Proposed Rule, we also proposed not to include the proposed ''drug-formulary checks'' and ToC certification criteria within the scope of this criterion because the corresponding MU measures already provide evidence of use. We also proposed that all the proposed privacy and security certification criteria of the Proposed Voluntary Edition should not be included within the scope of this certification criterion because EHR technology would not be able to capture that a security risk analysis was performed by an EP, EH, or CAH except through a manual entry by the EP, EH, or CAH affirming the completion of the risk analysis.

Consistent with the way in which we have previously implemented certification policy that more generally applies to EHR technology, an ONC–ACB would need to have new certification responsibilities if we were to adopt this proposed criterion. As a result, we also proposed to revise § 170.550. This proposed revision would ensure that EHR Modules presented for certification to certification criteria that support MU objectives with a non-percentage-based measure are certified to this proposed certification criterion.

Comments. We received mixed comments regarding the proposal to adopt a new certification criterion to generate reports for non-percentage-based EHR capabilities. Some commenters supported the new criterion for all of the seven certification criteria we presented in the table (79 FR 10912).[49] However, some commenters stated that this requirement would only be feasible or preferable for a subset of the proposed certification criteria. One commenter opined that this functionality was feasible for drug-drug, drug-allergy interaction checks and CDS, but for the rest of the certification criteria, it would be difficult to build this functionality on a user-level. Another commenter recommended adopting this functionality only to support CDS. One commenter recommended the requirement be that EHRs be able to perform this function for three out of the six proposed certification criteria to lessen the administrative burden.

Commenters that opposed adopting the proposed criterion expressed that the reason for not adopting this criterion in the 2014 Edition still holds (i.e.,

[47] *http://www.healthit.gov/sites/default/files/fdasia_healthitreport_final.pdf.*

[48] The Request for Comments is available at: *http://www.healthit.gov/sites/default/files/hitpc_stage3_rfc_final.pdf.*

[49] Drug-drug, drug-allergy interaction checks; clinical decision support; patient list creation; transmission to immunization registries; transmission of syndromic surveillance data to public health agencies; transmission of reportable lab tests and values/results to public health agencies; and transmission to cancer registries.

additional specificity is needed to make the proposed criterion more effective). Many commenters stated that providers can, and currently do, attest to the non-percentage-based MU objectives without the EHR having to monitor or ''police'' the provider's interactions with the EHR. Commenters were also concerned that building this functionality will be a major development undertaking and will have to be custom-built for each certification criterion. Commenters provided specific examples of the challenges in building this functionality for certain certification criteria. For example:

- For CDS interventions, EHR systems vary in their configurations that determine how often interventions are seen. EHR developers who currently track this information note that the data volumes can be very large, and that retention of large volumes of data over extended periods of time can have performance and hardware implications.
- For the public health certification criteria, it is possible that an EHR user is connected and submitting appropriate information but may not have submissions within a particular reporting period. Multiple transport methods and methodologies can introduce challenges to implementing this functionality in a standard way. What is defined as ''ongoing submission'' can vary and human judgment is required to make the determination (e.g., data is sent using different procedures like real-time or periodic uploads).

Thus, some commenters were concerned that an auditor could review the ''non-percentage-based measures report'' and incorrectly conclude that the EP, EH, or CAH failed the CDS objective if none of the implemented CDS rules/interventions were triggered during the reporting period.

Another commenter recommended changing the regulatory text that as proposed would require an EHR to ''electronically record evidence that a user used or interacted with the capability . . .'' The commenter stated that the use of the word ''evidence'' implies too strong of a legal ramification and that the EHR can only indicate when different features or options were triggered or activated within the EHR, but not that a user did or did not properly act upon the MU-related feature.

A few commenters were opposed to Option 1, which would require EHR technology to record evidence of use each time a particular capability was used during the reporting period. One commenter stated that there are no standards to support reporting of this type of information. Another commenter suggested that Option 1 would result in large amounts of data that would require additional storage space. One commenter supported Option 2 and agreed with the need to show that certain functionalities were enabled in the system during the reporting period.

Response. There was mixed feedback on which certification criteria this functionality would be required to support. We agree with comments stating that this functionality would vary in support of different certification criteria, and believe that more work is needed to further refine our proposal. Since the overall scope of this final rule focuses on the adoption of a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and includes revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange, we do not believe it is appropriate to adopt this new certification criterion at this time. Our experience with the certification of EHR technology to the 2014 Edition suggests that EHR technology developers have already implemented or are in the process of implementing their certified software with providers and hospitals, and it is unlikely that EHRs would be updated with this new functionality in time to positively affect reporting for non-percentage-based functions. Thus, we will consider the comments received on feasibility, implementation, the regulatory text, and frequency of recording data on use of particular capabilities for future rulemaking concerning a ''non-percentage-based measures report'' certification criterion.

Applicability Statement for Secure Health Transport and Delivery Notification in Direct

We proposed to adopt a new certification criterion for electronic sending and receiving that would enable EHR technology to be tested and certified solely to perform ''transmissions'' in accordance with the Applicability Statement for Secure Health Transport (the primary Direct Project specification) adopted at § 170.202(a) and its companion implementation specification (Implementation Guide for Delivery Notification in Direct, Version 1.0, June 29, 2012 (Delivery Notification IG)).[50]

[50] *http://wiki.directproject.org/file/view/Implementation+Guide+for+Delivery+Notification+in+Direct+v1.0.pdf.*

Comments. Some commenters supported the goal of acknowledging receipt of the documents by the intended recipient. Commenters also voiced concern that this was a new area of certification that lacked HIT developer feedback and recommended that we further consider this certification criterion before finalizing it. Other commenters stated that the depth of information required to be reported to the sender of information would cause significant burden on HIT developers to create the functionality and providers and health care organizations to use the functionality. One commenter noted that, as the market matured, demand for this kind of functionality would increase and HIT developers would design these functions without the need of a certification criterion.

Response. We have not adopted this certification criterion because we have not adopted the Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. We will, however, consider comments regarding the Delivery Notification IG capabilities, the concerns expressed by commenters, and evaluate whether the market demand for this capability would moot the benefit that certification could provide for proof of a consistent implementation according to the IG as part of future rulemaking.

B. 2014 Edition and Proposed Voluntary Edition Equivalency Table

In the Proposed Rule, we provided an ''equivalency table'' (79 FR 10915–16) that identified the Proposed Voluntary Edition EHR certification criteria that were equivalent to the 2014 Edition certification criteria for the purposes of meeting the CEHRT definition. There is no longer a need for an ''equivalency table'' because we have not adopted the Proposed Voluntary Edition in this final rule. Therefore, we have not included an ''equivalency table'' in this final rule.

C. HIT Definitions

1. CEHRT

We proposed to revise the CEHRT definition for FY/CY 2014 and subsequent years to include reference to the Proposed Voluntary Edition as a means of giving EPs, EHs, and CAHs the flexibility to use EHR technology that has been certified to either the 2014 Edition or the Proposed Voluntary

Edition, or a combination of both editions, to meet the CEHRT definition for FY/CY 2014 and subsequent years.

Comments. We received many comments recommending that we do not adopt the Proposed Voluntary Edition.

Response. We have not revised the CEHRT definition. In response to comments recommending that we not adopt the Proposed Voluntary Edition and for the other reasons discussed earlier in this preamble, we have not adopted the full Proposed Voluntary Edition. Rather, we have only adopted a small subset of the proposed certification criteria as optional 2014 Edition EHR certification criteria and made revisions to 2014 Edition EHR certification criteria that provide flexibility, clarity, and enhance health information exchange. As such, no revisions are necessary to the CEHRT definition to account for the additional optional 2014 Edition EHR certification criteria.

2. Common MU Data Set

We proposed to revise the Common MU Data Set definition in § 170.102 by including the preferred language standard in the proposed ''demographics'' certification criterion solely for the purposes of certifying EHR technology to the Proposed Voluntary Edition EHR certification criteria that referenced the Common MU Data Set.

Comments. We received comments recommending that we not adopt a new preferred language standard as well as comments on each of the standards we proposed as the potential new preferred language standard.

Response. We have not adopted a revised or new demographics certification criterion or a new preferred language standard consistent with our reasons for not adopting the Proposed Voluntary Edition and for the reasons discussed in more detail under the ''demographics'' certification criterion in section IV.A. Accordingly, we have not finalized our proposal to revise the Common MU Data Set definition.

C. ONC HIT Certification Program

1. Non-MU EHR Technology Certification

We proposed to establish an ''MU EHR Module'' definition and a ''non-MU EHR Module'' definition under the main ''EHR Module'' definition at § 170.102. We proposed to define an ''MU EHR Module'' as any service, component, or combination thereof that is designed for purposes of the Medicare and Medicaid EHR Incentive Programs and can meet the requirements of at least one certification criterion adopted by the Secretary. We proposed to define a ''non-MU EHR Module'' as any service, component, or combination thereof that is designed for any purpose other than the Medicare and Medicaid EHR Incentive Programs and can meet the requirements of at least one certification criterion adopted by the Secretary. Correspondingly, we proposed to revise § 170.550 to require the certification of only MU EHR Modules, as applicable, to the Proposed Voluntary Edition ''automated numerator recording'' certification criterion, the ''automated measure calculation'' certification criterion, and the ''non-percentage-based measure use report'' certification criterion.

We stated that these proposals would ensure that EHR technology designed for MU purposes and certified to certification criteria that include capabilities that support percentage-based and/or non-percentage-based MU measures are capable of electronically performing the associated recording and calculation of measure activities for MU purposes, while permitting EHR technology that is designed for non-MU purposes (e.g., broad electronic health information exchange or behavioral health settings staffed mainly by MU ineligibles) to be certified without having to include capabilities that support percentage-based and/or non-percentage-based MU measures. These proposals were based on our belief that EHR technology developers who design EHR technology for non-MU purposes and settings find that the MU measurement certification criteria requirements are unnecessary burdens and resource investments (i.e., to have to program MU-specific rules into their software just to get certified). Similarly, we noted that because of the specific ways in which MU measures are structured non-MU health care providers would find little benefit in receiving EHR utilization reports showing MU performance. In the Proposed Rule, we specifically requested comment on these assumptions and on how best to implement our proposed approach if we were to adopt it in this final rule (e.g., requested comments on what processes we should use for testing and certification and distinguishing MU and non-MU EHR Modules on the CHPL) (79 FR 10919–20).

Overall, as stated in the Proposed Rule, we saw these proposals as a first step towards the expansion of the ONC HIT Certification Program to accommodate other types of HIT (79 FR 10930). To note, as stated in the Proposed Rule, we *did not* propose to apply the certification concept of MU EHR Module and non-MU EHR Module to the 2014 Edition because of the inconsistency and potential confusion it would create regarding EHR Modules that have already been certified and, more importantly, because it would be infeasible to implement for the purposes of establishing a distinction on the CHPL in a timely manner to avoid such potential confusion.

Comments. We received comments supporting our proposal not to require ''non-MU'' technologies to be certified to certification criteria designed to support MU measurement. We also received a significant number of comments expressing concern that our proposals would cause confusion. Commenters suggested that designations and concepts such as ''MU,'' ''non-MU,'' and ''beyond MU purposes'' would add complexity and confusion to an already strained marketplace. A few commenters stated that we need to also account for *non-EHR* technologies. Another commenter suggested that we not rely on assumptions about the differences in technology needs between providers that are eligible for MU incentive payments and those that are ineligible. As an example, the commenter suggested that the numerator and denominator calculations may, in fact, be useful to providers that are not eligible for MU incentive payments for patient safety tracking and other purposes.

Response. In consideration of comments and our overall goal to expand the ONC HIT Certification Program to accommodate other types of HIT, we have decided not to adopt any of these proposals. Upon further reflection, we believe these proposals may not clearly and appropriately move us away from a certification program currently focused on MU. By using terminology such as ''MU'' and ''non-MU,'' we only reinforce the MU-aspect of the ONC HIT Certification Program. Further, as noted by commenters, our proposals could confuse providers and may not be based on sound assumptions such as MU-ineligible providers not finding value in some of the capabilities that support MU measurement as noted by a commenter. Accordingly, with consideration of comments that supported our stated goal and recommended that we address non-EHR technologies, we will further consider how best to restructure the ONC HIT Certification Program to move it beyond MU in preparation for our next rulemaking. To reaffirm, as our request for comment indicated in the Proposed Rule (79 FR 10929–30), we intend to propose changes to the ONC HIT

Certification Program that will permit the certification of other types of HIT and the certification of HIT for other specific types of health care settings (i.e., beyond the general ambulatory and general inpatient settings). For now, we direct stakeholders to our guidance for EHR technology developers serving providers ineligible for the EHR Incentive Programs titled ''Certification Guidance for EHR Technology Developers Serving Health Care Providers Ineligible for Medicare and Medicaid EHR Incentive Payments.''[51]

2. ''Certification Packages'' for EHR Modules

We proposed to establish the concept of predefined ''certification packages'' that would reflect groupings of certification criteria. We stated that our proposal was intended to improve the ease with which our regulatory concepts could be communicated to the general public and to EHR Module purchasers. More specifically, we stated that this concept would make it easier for stakeholders to communicate and understand the functionality an EHR Module includes and the certification criteria to which it is certified.

We proposed to define ''certification package'' in § 170.502 as an identified set of certification criteria adopted by the Secretary in subpart C of part 170 that represent a specific grouping of capabilities. For EHR Modules certified to the Proposed Voluntary Edition, we proposed definitions in § 170.502 for ''2015 Edition Care Coordination Package'' and ''2015 Edition Patient Engagement Package'' that each identified the set of specific certification criteria to which an EHR Module would need to be certified, at a minimum, in order for its EHR Module developer to represent that the EHR Module meets the requirements of a particular package. We further sought comment on what certification criteria should be included in the care coordination and patient engagement packages.

We also clarified that if an EHR Module were certified to the certification criteria included in a proposed certification package definition, then the EHR Module developer would be able to indicate this fact without the need for any additional determination to be made by the ONC–ACB. However, to ensure that certification packages would be represented accurately to potential purchasers and users of EHR Modules, we proposed to modify § 170.523(k)(1) to require ONC–ACBs to ensure that an EHR Module developer accurately represents the certification packages its EHR Module meets if and when the EHR Module developer uses the certification package designation(s) on its Web site and in marketing materials, communications statements, or other assertions related to the EHR Module's certification. We further clarified that the certification criteria included in a certification package would be a minimum threshold, meaning that an EHR Module could be certified to other certification criteria adopted by the Secretary in subpart C of part 170 in addition to the certification criteria included in the certification package at issue. Thus, in the event that an EHR Module presented for certification satisfied the certification criteria included in each of the proposed certification packages and was also certified to other certification criteria, it could be so indicated by the EHR Module developer to its customers.

Comments. We received only three comments that supported our proposals. However, the commenters submitting these comments misconstrued our proposals as either a new required type of certification for EHR Modules to the Proposed Voluntary Edition or as an additional requirement beyond initial certification, such as specifically requiring additional functionality for ''care coordination.'' All other commenters did not support our proposals. These commenters disagreed with our rationale that our approach would provide clarity for stakeholders. Rather, commenters stated that our approach would cause more confusion than it would solve. Commenters noted that one individual's definition of ''care coordination'' may not be the same as another, which could lead to misunderstandings about what is or is not included in the EHR technology. Commenters also noted that there are a large number of possible combinations of certification criteria and associated capabilities that could plausibly be called ''care coordination'' (e.g., inclusion of lab exchange certification criteria and capabilities) and patient engagement (e.g., inclusion of the ''clinical summary'' certification criterion). The commenters opined that the certification criteria included in the proposed packages seemed arbitrary and not applicable to all providers. Commenters suggested that we focus on educating providers, particularly those ineligible for the EHR Incentive Programs, as to what types of certified capabilities providers should look for in a certified technology. In this regard, one commenter suggested that we rely on and educate more providers on our guidance titled ''Certification Guidance for EHR Technology Developers Serving Health Care Providers Ineligible for Medicare and Medicaid EHR Incentive Payments.''[52] A few commenters also mentioned that certified technologies should be properly labeled as to the certification criteria and associated capabilities they include.

Response. We have not finalized our proposals for the ''care coordination'' and ''patient engagement'' packages.

We clarify that our ''certification packages'' proposals did not require a new type of certification or additional functionality for EHR Modules. Under the proposals, an EHR Module would not have been required to be certified to the certification criteria specified in a certification package, and an EHR Module could have been certified to more certification criteria than were included in a certification package. Our proposal was designed such that an EHR Module developer could assert (e.g., for communications and marketing purposes) that its EHR Module met a certification package if the EHR Module had been certified to all of the certification criteria included in a certification package without any additional determination made by an ONC–ACB. However, given the comments received from commenters that clearly understood our proposals, we have not adopted ''certification package'' as a concept and definition in § 170.502 nor have we finalized a requirement under § 170.523(k)(1) that an ONC–ACB ensure that an EHR Module developer accurately represents the certification packages its EHR Module meets. We agree with commenters that our proposed ''certification packages'' could have ended up creating more confusion than they solved, and that there are no definitive certification criteria that meet the concept of ''care coordination'' and ''patient engagement'' for all providers. As recommended by commenters, we will try to further educate providers on the capabilities included in certification criteria, the means for determining what capabilities a certified EHR Module includes (e.g., utilizing the CHPL and reviewing an EHR technology developer's communications and marketing materials, which should include a list of the certification criteria and CQMs that the EHR Module was certified to), and on the ''Certification Guidance for EHR Technology Developers Serving Health Care Providers Ineligible for Medicare and

[51] *http://www.healthit.gov/sites/default/files/generalcertexchangeguidance_final_9-9-13.pdf.*

[52] *http://www.healthit.gov/sites/default/files/generalcertexchangeguidance_final_9-9-13.pdf.*

Medicaid EHR Incentive Payments'' guidance we issued in 2013.

V. Comments Beyond the Scope of This Final Rule

In response to the Proposed Rule, some commenters chose to raise issues that are beyond the scope of our proposals such as encouraging us to amend our certification criteria to include EHR accessibility for users with disabilities. We do not summarize or respond to those comments in this final rule. However, we will review the comments and consider whether other actions may be necessary, such as addressing the comments in future rulemakings.

VI. Collection of Information Requirements

This final rule contains no new collections of information under the Paperwork Reduction Act nor does it revise any current collection of information approved by OMB.

VII. Regulatory Impact Statement

A. Statement of Need

Consistent with EO 13563, we have completed a retrospective review of our 2014 Edition Final Rule and the certification criteria we adopted in that final rule. Further, consistent with EO 13563, we have only adopted the proposed certification criteria as part of the 2014 Edition that provide regulatory flexibility and reduce regulatory burden for stakeholders.

B. Overall Impact

We have examined the impact of this final rule as required by EO 12866 on Regulatory Planning and Review (September 30, 1993), EO 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), and EO 13132 on Federalism (August 4, 1999).

1. Executive Orders 12866 and 13563—Regulatory Planning and Review Analysis

EOs 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this final rule is not an economically significant rule. Related costs to prepare EHR technology and other HIT to be tested and certified are estimated to be far less than $100 million per year. Nevertheless, because of the public interest in this final rule, we have prepared an RIA that to the best of our ability presents the costs and benefits of this final rule.

a. Costs

This final rule adopts new optional certification criteria and revised certification criteria as part of the 2014 Edition. Our analysis focuses on the direct effects of the provisions of this final rule—the costs incurred by EHR technology developers to develop and prepare EHR technology to be tested and certified in accordance with the certification criteria (and the standards and implementation specifications they include) adopted by the Secretary. That is, we focus on the technological development and preparation costs necessary for EHR technology already certified to the 2014 Edition to certify to the new optional certification criteria and revised certification criteria and for developing new EHR technology to meet the new optional certification criteria and revised certification criteria. The costs for testing and certification of EHR technologies to the certification criteria adopted in this final rule were captured in the RIA of the Permanent Certification Program final rule as we discuss in more detail below (VI.B.1.a.ii ''Testing and Certification Costs for the 2014 Edition Release 2''). The costs that EPs, EHs, and CAHs will incur in adopting and implementing EHR technology certified to the certification criteria adopted in this final rule are not within the scope of this final rule.

i. Development and Preparation Costs for the 2014 Edition Release 2

In the Proposed Rule (79 FR 10932–36), we estimated the development and preparation costs for the Proposed Voluntary Edition. We categorized proposed certification criteria based on their gap certification status (i.e., new, revised, and unchanged). We used the total number of unique [53] 2011 Edition Complete EHRs and EHR Modules that were used for MU Stage 1 attestation as reported at the end of FY 2013.[54] Using the unique number of 2011 Edition EHR technologies used for MU Stage 1 attestation we established a range of between 20% and 40% of unique EHR technologies used for MU Stage 1 that we believed would be developed and prepared to meet each of the certification criteria of the Proposed Voluntary Edition. This range accounted for potential new entrants to the market as well as those EHR technologies used for MU Stage 1 attestation that may no longer be brought forth for certification because of such factors as corporate re-organizations (e.g., mergers and acquisitions) as well as the loss of market share for some EHR technologies. The range also took into account any potential non-MU-focused EHR technologies that will be developed and prepared to meet the Proposed Voluntary Edition, but not designed for MU purposes. We identified three levels of effort to associate with the development and preparation of EHR technology to meet the requirements of the Proposed Voluntary Edition.[55] We based the effort levels on the hours necessary for a software developer to develop and prepare the EHR technology for testing and certification and calculated the average software developer's wage with benefits at $61 per hour.[56] We calculated a low cost estimate, high cost estimate, and average cost estimate for each proposed certification criterion and then estimated the totals equally split between 2014 and 2015.[57]

Comments. We received very limited comments on our proposed impact analysis, all of which came from EHR technology developers and reiterated the detailed comment that came from the Electronic Health Record Association (EHRA). In its comments, the EHRA presented average hourly burden estimates that would be incurred by an EHR technology developer per proposed certification criterion. The EHRA indicated that its estimates presumed a product was already certified to 2014 Edition certification criteria and included ''research, planning and design, development, testing, usability testing, documentation, release, and certification effort.'' Additionally, a follow-up request for clarification and fact finding indicated that these hourly estimates included an average of 2.5 products per EHR technology developer that would be certified to the certification criteria of the Proposed Voluntary Edition. Overall, the EHRA

[53] We attempted to discern how many Complete EHRs and EHR Modules were used that would not constitute a newer version of the same EHR technology.

[54] For the Proposed Voluntary Edition certification criteria that did not have equivalent 2011 Edition EHR certification criteria, we used the unique number for the equivalent 2014 Edition EHR certification criteria as identified and used for the 2014 Edition Final Rule regulatory impact analysis.

[55] 79 FR 10932–33.

[56] 79 FR 10933.

[57] 79 FR 10933–36.

generally concluded that we had, in most cases, significantly underestimated the hourly burden associated with the proposed certification criteria and provided a detailed chart identifying the potential discrepancies.

Response. We appreciate the detailed response provided by the EHR technology developer community. In reviewing the provided comments, it became clear that the way in which we were presenting the calculation of our impacts in the preamble and the way in which EHR technology developers think about the impacts were different. In other words, our approach in the Proposed Rule was to assign burden hours to each certified product listed on the CHPL by certification criterion and we never provided a ''per EHR technology developer'' estimate. However, in contrast, the EHRA estimates were burden hours by EHR technology developer for each certification criterion.

On face value, for example, if one were to compare the ''Level 2 range'' we included in the Proposed Rule of 100–300 hours without multiplying by the number of products on the CHPL attributable to a particular EHR technology developer it would appear that we did significantly underestimate the burden. However, if one were to multiply that 100–300 hour range by the number of products attributable to a particular EHR technology developer and that were certified to the certification criterion in question a potentially narrower gap in the estimates could result.

After considering these comments, we believe that a more direct way for this final rule and for future rulemakings to identify burden will be to identify hourly burden estimates for each certification criterion by EHR technology developer. Given the reduced scope of this final rule, we do not include hourly cost estimates for certification criteria that we are not finalizing. Table 4 indicates only the regulatory changes we have finalized for the adopted certification criteria and our hourly burden estimate range for each of the changes by EHR technology developer.

We also include an estimated number of EHR technology developers that we believe will seek certification to these certification criteria (and built into this assumption is that they would be presenting on average 3 products for certification, similar to EHRA's number). To arrive at this estimate, we analyzed available CHPL data from mid-May of this year for 2014 Edition certifications. From this data, we determined how many EHR technology developers had at least one product certified to the adopted 2014 Edition. From the group of EHR technology developers with a product certified to the 2014 Edition, we estimate that no more than 20% of those developers will seek certification because of the reduced and specific scope of this final rule. We also believe that for some certification criteria the 20% estimate could be a substantial overestimation. We provide a more detailed criterion-by-criterion explanation of our estimates below in Table 4.

Additionally, despite the specificity included in the EHRA estimates, we have found from past experience that at times EHR technology developers have misinterpreted what we have proposed. The EHRA's comments noted this kind of discrepancy by stating for certain certification criteria that some of its members interpreted the burden to be reasonably low while others very high. Given that we have no other comments by which to compare the EHRA estimates, we have generally used the EHRA estimate as our ''high average'' rounded up or down to the nearest hundred hours.

TABLE 4—DEVELOPMENT AND PREPARATION COSTS FOR EHR TECHNOLOGY DEVELOPERS FOR ADOPTED CERTIFICATION CRITERIA

Item #	CFR Text	Certification criterion name	Number of EHR developers who develop product(s) for certification to criterion	Hourly development effort by EHR developer	
				Low avg	High avg
1	§ 170.314(a)(18)	CPOE—medications	33	0	100
2	§ 170.314(a)(19)	CPOE—laboratory	33	0	100
3	§ 170.314(a)(20)	CPOE—diagnostic imaging	33	0	100
4	§ 170.314(b)(8)	Transitions of care	29	400	600
5	§ 170.314(b)(9)	Clinical information reconciliation and incorporation	27	0	100
6	§ 170.314(e)(1)	View, download, and transmit to 3rd party	33	400	600
7	§ 170.314(f)(7)	Transmission to public health agencies—syndromic surveillance.	25	0	100
8	§ 170.314(g)(1)	Automated numerator recording	N/A	N/A	N/A
9	§ 170.314(g)(3)	Safety-enhanced design	77	0	100
10	§ 170.314(h)(1)	Applicability Statement for Secure Health Transport	33	300	500
11	§ 170.314(h)(2)	Applicability Statement for Secure Health Transport & XDR/XDM for Direct Messaging.	33	200	300
12	§ 170.314(h)(3)	SOAP Transport and Security Specification & XDR/XDM for Direct Messaging.	33	200	300

• *Items #1 through #3:* With the exception of splitting out the three CPOE order type functionalities, there are no new requirements as part of any of these three certification criteria in this final rule. As a result, we provided a low range estimate.

• *Item #4:* For this certification criterion, the only substantial new development change between it and the 2014 Edition certification criteria at § 170.314(b)(1) and (2) is the addition of the Direct Edge Protocols IG. The EHRA estimates did not clearly identify whether the hourly range of 1,380 hours was to implement all four edge protocols or some number of them. Regardless, given that we only require one for certification, we have more than halved the EHRA estimate to fall into a range that we believe would be more reflective of the burden imposed by the final certification criterion.

• *Item #5:* The EHRA did not provide any hourly estimate for new development, nor does this criterion substantively differ from already

required capabilities in the 2014 Edition. As a result, we provided a low estimate.

• *Item #6:* For this certification criterion, the only substantial new development change between it and the original 2014 Edition version is the addition of the IG for Direct Edge Protocols. As a result, our estimates are the same as for Item #4.

• *Item #7:* Given the adoption of this more general certification criterion, we have provided a low estimate.

• *Item # 8:* This certification criterion was simply changed to an ''optional'' designation to provide regulatory clarity for Complete EHR certification to the 2014 Edition. There should be no new cost estimates related to certification as this regulatory change simply implements ONC Regulation FAQ 28 as discussed in section III.B.3 of the preamble.

• *Item # 9:* This certification criterion now includes the adopted optional CPOE and CIRI certification criteria. We have estimated a low cost range because we anticipate that EHR technology developers will use the same SED practices they used for certification to the CPOE (§ 170.314(a)(1)) and CIR (§ 170.314(b)(4)) certification criteria. Additionally, we note that we do not believe that there will be 99 different EHR technology developers that will get certified to the three CPOE criteria (i.e., 33 + 33 + 33). We expect that there will be overlap (i.e., multiple EHR technology developers getting certified to more than one CPOE certification criterion) and that some EHR technology developers will only get certified to one CPOE certification criterion such as CPOE—medications or CPOE—laboratory. Therefore, we estimate that there will be no more than 50 EHR technology developers that are certified to the SED certification criterion based on certification to the new optional CPOE certification criteria. We have combined this estimated number with the number of EHR technology developers we have estimated for the CIRI certification criterion to get an estimated total for this certification criterion.

• *Items #10–12:* We provide estimates reasonably close to the EHRA estimates.

Table 5 includes an overall 2-year cost estimate for each criterion. We retain the 2-year cost estimate period (CY 2014 and CY 2015) for the reason provided in the Proposed Rule as they would similarly apply to the adopted optional and revised 2014 Edition certification criteria. Additionally, we retain and use the estimate of $61 per hour (with benefits) as the average software developer's wage.

TABLE 5—DISTRIBUTED TOTAL DEVELOPMENT AND PREPARATION COSTS FOR EHR TECHNOLOGY DEVELOPERS (TWO-YEAR PERIOD)—TOTALS ROUNDED

Item #	CFR Text	Certification criterion name	Total low cost estimate ($M)	Total high cost estimate ($M)	Total average cost estimate ($M)
1	§ 170.314(a)(18)	CPOE—medications	$0	$.2	$.1
2	§ 170.314(a)(19)	CPOE—laboratory	0	.2	.1
3	§ 170.314(a)(20)	CPOE—diagnostic imaging	0	.2	.1
4	§ 170.314(b)(8)	Transitions of care	.71	1.0	.89
5	§ 170.314(b)(9)	Clinical information reconciliation and incorporation	0	.16	.081
6	§ 170.314(e)(1)	View, download, and transmit to 3rd party	.81	1.22	1.0
7	§ 170.314(f)(7)	Transmission to public health agencies—syndromic surveillance.	0	.15	.077
8	§ 170.314(g)(1)	Automated numerator recording	N/A	N/A	N/A
9	§ 170.314(g)(3)	Safety-enhanced design	0	.47	.235
10	§ 170.314(h)(1)	Applicability Statement for Secure Health Transport	.6	1.0	.8
11	§ 170.314(h)(2)	Applicability Statement for Secure Health Transport & XDR/XDM for Direct Messaging.	.4	.6	.5
12	§ 170.314(h)(3)	SOAP Transport and Security Specification & XDR/XDM for Direct Messaging.	.4	.6	.5
2-Year Total			2.92	5.80	4.38
2014 total (50%).			1.46	2.90	2.19
2015 total (50%).			1.46	2.90	2.19

iii. Testing and Certification Costs for the 2014 Edition Release 2

In the RIA of the Permanent Certification Program final rule, we estimated the costs for testing and certification of EHR technologies that would be used for providers to attempt to achieve MU Stages 1–3.[58] These costs were based on a two-year rulemaking cycle for the CEHRT definition and each MU stage. We believe the costs we attributed to testing and certification of EHR technologies in support of MU Stage 2 in the Permanent Certification Program final rule would encompass the actual testing and certification of EHR technologies to both the 2014 Edition and the certification criteria we have adopted as part of the 2014 Edition Release 2. This assessment is based on the number of EHR technologies currently certified to the 2014 Edition and our projections for the number of EHR technology developers that would likely have their EHR technologies tested and certified to the optional and revised 2014 Edition certification criteria adopted in this final rule. Further, we note that the estimated costs in the Permanent Certification Program final rule included costs for surveillance of EHR technologies and also estimated the costs for testing and certification above what we understand are the cost ranges charged by ONC–ACBs today.

b. Benefits

The regulatory flexibility the 2014 Edition Release 2 certification criteria provide will offer several significant benefits to patients, health care providers, and HIT developers. The 2014 Edition Release 2 incorporates stakeholder feedback on particular 2014 Edition issues identified as unnecessarily impeding innovation and causing undue burden. The 2014 Edition Release 2 also seeks to continue to improve EHR technology's interoperability and electronic health

[58] 76 FR 1318.

information exchange. Specifically, the separating out of the ''content'' and ''transport'' capabilities in the optional 2014 Edition ToC certification criterion (compared to the 2014 Edition ToC certification criteria adopted at § 170.314(b)(1) and (2)) and adoption of the Edge Protocol IG is aimed at improving the market availability of electronic health information exchange services. The new certification flexibilities offered by the optional ''CPOE'' and optional ''syndromic surveillance'' certification criteria are designed to enhance innovation and offer providers enhanced functionality and options for meeting applicable MU measures. The new flexibility in the VDT certification criterion is designed to further facilitate the exchange of patient health information between provider and patient. The optional CIRI criterion is designed to align better with clinical workflows and reduce regulatory burden found in certification to the current ToC certification criterion at § 170.314(b)(1).

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities.

The Small Business Administration (SBA) establishes the size of small businesses for federal government programs based on average annual receipts or the average employment of a firm. While EHR technology developers that pursue certification under the ONC HIT Certification Program represent a small segment of the overall information technology industry, we believe that the entities impacted by this final rule most likely fall under the North American Industry Classification System (NAICS) code 541511 ''Custom Computer Programming Services'' specified at 13 CFR 121.201 where the SBA publishes ''Small Business Size Standards by NAICS Industry.'' The SBA size standard associated with this NAICS code is set at $25 million in annual receipts [59] which ''indicates the maximum allowed for a concern and its affiliates to be considered small entities.''

Based on our analysis, we believe that there is enough data generally available to establish that between 75% and 90% of entities that are categorized under the NAICS code 541511 are under the SBA size standard, but note that the available data does not show how many of these entities will develop a EHR product that will be certified to the optional 2014 Edition Release 2 certification criteria under the ONC HIT Certification Program. We also note that with the exception of aggregate business information available through the U.S. Census Bureau and the SBA related to NAICS code 541511, it appears that many EHR technology developers that pursue certification under the ONC HIT Certification Program are privately held or owned and do not regularly, if at all, make their specific annual receipts publicly available. As a result, it is difficult to locate empirical data related to many of these EHR technology developers to correlate to the SBA size standard. However, although not correlated to the size standard for NAICS code 541511, we do have information indicating that over 60% of EHR technology developers that have had Complete EHRs and/or EHR Modules certified to the 2011 Edition EHR certification criteria have less than 51 employees.

We estimate that this final rule would have effects on EHR technology developers that are likely to pursue certification under the ONC HIT Certification Program, some of which may be small entities. However, we believe that we have proposed the minimum amount of requirements necessary to accomplish our policy goals, including a reduction in regulatory burden and additional flexibility for the regulated community, and that no additional appropriate regulatory alternatives could be developed to lessen the compliance burden associated with this final rule. We note that this final rule does not impose the costs cited in the RIA as compliance costs, but rather as investments which these EHR technology developers voluntarily take on and expect to recover with an appropriate rate of return. Accordingly, we do not find that this final rule will create a significant impact on a substantial number of small entities. Additionally, the Secretary certifies that this final rule will not have a significant impact on a substantial number of small entities.

3. Executive Order 13132—Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Nothing in this final rule imposes substantial direct compliance costs on state and local governments, preempts state law or otherwise has federalism implications. We are not aware of any state laws or regulations that are contradicted or impeded by any of the certification criteria or other proposals we have adopted in this final rule.

4. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. The current inflation-adjusted statutory threshold is approximately $141 million. This final rule will not impose an unfunded mandate on state, local, and tribal governments or on the private sector that will reach the threshold level.

Regulation Text

List of Subjects in 45 CFR Part 170

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Health care, Health information technology, Health insurance, Health records, Hospitals, Incorporation by reference, Laboratories, Medicaid, Medicare, Privacy, Reporting and recordkeeping requirements, Public health, Security.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter D, part 170, is amended as follows:

PART 170—HEALTH INFORMATION TECHNOLOGY STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA AND CERTIFICATION PROGRAMS FOR HEALTH INFORMATION TECHNOLOGY

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 42 U.S.C. 300jj–11; 42 U.S.C. 300jj–14; 5 U.S.C. 552.

■ 2. Section 170.102 is amended by revising the definition for ''Base EHR'' to read as follows:

§ 170.102 Definitions.

* * * * *

Base EHR means an electronic record of health-related information on an individual that:

(1) Includes patient demographic and clinical health information, such as medical history and problem lists;

[59] The SBA references that annual receipts means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service tax return forms. *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

(2) Has the capacity:

(i) To provide clinical decision support;

(ii) To support physician order entry;

(iii) To capture and query information relevant to health care quality;

(iv) To exchange electronic health information with, and integrate such information from other sources;

(v) To protect the confidentiality, integrity, and availability of health information stored and exchanged; and

(3) Has been certified to the certification criteria adopted by the Secretary:

(i) For at least one of the four criteria adopted at § 170.314(a)(1), (a)(18), (a)(19), or (a)(20);

(ii) At § 170.314(a)(3);

(iii) At § 170.314(a)(5) through § 170.314(a)(8);

(iv) Both § 170.314(b)(1) and (2); or, both § 170.314(b)(8) and § 170.314(h)(1); or § 170.314(b)(1) and (2) combined with either § 170.314(b)(8) or § 170.314(h)(1), or both § 170.314(b)(8) and § 170.314(h)(1);

(v) At § 170.314(b)(7);

(vi) At § 170.314(c)(1) through § 170.314(c)(3);

(vii) At § 170.314(d)(1) through § 170.314(d)(8);

(4) Has been certified to the certification criteria at § 170.314(c)(1) and (2):

(i) For no fewer than 9 clinical quality measures covering at least 3 domains from the set selected by CMS for eligible professionals, including at least 6 clinical quality measures from the recommended core set identified by CMS; or

(ii) For no fewer than 16 clinical quality measures covering at least 3 domains from the set selected by CMS for eligible hospitals and critical access hospitals.

* * * * *

§ 170.102 [Amended]

■ 3. Section 170.102 is further amended, effective March 1, 2015, by removing the definitions of ''2011 Edition EHR certification criteria'' and ''Complete EHR, 2011 Edition.''

■ 4. Section 170.202 is amended by adding paragraph (d) to read as follows:

§ 170.202 Transport standards.

* * * * *

(d) *Standard.* ONC Implementation Guide for Direct Edge Protocols (incorporated by reference in § 170.299).

§ 170.205 [Amended]

■ 5. Section 170.205 is amended, effective March 1, 2015, by removing and reserving paragraphs (b)(1), (c), (d)(1), (e)(1) and (2), and (f).

§ 170.207 [Amended]

■ 6. Section 170.207 is amended, effective March 1, 2015, by removing and reserving paragraphs (a)(1) and (2), (b)(1), (c)(1), (d)(1), and (e)(1).

§ 170.210 [Amended]

■ 7. Section 170.210 is amended, effective March 1, 2015, by removing and reserving paragraphs (a)(2) and (b).

■ 8. Section 170.299 is amended by adding paragraph (k)(4) to read as follows:

§ 170.299 Incorporation by reference.

* * * * *

(k) * * *

(4) ONC Implementation Guide for Direct Edge Protocols, Version 1.1, June 25, 2014, IBR approved for § 170.202; available at *http://www.healthit.gov/sites/default/files/implementationguidefordirectedgeprotocolsv1_1.pdf.*

* * * * *

§ 170.302 [Removed and Reserved]

■ 9. Section 170.302 is removed and reserved, effective March 1, 2015.

§ 170.304 [Removed and Reserved]

■ 10. Section 170.304 is removed and reserved, effective March 1, 2015.

§ 170.306 [Removed and Reserved]

■ 11. Section 170.306 is removed and reserved, effective March 1, 2015.

■ 12. Section 170.314 is amended by:

■ a. Revising paragraph (a)(1)(iii);

■ b. Adding paragraphs (a)(18) through (20) and (b)(8) and (9);

■ c. Revising paragraphs (e)(1)(i)(C)(*1*) and (*2*);

■ d. Adding paragraph (f)(7);

■ e. Revising paragraphs (g)(1) and (3); and

■ f. Adding paragraph (h).

The revisions and additions read as follows:

§ 170.314 2014 Edition electronic health record certification criteria.

* * * * *

(a) * * *

(1) * * *

(iii) Diagnostic imaging.

* * * * *

(18) *Optional—computerized provider order entry—medications.* Enable a user to electronically record, change, and access medication orders.

(19) *Optional—computerized provider order entry—laboratory.* Enable a user to electronically record, change, and access laboratory orders.

(20) *Optional—computerized provider order entry—diagnostic imaging.* Enable a user to electronically record, change, and access diagnostic imaging orders.

(b) * * *

(8) *Optional—Transitions of care.* (i) *Send and receive via edge protocol.* EHR technology must be able to electronically:

(A) Send transitions of care/referral summaries through a method that conforms to the standard specified at § 170.202(d) and that leads to such summaries being processed by a service that has implemented the standard specified in § 170.202(a); and

(B) Receive transitions of care/referral summaries through a method that conforms to the standard specified at § 170.202(d) from a service that has implemented the standard specified in § 170.202(a).

(ii)(A) *Display.* EHR technology must be able to electronically display in human readable format the data included in transition of care/referral summaries received and formatted according to any of the following standards (and applicable implementation specifications) specified in: § 170.205(a)(1) through (3).

(B) *Section views.* Extract and allow for individual display each additional section or sections (and the accompanying document header information) that were included in a transition of care/referral summary received and formatted in accordance with the standard adopted at § 170.205(a)(3).

(iii) *Create.* Enable a user to electronically create a transition of care/referral summary formatted according to the standard adopted at § 170.205(a)(3) that includes, at a minimum, the Common MU Data Set and the following data expressed, where applicable, according to the specified standard(s):

(A) *Encounter diagnoses.* The standard specified in § 170.207(i) or, at a minimum, the version of the standard specified § 170.207(a)(3);

(B) *Immunizations.* The standard specified in § 170.207(e)(2);

(C) Cognitive status;

(D) Functional status;

(E) *Ambulatory setting only.* The reason for referral; and referring or transitioning provider's name and office contact information; and

(F) *Inpatient setting only.* Discharge instructions.

(9) *Optional—clinical information reconciliation and incorporation*—(i) *Correct patient.* Upon receipt of a transition of care/referral summary formatted according to the standard adopted at § 170.205(a)(3), EHR technology must be able to demonstrate that the transition of care/referral summary received is or can be properly matched to the correct patient.

(ii) *Reconciliation.* Enable a user to electronically reconcile the data that represent a patient's active medication, problem, and medication allergy list as follows. For each list type:

(A) Electronically and simultaneously display (i.e., in a single view) the data from at least two list sources in a manner that allows a user to view the data and their attributes, which must include, at a minimum, the source and last modification date;

(B) Enable a user to create a single reconciled list of medications, medication allergies, or problems;

(C) Enable a user to review and validate the accuracy of a final set of data; and

(D) Upon a user's confirmation, automatically update the list, and electronically incorporate the following data expressed according to the specified standard(s):

(*1*) *Medications.* At a minimum, the version of the standard specified in § 170.207(d)(2);

(*2*) *Problems.* At a minimum, the version of the standard specified in § 170.207(a)(3);

(*3*) *Medication allergies.* At a minimum, the version of the standard specified in § 170.207(d)(2).

* * * * *

(e) * * *

(1) * * *

(i) * * *

(C) * * *

(*1*) Electronically transmit the ambulatory summary or inpatient summary (as applicable to the EHR technology setting for which certification is requested) created in paragraph (e)(1)(i)(B)(*1*) of this section in accordance with at least one of the following:

(*i*) The standard specified in § 170.202(a).

(*ii*) Through a method that conforms to the standard specified at § 170.202(d) and that leads to such summary being processed by a service that has implemented the standard specified in § 170.202(a).

(*2*) *Inpatient setting only.* Electronically transmit transition of care/referral summaries (as a result of a transition of care/referral) selected by the patient (or their authorized representative) in accordance with at least one of the following:

(*i*) The standard specified in § 170.202(a).

(*ii*) Through a method that conforms to the standard specified at § 170.202(d) and that leads to such summary being processed by a service that has implemented the standard specified in § 170.202(a).

* * * * *

(f) * * *

(7) *Optional—Ambulatory setting only—Transmission to public health agencies—syndromic surveillance.* EHR technology must be able to electronically create syndrome-based public health surveillance information for electronic transmission.

(i) *Optional.* That contains the following data:

(A) Patient demographics;

(B) Provider specialty;

(C) Provider address;

(D) Problem list;

(E) Vital signs;

(F) Laboratory test values/results;

(G) Procedures;

(H) Medication list; and

(I) Insurance.

(ii) [Reserved]

(g) * * *

(1) *Optional—Automated numerator recording.* For each meaningful use objective with a percentage-based measure, EHR technology must be able to create a report or file that enables a user to review the patients or actions that would make the patient or action eligible to be included in the measure's numerator. The information in the report or file created must be of sufficient detail such that it enables a user to match those patients or actions to meet the measure's denominator limitations when necessary to generate an accurate percentage.

* * * * *

(3) *Safety-enhanced design.* User-centered design processes must be applied to each capability an EHR technology includes that is specified in the following certification criteria: § 170.314(a)(1), (2), (6) through (8), (16) and (18) through (20) and (b)(3), (4), and (9).

* * * * *

(h) *Transport methods*—(1) *Optional—Applicability Statement for Secure Health Transport.* Enable health information to be electronically sent and electronically received in accordance with the standard specified in § 170.202(a).

(2) *Optional—Applicability Statement for Secure Health Transport and XDR/XDM for Direct Messaging.* Enable health information to be electronically sent and electronically received in accordance with the standards specified in § 170.202(a) and (b).

(3) *Optional—SOAP Transport and Security Specification and XDR/XDM for Direct Messaging.* Enable health information to be electronically sent and electronically received in accordance with the standards specified in § 170.202(b) and (c).

Subpart D—[Removed and Reserved]

■ 13. Remove and reserve subpart D, consisting of §§ 170.400 through 170.499.

■ 14. Section 170.501 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 170.501 Applicability.

* * * * *

(b) References to the term Complete EHR and Complete EHR certification throughout this subpart do not apply to certification in accordance with any edition of certification criteria that is adopted by the Secretary under subpart C after the 2014 Edition EHR certification criteria.

■ 15. Section 170.503 is amended by revising paragraphs (b)(1) and (e)(1) and (2) to read as follows:

§ 170.503 Requests for ONC–AA status and ONC–AA ongoing responsibilities.

* * * * *

(b) * * *

(1) A detailed description of the accreditation organization's conformance to ISO/IEC17011 (incorporated by reference in § 170.599) and experience evaluating the conformance of certification bodies to ISO/IEC 17065 (incorporated by reference in § 170.599).

* * * * *

(e) * * *

(1) Maintain conformance with ISO/IEC 17011 (incorporated by reference in § 170.599);

(2) Verify that the certification bodies it accredits and ONC–ACBs conform to, at a minimum:

(i) For fiscal years 2014 and 2015, ISO/IEC Guide 65 (incorporated by reference in § 170.599); and

(ii) For fiscal year 2016 and subsequent years, ISO/IEC 17065 (incorporated by reference in § 170.599).

* * * * *

■ 16. Section 170.523 is amended by adding paragraph (l) to read as follows:

§ 170.523 Principles of proper conduct for ONC–ACBs.

* * * * *

(l) Display the ONC Certified HIT Certification and Design Mark on all certifications issued under the ONC HIT Certification Program in a manner that complies with the Criteria and Terms of Use for the ONC Certified HIT Certification and Design Mark, and ensure that use of the mark by HIT developers whose products are certified under the ONC HIT Certification Program is compliant with the Criteria

and Terms of Use for the ONC Certified HIT Certification and Design Mark.

■ 17. Section 170.550 is amended by revising paragraph (f)(1) to read as follows:

§ 170.550 EHR Module certification.

* * * * *

(f) * * *

(1) Section 170.314(g)(1) or (2) if the EHR Module has capabilities presented for certification that would support a meaningful use objective with a percentage-based measure;

* * * * *

§ 170.550 [Amended]

■ 18. Section 170.550 is further amended, effective March 1, 2015, by removing and reserving paragraph (e).

■ 19. Section 170.599 is amended by revising paragraphs (b)(1) and (2) and adding paragraph (b)(3) to read as follows:

§ 170.599 Incorporation by reference.

* * * * *

(b) * * *

(1) ISO/IEC 17011:2004 Conformity Assessment—General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies (Corrected Version), February 15, 2005, ''ISO/IEC 17011,'' IBR approved for § 170.503.

(2) ISO/IEC GUIDE 65:1996—General Requirements for Bodies Operating Product Certification Systems (First Edition), 1996, ''ISO/IEC Guide 65,'' IBR approved for § 170.503.

(3) ISO/IEC 17065:2012(E)—Conformity assessment—Requirements for bodies certifying products, processes and services (First Edition), 2012, ''ISO/IEC 17065,'' IBR approved for § 170.503.

Dated: August 20, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–21633 Filed 9–10–14; 8:45 am]

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Part V

Federal Housing Finance Agency

12 CFR Part 1282

2015–2017 Enterprise Housing Goals; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1282

RIN 2590–AA65

2015–2017 Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a proposed rule with request for comments regarding the housing goals for Fannie Mae and Freddie Mac (the Enterprises). The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, (the Safety and Soundness Act) requires FHFA to establish annual housing goals for mortgages purchased by the Enterprises. The housing goals include separate categories for single-family and multifamily mortgages on housing that is affordable to low-income and very low-income families, among other categories. The existing housing goals for the Enterprises remain in effect through the end of 2014.

This proposed rule would update the benchmark levels for each of the housing goals and subgoals for 2015 through 2017. The proposed rule would also establish a new housing subgoal for small multifamily properties affordable to low-income families.

The proposed rule presents three alternatives for determining whether an Enterprise has met the single-family housing goals. The first option would keep the current approach, which compares the performance of the Enterprise both to a benchmark level and to a retrospective market level. The second option would use a benchmark level only, and the third option would use a retrospective market level only.

The proposed rule would also revise a number of other provisions in order to provide greater clarity on the mortgages eligible for goal or subgoal categories. Specific changes include rules for counting shared living spaces such as student housing and rules for skilled nursing and seniors housing units. In addition, the proposed rule would make a number of clarifying and conforming changes, including revisions to the definitions of ''rent'' and ''utilities'' and to the rules for determining affordability of both single-family and multifamily units.

FHFA also plans to require more detailed Enterprise reporting on their purchases of mortgages on single-family rental housing. Finally, the proposed rule would establish more transparent agency procedures if FHFA issues guidance on the housing goals in the future.

DATES: FHFA will accept written comments on the proposed rule on or before October 28, 2014.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA65, by any one of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA65.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA65, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA65, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

FOR FURTHER INFORMATION CONTACT: Dr. Nayantara Hensel, Associate Director, Division of Housing Mission and Goals, at (202) 649–3122; Michael Groarke, Senior Policy Analyst, Division of Housing Mission and Goals, at (202) 649–3125; Kevin Sheehan, Office of General Counsel, at (202) 649–3086. These are not toll-free numbers. The mailing address for each contact is: Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide such as your name, address, email address and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

Commenters are encouraged to review and comment on all aspects of the proposed rule, including the single-family benchmark levels, the possible changes to the retrospective market approach, the multifamily benchmark levels, the new low-income housing subgoal for small multifamily properties, and other changes to the regulation. FHFA also requests comments on the two issues described in Section IX.

II. Background

A. Statutory and Regulatory Background for the Existing Housing Goals

The Safety and Soundness Act requires FHFA to establish several annual housing goals for both single-family and multifamily mortgages purchased by Fannie Mae and Freddie Mac.[1] The annual housing goals are one measure of the extent to which the Enterprises are meeting their public purposes, which include ''an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.''[2]

The housing goals provisions of the Safety and Soundness Act were substantially revised in 2008 with the enactment of the Housing and Economic Recovery Act, which amended the Safety and Soundness Act.[3] Under this revised structure, FHFA established housing goals for the Enterprises for 2010 and 2011 in a final rule published on September 14, 2010.[4] FHFA established new housing goals levels for the Enterprises for 2012 through 2014 in a final rule published on November 13, 2012.[5] The housing goals established by FHFA in these two prior rulemakings

[1] *See* 12 U.S.C. 4561(a).

[2] *See* 12 U.S.C. 4501(7).

[3] Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (July 30, 2008).

[4] *See* 75 FR 55892.

[5] *See* 77 FR 67535.

include four goals and one subgoal for single-family, owner-occupied housing and one goal and one subgoal for multifamily housing.

Single-family goals. The single-family goals defined under the Safety and Soundness Act include separate categories for home purchase mortgages for low-income families, very low-income families, and families that reside in low-income areas. Performance on the single-family home purchase goals is measured as the percentage of the total home purchase mortgages purchased by an Enterprise each year that qualifies for each goal or subgoal. There is also a separate goal for refinancing mortgages for low-income families, and performance on the refinancing goal is determined in a similar way.

Under the Safety and Soundness Act, the single-family housing goals are limited to mortgages on owner-occupied housing with one to four units total. The single-family goals cover ''conventional, conforming mortgages,'' with the ''conventional'' component meaning not insured or guaranteed by the Federal Housing Administration or other government agency and the ''conforming'' component meaning those mortgages with a principal balance that does not exceed the loan limits for Enterprise mortgages.

The single-family goals established by FHFA in 2010 and 2012 compare the goal-qualifying share of the Enterprise's mortgage purchases to two separate measures: a ''benchmark level'' and a ''market level.'' The ''benchmark level'' is set prospectively by rulemaking, based on various factors, including FHFA's forecast of the goal-qualifying share of the overall market. The ''market level'' is determined retrospectively each year, based on the actual goal-qualifying share of the overall market as measured by the Home Mortgage Disclosure Act (HMDA) data for that year. The ''overall market'' that FHFA uses for purposes of both the prospective market forecasts and the retrospective market measurement consists of all single-family owner-occupied conventional conforming mortgages that would be eligible for purchase by either Enterprise. It includes loans actually purchased by the Enterprises as well as comparable loans held in a lender's portfolio. It also includes any loans that are part of a private label security (PLS), though very few such securities have been issued for conventional conforming mortgages since 2008.

Under this two-part approach, determining whether an Enterprise has met the single-family goal requirements for a specified year requires looking at both the benchmark level and the market level measures. In order to meet a single-family housing goal or subgoal, the actual percentage of mortgage purchases by an Enterprise that meet each goal or subgoal must exceed either the benchmark level or the market level for that year.

Multifamily goals. The multifamily goals defined under the Safety and Soundness Act include separate categories for mortgages on multifamily properties (*i.e.,* properties with five or more units) with rental units affordable to low-income families and very low-income families. The multifamily goals established by FHFA in 2010 and 2012, as required by the Safety and Soundness Act, evaluate the performance of the Enterprises based on numeric targets, not percentages, for the number of affordable units in properties backed by mortgages purchased by an Enterprise. FHFA has not established a retrospective market level measure for the multifamily goals and subgoals, due to a lack of comprehensive data about the multifamily market such as that provided by HMDA for single-family mortgages. As a result, FHFA measures Enterprise multifamily goals performance against the benchmark levels only.

B. Adjusting the Housing Goals

Under the housing goals regulation first established by FHFA in 2010, as well as under this proposed rule, FHFA may adjust the benchmark levels for any of the single-family or multifamily housing goals in a particular year without going through notice and comment rulemaking based on (1) market and economic conditions or the financial condition of the Enterprise, or (2) a determination by FHFA that ''efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Charter Acts.'' [6] The regulation also takes into account the possibility that achievement of a particular housing goal may or may not have been feasible for the Enterprise. If FHFA determines that a housing goal was not feasible for the Enterprise to achieve, then the regulation provides for no further enforcement of that housing goal for that year.[7]

If, after publication of a final rule establishing the housing goals for 2015 through 2017, FHFA determines that any of the single-family or multifamily housing goals should be adjusted in light of market conditions, to ensure the safety and soundness of the Enterprises, or for any other reason, FHFA will take any steps that are necessary and appropriate to adjust that goal. Such steps could include adjusting the benchmark levels through the processes in the existing regulation or establishing new or revised housing goal levels through notice and comment rulemaking.

C. Housing Goals Under Conservatorship

On September 6, 2008, FHFA placed each Enterprise into conservatorship. Although the Enterprises remain in conservatorship at this time, they continue to have the mission of supporting a stable and liquid national market for residential mortgage financing. FHFA has continued to establish annual housing goals for the Enterprises and to assess their performance under the housing goals each year during conservatorship.

III. Summary of Proposed Rule

A. Benchmark Levels for the Single-Family Housing Goals

This proposed rule would establish the benchmark levels for the single-family housing goals and subgoal for 2015–2017 as follows:

Goal	Criteria	Current benchmark level for 2012–2014 (percent)	Proposed benchmark level for 2015–2017 (percent)
Low-Income Home Purchase Goal.	Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income.	23	23
Very Low-Income Home Purchase Goal.	Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 50 percent of area median income.	7	7

[6] 12 CFR 1282.14(d).

[7] 12 CFR 1282.21(a).

Goal	Criteria	Current benchmark level for 2012–2014 (percent)	Proposed benchmark level for 2015–2017 (percent)
Low-Income Areas Home Purchase Subgoal.	Home purchase mortgages on single-family, owner-occupied properties with: • Borrowers in census tracts with tract median income of no greater than 80 percent of area median income; and • Borrowers with income no greater than 100 percent of area median income in census tracts where (i) tract income is less than 100 percent of area median income, and (ii) minorities comprise at least 30 percent of the tract population.	11	14
Low-Income Refinancing Goal.	Refinancing mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income.	20	27

B. Proposed Alternatives to the Market-Based Retrospective Approach

The proposed rule would adopt one of three different approaches for determining whether an Enterprise has met one of the single-family housing goals. Under the current regulation, the performance of the Enterprise on each single-family housing goal is compared to both a benchmark level and a retrospective market level. The first proposed alternative would maintain this approach. The second proposed alternative would evaluate the performance of the Enterprise based solely on a comparison to a benchmark level. The third proposed alternative would evaluate the performance of the Enterprise based solely on a comparison to a retrospective market level.

C. Multifamily Housing Goal Levels

The proposed rule would establish the levels for the multifamily goal and subgoal for 2015–2017 as follows:

Goal	Criteria	Current goal levels for 2014 (units)	Proposed goal levels for 2015 (units)	Proposed goal levels for 2016 (units)	Proposed goal levels for 2017 (units)
Low-Income Goal	Units affordable to families with incomes no greater than 80 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise.	Fannie Mae: 250,000. Freddie Mac: 200,000.	Fannie Mae: 250,000. Freddie Mac: 210,000.	Fannie Mae: 250,000. Freddie Mac: 220,000.	Fannie Mae: 250,000. Freddie Mac: 230,000.
Very Low-Income Subgoal.	Units affordable to families with incomes no greater than 50 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise.	Fannie Mae: 60,000. Freddie Mac: 40,000.	Fannie Mae: 60,000. Freddie Mac: 43,000.	Fannie Mae: 60,000. Freddie Mac: 46,000.	Fannie Mae: 60,000. Freddie Mac: 50,000.

D. Small Multifamily Housing Subgoal Levels

The proposed rule would also establish for the first time a separate subgoal for rental units that are affordable to families with incomes no greater than 80 percent of area median income in small multifamily properties with mortgages purchased by an Enterprise. The proposed rule would establish the levels for the small multifamily subgoal for 2015–2017 as follows:

Goal	Criteria	Current goal levels for 2014 (units)	Proposed goal levels for 2015 (units)	Proposed goal levels for 2016 (units)	Proposed goal levels for 2017 (units)
Low-Income Subgoal for Small Multifamily.	Units affordable to families with incomes no greater than 80 percent of area median income in small multifamily rental properties (5 to 50 units) with mortgages purchased by an Enterprise.	None	Fannie Mae: 20,000. Freddie Mac: 5,000.	Fannie Mae: 25,000. Freddie Mac: 10,000.	Fannie Mae: 30,000. Freddie Mac: 15,000.

E. Single-Family Rental Housing

The housing goals regulation currently requires the Enterprises to report to FHFA on all mortgage purchases. Starting in 2015, FHFA plans to revise the reports required under this existing authority so that the Enterprises provide more detailed information about their purchases of mortgages on single-family rental housing, including detailed affordability information.

F. Other Proposed Changes

The proposed rule would also make a number of changes and clarifications to the existing rules concerning whether a particular mortgage purchase may be counted for purposes of the housing goals. These changes include updating and clarifying definitions and other provisions to reflect current Enterprise lending programs and market practices. The proposed rule would incorporate existing FHFA guidance on the appropriate treatment of loans on senior housing and skilled nursing units. The proposed rule would also add transparency to agency guidance on issues that may arise under the housing goals by placing past and future guidance on the FHFA Web site.

IV. Single-Family Housing Goals

A. Factors Considered in Setting the Proposed Single-Family Housing Goal Levels

Section 1332(e)(2) of the Safety and Soundness Act requires FHFA to consider the following seven factors in setting the single-family housing goals:

1. National housing needs;
2. Economic, housing, and demographic conditions, including expected market developments;
3. The performance and effort of the Enterprises toward achieving the housing goals under this section in previous years;
4. The ability of the Enterprise to lead the industry in making mortgage credit available;
5. Such other reliable mortgage data as may be available;
6. The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and
7. The need to maintain the sound financial condition of the Enterprises.[8]

FHFA has considered each of these seven statutory factors in setting the proposed benchmark levels for each of the single-family housing goals and subgoal. Additional discussion of these single-family factors is contained in the Appendix.

Market estimation models. In setting the proposed benchmark levels, FHFA relies extensively on its projections of the estimated market performance for each goal or subgoal in the primary mortgage market. FHFA has developed market estimation models for determining these projections. Additional discussion of the market estimation models can be found in a research paper, available at *http://www.fhfa.gov/PolicyProgramsResearch/Research/.*

FHFA's market estimation models look at the relationship between (a) the actual historical market performance for each single-family housing goal, as calculated from HMDA data, and (b) the actual historical values for various factors that may influence the market performance, such as interest rates, inflation, house prices, home sales and the unemployment rate. The market estimation models then use forecasts for each of the variables influencing market performance to project an estimated market performance for each goal or subgoal. The models yield a point estimate which represents the best estimate of goal qualifying shares for each year (*i.e.,* 2015, 2016, and 2017), as well as a range of predicted levels based on different confidence levels. The models produce ranges and estimates for each successive year. For example, the estimate for the low-income home purchase goal for 2015 is 20.9 percent, with a 95 percent confidence interval of plus or minus 6.7 percent. In other words, the model prediction is that there is a 95 percent chance that the actual market share in 2015 will be between 14.2 percent and 27.6 percent. The same forecast for 2017 is 19.8 percent, with a 95 percent confidence interval of plus or minus 9.0 percent. Thus, the model prediction range for 2017 is between 10.8 percent and 28.8 percent.

FHFA periodically updates the market estimation models to reflect new data. These updates may result in changes to the specific variables that are included in the model for each of the housing goals. The updates may also result in new estimates for the goal-qualifying share for one or more of the single-family housing goals. If the market estimation models are updated before publication of the final rule, FHFA will consider any such updates and the new estimates for the goal-qualifying shares of the market when establishing the benchmark levels for 2015 through 2017.

The market estimation models address four of the seven factors that FHFA is required to consider. The models are designed to measure the size of the single-family mortgage market (Factor 6), and in doing so they incorporate aspects of three of the other factors: Factor 1: National Housing Needs; Factor 2: Economic, Housing, and Demographic Conditions; and Factor 5: Other Mortgage Data. Information about economic and housing conditions, such as the unemployment rate, inflation, housing starts, home sales, and home prices are included in the market models, which estimate the market performance for 2015 through 2017. FHFA also considers various other mortgage data sources, including the Mortgage Bankers Association's mortgage default survey, the National Association of Realtors' Housing Affordability Index and Freddie Mac's Primary Mortgage Market Survey.

Past performance. The past performance of the Enterprises on each of the single-family housing goals and subgoal, Factor 3 above, is also an important factor in setting the benchmark levels. Reviewing the actual performance of the Enterprises on each housing goal in previous years and comparing that performance to the performance of the overall market helps FHFA ensure that the benchmark levels are set at levels that are feasible for the Enterprises to achieve. For example, the market estimation models may not capture all of the factors that contribute to Enterprise performance, or FHFA's measurements of the market using HMDA data may not reflect the exact portion of the market that is eligible for purchase by the Enterprises. FHFA may rely more heavily on past Enterprise performance if the market estimation model yields results that are far above, or far below, the past performance of either Enterprise on a housing goal.

Other factors. FHFA has also considered the remaining two statutory factors in proposing these single-family housing goals: Factor 4: Ability to Lead the Industry and Factor 7: Need to Maintain Sound Financial Condition. FHFA's consideration of these factors takes into account the financial condition of the Enterprises, the importance of maintaining the Enterprises in sound and solvent financial condition, and the appropriate role of the Enterprises in relation to the overall mortgage market. The process of setting benchmark levels based on the recent performance of the Enterprises and on the past and expected performance of the overall market also contributes to FHFA's consideration of these required statutory factors.[9]

FHFA continues to monitor the activities of the Enterprises, both in FHFA's capacity as safety and soundness regulator and as conservator. If necessary, FHFA will make any appropriate changes in the housing goals to ensure the continued safety and soundness of the Enterprises.

B. Proposed Single-Family Benchmark Levels

1. Low-Income Home Purchase Goal

The low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less

[8] 12 U.S.C. 4562(e)(2).

[9] In 2013, the Enterprises remained the largest issuers of mortgage-backed securities (MBS), guaranteeing 73 percent of single-family MBS, slightly above the average of 72 percent for 2008–2012, but above the average of 46 percent for 2004–2007, and above the average of 67 percent for 2000–2003. *See* Inside Mortgage Finance Publications, ''Mortgage Market Statistical Annual,'' volume II, ''The Secondary Mortgage Market,'' p.4 (2013 Edition); *see also* Inside MBS & ABS, p.4 (April 4, 2014).

than or equal to 80 percent of the area median income.

The proposed rule would set the annual low-income home purchase housing goal benchmark level for 2015 through 2017 at 23 percent, which would be unchanged from the current 2014 benchmark level. FHFA's market model forecasts a declining proportion of home purchase mortgages for low-income families for these years. FHFA has not reduced the proposed benchmark level, however, in order to encourage the Enterprises to continue their efforts to promote safe and sustainable lending to low-income families. This may include any steps the Enterprises take to bring greater certainty to origination and servicing standards for lenders, any additional outreach to small and rural lenders and to state and local Housing Finance Agencies (HFAs), and any other efforts by the Enterprises to reach underserved creditworthy borrowers.

A summary of the past performance of the Enterprises on the low-income home purchase housing goal, including past benchmark levels and the size of the market in past years, appears in the Appendix in Table 6.

Market size. FHFA's forecast for the low-income share of the overall market for home purchase mortgages for 2015 through 2017 starts with a point estimate of 20.9 percent for 2015 and declines to a point estimate of 19.8 percent for 2017. These forecasts are significantly lower than the actual low-income share of the overall market for home purchase mortgages in 2010 through 2012 and are somewhat lower than FHFA's estimates of the low-income share of the market for 2013 and 2014. The actual low-income market shares for 2010 through 2012 are based on FHFA's analysis of the most recent HMDA data available and start at 27.2 percent in 2010, declining to 26.5 percent in 2011, and remaining essentially the same at 26.6 percent in 2012. FHFA has estimated the actual market shares for 2013 and 2014 using the market estimation models, because HMDA data for those years are not yet available. FHFA estimates that the low-income share of the overall market declined to 23.4 percent in 2013 and FHFA forecasts a further decline to 21.4 percent for 2014.

Past performance. The performance of the Enterprises on the low-income home purchase goal has followed a similar pattern as the overall market performance on the goal since 2010. Fannie Mae's performance on the low-income home purchase goal in 2010 was 25.1 percent and, in fact, increased slightly in 2011 and 2012. Fannie Mae's performance then declined to 23.8 percent in 2013. Freddie Mac's performance on the low-income home purchase goal in 2010 was 26.8 percent before declining to 23.3 percent in 2011, increasing to 24.4 percent in 2012, and declining to 21.8 percent in 2013.

Past benchmark levels. The benchmark level for the low-income home purchase housing goal in 2010 and 2011 was 27 percent. This level was very close to the actual low-income share of the overall market as measured by HMDA data for 2010 and 2011. The benchmark level for the low-income home purchase housing goal was lowered to 23 percent for 2012, 2013 and 2014. This new benchmark level was significantly lower than the actual low-income share of the overall market in 2012. FHFA estimates that the low-income share of the overall market was slightly higher than the benchmark level in 2013, and that the low-income share of the overall market will be below the 23 percent benchmark level in 2014.

Proposed benchmark levels. Although FHFA's market estimation model forecasts further declines in the low-income share of the overall home purchase mortgage market, the proposed rule would maintain the existing benchmark level of 23 percent for 2015 through 2017. FHFA is proposing this benchmark level in light of the current two-part process for evaluating Enterprise performance on the single-family housing goals, using both a benchmark level and a retrospective market level. If FHFA adopts an alternative approach that relies solely on benchmark levels, as described below in Section IV.C, FHFA may adopt a benchmark level in the final rule that is lower than the proposed benchmark level of 23 percent.

The market estimation model forecasts a range of possible market levels and, while the proposed benchmark level of 23 percent is above the point estimates for each year from 2015 through 2017, the proposed benchmark level is within the confidence interval range for those years. In addition, while the forecast of the market level declines each year from 2015 through 2017, the point estimate for 2015 is subject to less uncertainty than the point estimate for 2017. This supports setting the proposed benchmark level closer to the somewhat higher market estimate for 2015 than the lower estimate for 2017. Finally, FHFA is proposing benchmark levels for the low-income home purchase housing goal that are somewhat higher in the forecast range to encourage the Enterprises to continue to find ways to support lower income borrowers, without compromising safe and sound lending standards. FHFA will continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines in later years that the benchmark level for the low-income home purchase housing goal is no longer feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

2. Very Low-Income Home Purchase Goal

The very low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for very low-income families, defined as families with incomes less than or equal to 50 percent of the area median income.

The proposed rule would set the annual very low-income home purchase housing goal benchmark level for 2015 through 2017 at 7 percent, which would be unchanged from the current 2014 benchmark level. FHFA's market model forecasts a declining proportion of home purchase mortgages for very low-income families for these years. FHFA has not reduced the proposed benchmark level, however, in order to encourage the Enterprises to continue their efforts to promote safe and sustainable lending to very low-income families. This may include any steps the Enterprises take to bring greater certainty to origination and servicing standards for lenders, any additional outreach to small and rural lenders and to state and local Housing Finance Agencies (HFAs), and any other efforts by the Enterprises to reach underserved creditworthy borrowers.

A summary of the past performance of the Enterprises on the very low-income home purchase housing goal, including past benchmark levels and the size of the market in past years, appears in the Appendix in Table 7.

Market size. FHFA's forecast for the very low-income share of the overall market for home purchase mortgages is almost the same for each year from 2015 through 2017: 5.8 percent for 2015, 5.7 percent for 2016, and 5.6 percent for 2017. These forecasts for the very low-income share of the overall market are lower than the actual very low-income shares of the overall market in 2010 through 2012 and are slightly lower than the estimated very low-income shares for 2013 and 2014. The actual very low-income market shares for 2010 through 2012 are based on FHFA's analysis of the most recent HMDA data available: 8.1 percent in 2010, declining slightly to 8.0 percent in 2011 and 7.7

percent in 2012. FHFA estimates that the very low-income share of the overall market declined to 6.3 percent in 2013, and FHFA forecasts a further decline to 5.9 percent for 2014.

Past performance. The performance of the Enterprises on the very low-income home purchase housing goal was relatively stable between 2010 and 2012, before declining in 2013. Fannie Mae's performance was 7.2 percent in 2010, 7.6 percent in 2011 and 7.3 percent in 2012, while Freddie Mac's performance was 7.9 percent in 2010, 6.6 percent in 2011 and 7.1 percent in 2012. Both Enterprises performed at a lower level on the very low-income home purchase housing goal in 2013, with Fannie Mae at 6.0 percent and Freddie Mac at 5.5 percent.

Past benchmark levels. The benchmark level for the very low-income home purchase housing goal in 2010 and 2011 was 8 percent. This level was very close to the actual very low-income share of the overall market as measured by HMDA data for 2010 and 2011. The benchmark level for the very low-income home purchase housing goal was lowered to 7 percent for 2012, 2013 and 2014. This new benchmark level was slightly below the actual very low-income share of the overall market in 2012. FHFA estimates that the very low-income share of the overall market for 2013 and 2014 will be below the benchmark level of 7 percent.

Proposed benchmark levels. Although FHFA's market estimation model forecasts the very low-income share of the overall market to be below the current benchmark level, the proposed rule would maintain the existing benchmark level of 7 percent for 2015 through 2017. FHFA is proposing this benchmark level in light of the current two-part process for evaluating Enterprise performance on the single-family housing goals, using both a benchmark level and a retrospective market level. If FHFA adopts an alternative approach that relies solely on benchmark levels, as described below in Section IV.C, FHFA may adopt a benchmark level in the final rule that is lower than the proposed benchmark level of 7 percent.

The market estimation model forecasts a range of possible market levels and, while the proposed benchmark level is above the point estimates for each year from 2015 through 2017, the proposed benchmark level is within the confidence interval range for those years. FHFA is proposing benchmark levels for the very low-income home purchase housing goal that are somewhat higher in the forecast range to encourage the Enterprises to continue to find ways to support lower income borrowers, without compromising safe and sound lending standards. FHFA will continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines in later years that the benchmark level for the very low-income home purchase housing goal is no longer feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

3. Low-Income Areas Home Purchase Subgoal

The low-income areas home purchase subgoal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are either: (1) For families in low-income areas, defined to include census tracts with median income less than or equal to 80 percent of area median income; or (2) for families with incomes less than or equal to area median income who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of the area median income).

The proposed rule would set the annual low-income areas home purchase subgoal benchmark level for 2015 through 2017 at 14 percent. This proposed benchmark level would be an increase over the current benchmark level of 11 percent. However, the proposed benchmark level would be in line with FHFA's forecasts for the actual low-income areas shares of the overall market and in line with the recent performance of the Enterprises on the low-income areas home purchase housing subgoal.

A summary of the past performance of the Enterprises on the low-income areas home purchase subgoal, including past benchmark levels and the size of the market in past years, appears in the Appendix in Table 8.

Market size. FHFA's forecast for the low-income areas share of the overall market for home purchase mortgages is almost the same for each year from 2015 through 2017: 14.7 percent for 2015 and 2016, and 14.2 percent for 2017. These forecasts for the low-income areas share of the overall market are higher than the actual low-income areas shares of the overall market in 2010 through 2012, and are close to or higher than the estimated low-income areas shares for 2013 and 2014. The actual low-income areas market shares for 2010 through 2012 are based on FHFA's analysis of the most recent HMDA data available: 12.1 percent in 2010, declining slightly to 11.4 percent in 2011 before increasing to 13.6 percent in 2012. FHFA estimates that the low-income areas share of the overall market increased to 13.4 percent in 2013, and FHFA forecasts a further increase to 14.3 percent for 2014.

Past performance. The performance of the Enterprises on the low-income areas home purchase subgoal has generally followed the changes in the low-income shares of the overall market between 2010 and 2013. Fannie Mae's performance was 12.4 percent in 2010 and declined to 11.6 percent in 2011 before increasing to 13.1 percent in 2012 and 14.0 percent in 2013. Freddie Mac's performance has followed the same basic pattern. Freddie Mac's performance was 10.4 percent in 2010 and declined to 9.2 percent in 2011 before increasing to 11.4 percent in 2012 and 12.3 percent in 2013.

Past benchmark levels. The benchmark level for the low-income areas home purchase subgoal in 2010 and 2011 was 13 percent. This level was somewhat higher than the actual low-income areas share of the overall market as measured by HMDA data for 2010 and 2011. The benchmark level for the low-income areas home purchase subgoal was lowered to 11 percent for 2012, 2013 and 2014. This new benchmark level turned out to be lower than the actual low-income areas share of the overall market in 2012. FHFA estimates that the low-income areas share of the overall market for 2013 and 2014 will continue to be higher than the 2014 benchmark level of 11 percent.

Proposed benchmark levels. The proposed rule would set the annual low-income areas home purchase subgoal benchmark level for 2015 through 2017 at 14 percent. The proposed benchmark levels are higher than the current benchmark level of 11 percent. However, the proposed benchmark levels are very close to the low-income areas shares of the overall market forecast by FHFA's market estimation model for 2015 through 2017, as well as to the recent performance levels of the Enterprises.

FHFA is proposing this benchmark level in light of the current two-part process for evaluating Enterprise performance on the single-family housing goals, using both a benchmark level and a retrospective market level. If FHFA adopts an alternative approach that relies solely on benchmark levels, as described below in Section IV.C, FHFA may adopt a benchmark level in the final rule that is lower than the proposed benchmark level of 14 percent. FHFA will continue to monitor the Enterprises in its capacities as

regulator and as conservator, and if FHFA determines in later years that the benchmark level for the low-income areas home purchase housing goal is no longer feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

4. Low-Income Areas Home Purchase Goal

The low-income areas home purchase goal covers the same categories as the low-income areas home purchase subgoal, but it also includes moderate income families in designated disaster areas. As a result, the low-income areas home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are: (1) For families in low-income areas, defined to include census tracts with median income less than or equal to 80 percent of area median income; (2) for families with incomes less than or equal to median income who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of the area median income); or (3) for families with incomes less than or equal to median income who reside in designated disaster areas.

The low-income areas goal benchmark level is established by a two-step process. The first step is setting the benchmark level for the low-income areas subgoal, which would be established by this proposed rule. The second step is establishing an additional increment for mortgages to families with incomes less than or equal to the area median income who are located in Federally-declared disaster areas. The disaster areas increment is set annually by FHFA separately from this rulemaking. Each year, FHFA notifies the Enterprises by letter of the benchmark level for that year. Thus, under this process, this proposed rule would set the annual low-income areas home purchase goal benchmark level for 2015 through 2017 at the subgoal benchmark level of 14 percent plus a disaster areas increment that FHFA will set separately and that may vary from year to year.

5. Low-Income Refinancing Goal

The low-income refinancing goal is based on the percentage of all single-family, owner-occupied refinancing mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of the area median income.

The proposed rule would set the annual low-income refinancing housing goal benchmark level for 2015 through 2017 at 27 percent. This proposed benchmark level would be a significant increase from the current benchmark level of 20 percent. However, because FHFA forecasts even larger increases in the low-income share of the overall refinancing mortgage market, the proposed benchmark levels are relatively low in the forecast range for the low-income refinancing housing goal.

A summary of the past performance of the Enterprises on the low-income refinancing housing goal, including past benchmark levels and the size of the market in past years, appears in the Appendix in Table 9.

Market size. FHFA's forecast for the low-income share of the overall market for refinancing mortgages in 2015 is 31.0 percent, increasing to 33.5 percent in 2016 and to 34.2 percent in 2017. These forecasts for the low-income share of the overall market for refinancing mortgages are notably higher than the actual low-income share in recent years. The actual low-income shares are based on FHFA's analysis of the most recent HMDA data available. The low-income share of the overall refinancing mortgage market in 2010 was 20.2 percent, increasing slightly to 21.5 percent in 2011 and to 22.3 percent in 2012. FHFA estimates that the low-income share of the overall refinancing market increased slightly to 22.4 percent in 2013, and FHFA forecasts a more significant increase for 2014, to 27.6 percent.

Past performance. The performance of the Enterprises on the low-income refinancing housing goal was somewhat higher than the actual market levels for 2010 through 2012, as well as the forecast market level for 2013. Since 2010, the low-income refinancing housing goal has treated modifications under the Home Affordable Modification Program (HAMP) as refinancing mortgages for purposes of the housing goals. The Enterprise performance numbers include HAMP modifications, which are not included in the data used to calculate the market levels. Including HAMP modifications in the Enterprise performance numbers tends to increase the measured performance of the Enterprises on the low-income refinancing housing goal. This is because lower income borrowers make up a greater proportion of the borrowers receiving HAMP modifications than the low-income share of the overall refinancing mortgage market.

Fannie Mae's performance on the low-income refinancing housing goal was 20.9 percent in 2010, increasing to 23.1 percent in 2011, falling to 21.8 percent in 2012, and increasing again to 24.3 percent in 2013. Freddie Mac's performance followed a similar pattern, starting at 22.0 percent in 2010, increasing to 23.4 percent in 2011, falling to 22.4 percent in 2012, and increasing again to 24.1 percent in 2013.

Past benchmark levels. The benchmark level for the low-income refinancing housing goal was 21 percent in 2010 and 2011. This level was very close to the actual low-income share of the overall refinancing mortgage market as measured by HMDA data for 2010 and 2011. The benchmark level for the low-income refinancing housing goal was lowered to 20 percent for 2012, 2013 and 2014. This new benchmark level was below the actual low-income share of the overall refinancing mortgage market in 2012. FHFA estimates that the low-income share of the overall refinancing mortgage market for 2013 and 2014 will be significantly higher than the benchmark level of 20 percent.

Proposed benchmark levels. The proposed rule would set the annual low-income refinancing housing goal benchmark level for 2015 through 2017 at 27 percent. This is significantly higher than the current benchmark level of 20 percent. FHFA's market estimation model forecasts the low-income share of the overall refinancing mortgage market to be significantly higher than both the current benchmark level and the recent performance of the Enterprises. Although the proposed rule would increase the benchmark level for the low-income refinancing goal significantly, the proposed benchmark levels would be lower than the point estimates projected by the market estimation model for 2015 through 2017. However, the proposed benchmark level would still be within the range of possible market levels forecast by the market estimation model. In addition, while the forecast of the market level increases each year from 2015 through 2017, the point estimate for 2015 is subject to less uncertainty than the point estimate for 2017. This supports setting the proposed benchmark level closer to the somewhat lower market estimate for 2015 than the higher estimate for 2017.

Although this proposed benchmark level is higher than any level achieved by either Enterprise since 2010 and would represent an increase of 7 percentage points over the current goal, the proposed benchmark level should be achievable because higher income

borrowers are historically more likely to refinance their mortgages when interest rates have decreased. As a result, when interest rates fall, overall refinance volumes tend to increase, but the low-income goal qualifying share tends to decrease. The opposite is true when interest rates increase: There are usually fewer refinancings overall, but a greater percentage of those refinancings are by low-income borrowers. FHFA's market model forecasts that over the next three years the low-income goal-qualifying share of refinancing mortgages will increase significantly both due to future increases in interest rates and due to the fact that many borrowers would already have refinanced during the recent extended period of historically low interest rates.

FHFA is proposing this benchmark level in light of the current two-part process for evaluating Enterprise performance on the single-family housing goals, using both a benchmark level and a retrospective market level. If FHFA adopts an alternative approach that relies solely on benchmark levels, as described below in Section IV.C, FHFA may adopt a benchmark level in the final rule that is lower than the proposed benchmark level of 27 percent. In addition, FHFA will continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines in later years that the benchmark level for the low-income refinancing housing goal is no longer feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

C. Proposed Alternatives to the Market-Based Retrospective Approach

Since 2010, the single-family housing goals have measured Enterprise performance by comparing it to both: (1) A benchmark level that is set in advance, and (2) the actual market level, as measured retrospectively based on HMDA data. Under the current rule, an Enterprise has met a goal if it achieves either the benchmark level for that goal, or the actual, retrospective market size for that goal. FHFA is requesting comment on whether this current approach should be maintained or whether FHFA should adopt a different approach in the final rule.

FHFA is proposing three different alternatives and may adopt any of the three in the final rule. The first alternative would maintain the current approach, measuring performance on the single-family housing goals against both a benchmark level and a market level. The second alternative would eliminate the retrospective market level and measure performance on the single-family housing goals against a benchmark level only. The third alternative would eliminate the prospective benchmark levels and measure performance on the single-family housing goals against a retrospective market level only.

Each of these alternatives strikes a different balance between goals that are established in advance and goals that are determined retrospectively based on market performance. To the extent any of these alternatives sets goal levels in advance, it is easier for the Enterprises to establish plans for meeting the goal, while at the same time it is harder for FHFA to set the goal accurately for more than one year in advance. To the extent that an alternative sets goal levels retrospectively based on market performance, it is harder for the Enterprises to establish plans for meeting the goal, but the goal level is more likely to be feasible because it would be based on the actual performance of the overall market.

Under each of these alternatives, FHFA would continue to monitor the Enterprises in its capacities as regulator and as conservator. If FHFA determines that the housing goals established under any of these alternatives need to be adjusted in light of changes in the market, to ensure the safety and soundness of the Enterprises, or for any other reason, FHFA will take all appropriate steps, including adjusting the levels of the housing goals or initiating additional rulemaking to amend the housing goals regulation.

Alternative 1: Benchmark Level and Market Level. The first alternative being proposed by FHFA would continue evaluating Enterprise performance based on a comparison with both a benchmark level that is set prospectively by regulation and a retrospective market level based on HMDA data.

This alternative would maintain the existing regulatory language in § 1282.12. Paragraph (a) would continue to provide that ''[a]n Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either: (1) The share of the market that qualifies for the goal; or (2) The benchmark level for the goal.'' Paragraph (b) would define the process for measuring the share of the market that qualifies for the goal. The remaining paragraphs in the section would describe each of the single-family housing goals, including the retrospective market share and the benchmark level, where applicable.

This two-part approach incorporates some of the advantages both of a benchmark level that is set prospectively and of a market level that is set retrospectively. By including a benchmark level, the two-part approach gives the Enterprises more certainty in planning how they will achieve the single-family housing goals each year. At the same time, the retrospective market level measure helps to address the inherent difficulty of accurately forecasting, years in advance, the housing goals shares of the overall market. The retrospective market level is much more adaptive than a fixed benchmark level by itself, although the HMDA data used for the retrospective measure does not become available until September of the following year. The retrospective market level incorporates many of the same considerations that FHFA uses in setting the prospective benchmark levels, but it is based on the actual performance of the market in the year being evaluated. This versatility helps ensure that the single-family goals are feasible for the Enterprises to achieve each year. Without the retrospective market approach, additional regulatory action would be required for the agency to adapt to unanticipated market changes.

One disadvantage of this two-part approach is that if the Enterprises anticipate that the retrospective market level will end up lower than the benchmark level for a particular year, the single-family housing goals may provide less of an incentive for the Enterprises to serve the targeted parts of the market. On the other hand, the Enterprise would still have some incentive to meet benchmark targets in the first instance, rather than waiting to find out the results of the market-based analysis.

Another potential disadvantage of the retrospective, market-based approach generally is that it may be less meaningful under market circumstances where the Enterprises purchase a large percentage of the total number of single-family, conventional conforming mortgages in a particular year. In those circumstances, the retrospective, market-based approach would effectively compare the performance of the Enterprises to their own activity.

FHFA welcomes comments on this alternative, including any other advantages or disadvantages of measuring performance against both a benchmark level and the market level.

Alternative 2: Benchmarks Only. The second alternative being proposed by FHFA would be to evaluate Enterprise performance on the single-family housing goals based solely on a

comparison with a benchmark level that is set prospectively by regulation.[10]

This alternative would revise the existing regulatory language in § 1282.12(a) to provide that ''[a]n Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds the benchmark level for the goal.'' The current paragraph (b) would be deleted from the regulation. The remaining paragraphs in the section would be revised to delete from each the current subparagraph (1), which refers back to the retrospective market level. As revised, these paragraphs would simply set out the benchmark levels for each of the single-family housing goals.

An advantage of this approach is that it would provide the Enterprises with certainty in planning how to achieve the single-family housing goals each year. Another advantage of this approach would be that FHFA could determine whether the Enterprises met the single-family goals relatively early in the year, allowing the Enterprises to adjust their activities if necessary.

A disadvantage of the benchmarks-only approach is the difficulty in accurately forecasting market dynamics and goal-qualifying share levels years in advance. As a result, much of the impact of using housing goals based only on prospective benchmark levels depends on whether those forecasts are accurate or if the actual market level for that year is higher or lower than the benchmark level. If the actual market level for a particular year turns out to be higher than the benchmark level that was set in advance, the Enterprises are likely to find the goal easy to achieve without a particular focus on serving the portions of the single-family market targeted by the housing goals. Conversely, if the actual market level for a particular year turns out to be lower than the benchmark level that was set in advance, the Enterprises may find the goal difficult or impossible to achieve.

If FHFA adopts this alternative, FHFA would consider whether adjustments to the proposed benchmark levels for the single-family housing goals are necessary. Without the existence of the retrospective market level to help mitigate the uncertainty in projecting the market shares for each goal, FHFA's considerations might lead the agency to select a benchmark that is in the lower part of the projected market range.

FHFA welcomes comments on this alternative, including any other advantages or disadvantages of measuring performance against a benchmark level only. FHFA also encourages commenters to address what benchmark levels would be appropriate for each of the single-family housing goals if FHFA adopts this alternative in the final rule.

Alternative 3: Market Level Only. The third alternative being proposed by FHFA would be to evaluate Enterprise performance on the single-family housing goals based solely on a comparison with a retrospective market level based on HMDA data.

This alternative would revise the existing regulatory language in § 1282.12(a) to provide that ''[a]n Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the goal.'' Paragraph (b) would define the process for measuring the share of the market that qualifies for the goal. The remaining paragraphs in the section would be revised to delete from each the current subparagraph (2), which sets out the benchmark level for each single-family housing goal.

Under this alternative, whether an Enterprise meets a particular housing goal would depend solely on whether the performance of the Enterprise met the actual market level for that year. This would eliminate the need for FHFA to forecast the goal-qualifying share of the overall market, and it would make it more likely that the single-family goals would be feasible for the Enterprises each year compared to Alternative 2. An additional advantage of this approach would be that it would require the Enterprises to continue efforts to support all aspects of the market in years when the actual market levels are higher than forecasts would have predicted.

A disadvantage of this approach would be that it may be more difficult for the Enterprises to establish plans for how to meet or exceed the actual market level. If FHFA adopts this alternative, it may be necessary for FHFA to require more frequent reporting from the Enterprises on their current activities and on their forecasts and plans for addressing the housing goals over the course of each year. As discussed under Alternative 1, another disadvantage of the retrospective, market-based approach is that it may be less meaningful under market circumstances where the Enterprises purchase a large percentage of mortgages in a particular year. In addition, this alternative would not allow FHFA to determine whether an Enterprise has met the single-family goals until October of the following year.

FHFA welcomes comments on this alternative, including other advantages or disadvantages of measuring performance against a market level that can only be determined retrospectively, or against a market level based on data from a previous year.

V. Multifamily Housing Goals

A. Factors Considered in Setting the Proposed Multifamily Housing Goal Levels

Section 1333(a)(4) of the Safety and Soundness Act requires FHFA to consider the following six factors in setting the multifamily housing goals:

1. National multifamily mortgage credit needs and the ability of the Enterprise to provide additional liquidity and stability for the multifamily mortgage market;
2. The performance and effort of the Enterprise in making mortgage credit available for multifamily housing in previous years;
3. The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;
4. The ability of the Enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;
5. The availability of public subsidies; and
6. The need to maintain the sound financial condition of the Enterprise.[11]

In setting the proposed benchmark levels for the multifamily housing goals, FHFA has considered each of the six statutory factors. The statutory factors for the multifamily goals are very similar, but not identical, to the statutory factors considered in setting the benchmark levels for the single-family housing goals. At the same time, there are several important distinctions between the single-family housing goals and the multifamily housing goals. While there are separate single-family housing goals for home purchase and refinancing mortgages, the multifamily goals include all Enterprise multifamily mortgage purchases, regardless of the purpose of the loan. In addition, unlike the single-family housing goals, by statute the multifamily goals are measured based on the total volume of affordable multifamily mortgage purchases, not based on a percentage of multifamily mortgage purchases. The use of total volumes, which FHFA measures by the number of eligible

[10] Prior to 2010, the Enterprise housing goals consisted solely of benchmark levels that were set prospectively.

[11] 12 U.S.C. 4563(a)(4).

units, rather than percentages of each Enterprises' overall multifamily purchases requires particular attention both to the overall size of the multifamily mortgage market and to the expected volume of the Enterprises' multifamily purchases in a given year.

Another difference between the single-family and multifamily goals is that performance on the multifamily housing goals is measured based solely on a benchmark level, without any retrospective market measure. The absence of a retrospective market measure for the multifamily housing goals results, in part, from the lack of comprehensive data about the multifamily mortgage market. Unlike the single-family market, where HMDA provides a reasonably comprehensive dataset about single-family mortgage originations each year, the multifamily market (and the affordable multifamily market segment) has no such comparable data set. As a result, it can be difficult to correlate different data sets that may rely on different reporting formats—for example, some data is available by dollar volume while other data is available by unit production. The lack of comprehensive data about the multifamily mortgage market is even more acute with respect to the segments of the market that are targeted to low-income families, defined as families with incomes less than or equal to 80 percent of the area median income, and very low-income families, defined as families with incomes less than or equal to 50 percent of the area median income. Much of the analysis that follows discusses trends in the overall multifamily mortgage market. FHFA recognizes that these general trends may not apply to the same extent to all segments of the market.

FHFA has considered each of the required statutory factors and a discussion of the various factors, a number of which are related or overlap, follows.

1. The Multifamily Mortgage Market: Market Size, Competition and the Affordable Multifamily Market

FHFA's consideration of the multifamily mortgage market addresses the size of and competition within the multifamily mortgage market, as well as the subset of the multifamily market affordable to low-income and very low-income families (Factors 1, 3 and 5). Recent trends in the multifamily market indicate that overall multifamily mortgage market volumes are expected to increase between 2014 and 2017, both in terms of total refinancing activity and total financing for new multifamily units being completed. However, FHFA expects the Enterprises will make up a smaller share of the overall multifamily mortgage market due to increased participation from the private sector. FHFA has also considered the importance of Enterprise support of the multifamily market in light of recent decreases in rental affordability.

Multifamily mortgage market size. The overall size of the multifamily market, in terms of units, was over 23 million rental units in 2011, according to the data from the U.S. Census Bureau in the 2011 American Community Survey (ACS).[12] The size of the multifamily market in terms of mortgage origination volume varies significantly from year to year based on a variety of market conditions.

During the financial crisis and the resulting decline in the housing market, the size of the multifamily mortgage market decreased significantly. Overall, multifamily mortgage originations fell from $147.7 billion in 2007 to $87.9 billion in 2008 and $52.5 billion in 2009, as shown in Table 1. The declines were even more pronounced in the private sector segment of the multifamily market, which decreased from almost $112 billion in 2007 to $46.4 billion in 2008 and $18.4 billion in 2009. The Enterprises' multifamily purchases provided a countercyclical source of financing during this same period. While the size of the overall multifamily mortgage market was declining, the volume of Enterprise purchases was relatively steady. The combined volume of Enterprise purchases in 2007, excluding purchases of commercial mortgage-backed securities (CMBS), was $34.6 billion. The Enterprises' combined multifamily volume rose to $40 billion in 2008 before declining to $31 billion in 2009.

TABLE 1—GOVERNMENT AND PRIVATE SECTOR MARKET SHARE OF MULTIFAMILY ORIGINATIONS

Year	Total volume S Bil.	% Fannie Mae	% Freddie Mac	% Enterprise total	% FHA	% Private sector
2005	$133.1	11.7	6.7	18.4	2.2	79.3
2006	138.0	11.7	7.1	18.8	10	80.2
2007	147.7	13.1	10.4	23.4	0.8	75.8
2008	87.9	25.4	20.1	45.5	1.7	52.8
2009	52.5	30.2	28.9	59.2	5.6	35.2
2010	68.8	24.5	20.3	44.8	15.3	40.0
2011	110.1	20.9	18.9	39.8	10.6	49.6
2012	146.1	21.7	18.3	39.9	10.2	49.8
2013	170.0	16.6	14.8	31.4	10.4	58.3

*FHA data is for fiscal year 2005 to 2013.
Sources: "MBA Commercial Real Estate Finance Survey."
Sources for 2013 data: Fannie Mae, Freddie Mac, and FHA. Total 2013 volume derived from "MBA Commercial Real Estate Finance Survey" data.
Note: All multifamily loans in CMBS issuances are included under "Private Sector", regardless of the investor.

Since 2009, the overall size of the market has rebounded and has shown increasing private sector participation. The market has increased from a low of $52.5 billion in 2009, to $69 billion in 2010, $110 billion in 2011, and $146 billion in 2012. Total multifamily mortgage originations from all capital sources continued to increase in 2013, to $170 billion.[13]

Competition in the multifamily mortgage market. Increased demand for multifamily housing and strong investment returns have attracted banks, insurance companies, CMBS issuers, and other private lenders back to the

[12] U.S. Census Bureau, 2011 American Community Survey (ACS). The percentage of multifamily units relative to all housing units was highest in the Middle Atlantic Division (23.1 percent), the Pacific Division (21.7 percent), and the South Atlantic Division (18.4 percent).

[13] MBA, Annual Origination Volume Summary (February 3, 2014).

multifamily market.[14] Much of the increase in private sector activity has come from commercial banks and life insurance companies, the entities, other than the Enterprises, that purchase the most multifamily mortgages. Additionally, multifamily loans included in CMBS issuances increased from $785 million in the first half of 2013 to $2.6 billion in the first half of 2014.[15] FHA also remained a significant backer of multifamily mortgages, insuring over $18 billion in multifamily loans in 2013.[16] As reflected in Table 1, increased competition in the multifamily mortgage market resulted in the Enterprises' multifamily market share declining from a peak of almost 60 percent in 2009 to just under 40 percent in 2011 and 2012 and to just over 30 percent in 2013.[17]

The decrease in market share for the Enterprises relative to the overall market is expected to continue in 2014 and beyond. According to the MBA multifamily originations index, total multifamily originations for the first quarter of 2014 were about the same as first quarter 2013 data. MBA data shows a sharp rise in multifamily lending by banks and life insurance companies from first quarter 2013 compared to first quarter 2014.[18] The increase in activity by banks and life insurance companies likely affected the Enterprises' combined multifamily loan purchases, which were down by almost 50 percent in the first half of 2014 compared to their purchases in the first half of 2013. While this sharp decline is unlikely to continue through the rest of 2014, the overall trend of increased competition from the private sector is expected to continue in 2014 and beyond.

Affordable Multifamily Market Segment. FHFA's consideration of the multifamily mortgage market is limited by the lack of comprehensive data about the size of the market for low-income and very low-income families. However, FHFA recognizes that the portion of the overall multifamily mortgage market that is affordable to low-income and very low-income families may vary from year-to-year, that the competition within the multifamily market overall may differ from the competition within the affordable multifamily market segment, and that the volume for the affordable multifamily market segment will also be related to the availability of affordable housing subsidies.

Affordability for families living in rental units has decreased in recent years for many households. Spending more than 30 percent of household income towards rent is often used as a measure of whether a household is rent burdened, and the Safety and Soundness Act also incorporates this metric when determining whether a unit meets the low-income or very low-income categories, with appropriate adjustments for unit size.[19] According to the Joint Center on Housing Studies, ''[t]he share of cost-burdened renters increased in all but one year from 2001 to 2011, to just above 50 percent. More than a quarter of renter households (28 percent) had severe burdens (paid more than half their incomes for housing). In 2012, the share of cost-burdened renters improved slightly but their numbers held steady as more households entered the rental market.'' [20]

The affordable segment of the multifamily market is critical in meeting the housing needs of low-income and very low-income families that would otherwise be rent-burdened. Financing for affordable multifamily buildings—particularly those that are affordable to very low-income families, defined as families with incomes at or below 50 percent of AMI—often uses an array of state and federal housing subsidies, such as low-income housing tax credits (LIHTCs), tax-exempt bonds, Section 8 rental assistance or soft subordinate financing. Investor interest in tax credit equity projects of all types and in all markets is strong and is expected to remain so, especially in markets in which bank investors are seeking to meet Community Reinvestment Act (CRA) goals. Consequently, there should continue to be opportunities in the multifamily market to provide permanent financing for properties with low-income housing tax credits during the 2015–2017 period. Additionally, there should also be opportunities for market participants, including the Enterprises, to purchase mortgages that finance the preservation of existing affordable housing units (especially for restructurings of older properties that reach the end of their initial 15-year LIHTC compliance periods and for refinancing properties with expiring Section 8 rental assistance contracts).

2. Factors Impacting the Multifamily Mortgage Market

FHFA has considered a variety of economic indicators and measures related to the size and affordability of the multifamily mortgage market, which reflect fundamentals in the overall multifamily market and an ongoing need for affordable multifamily rental units. This section examines the following: interest rates, property values, multifamily rents, vacancy rates, multifamily building permits, multifamily housing starts, and multifamily housing completions.

Interest rates. The volume of multifamily mortgage originations is influenced heavily by interest rates. Although interest rates rose in 2013, they remained low compared to historical levels. If multifamily mortgage rates increase relative to the lower rates prior to 2013, multifamily mortgage origination volumes would be expected to decrease, including both refinancings and purchases.

Lower mortgage interest rates in recent years have resulted in refinancings making up a significant percentage of overall multifamily volume. This is reflected in the share of multifamily units financed by mortgages purchased by the Enterprises. For Fannie Mae, the share of multifamily units financed that were refinancings (as opposed to purchases, new construction, or preservation) increased from 64 percent in 2009, peaked at 75 percent in 2010, and declined to 66 percent in 2011, 66 percent in 2012, and 60 percent in 2013. For Freddie Mac the share of multifamily units financed that were refinancings declined from 77 percent in 2009, to 61 percent in 2010, 59 percent in 2011, 58 percent in 2012, and 50 percent in 2013.[21] If mortgage interest rates increase, the volume of refinancing mortgages can be expected to decrease.

In addition to the impact on refinancing volumes, increases in mortgage interest rates would make it more costly to finance the purchase of multifamily properties. The increased cost of multifamily financing would tend to decrease the volume of multifamily mortgage originations that fund purchases of multifamily properties.

Property values. As of the end of January 2014, multifamily property values were up over 13 percent from January 2013 and are now at or above the peak reached in 2007.[22] Rising

[14] National Mortgage News, ''JPMorgan's Appetite for Multifamily Loans Keeps Growing'' (February 19, 2014).

[15] Bloomberg and Commercial Mortgage Alert.

[16] FHA, Annual Management Report, 2013.

[17] Computed from data in the ''MBA Commercial Real Estate Finance Survey''; Mortgage Bankers Association CREF Conference presentation: ''The Economy and Multifamily Finance Markets'' (February 4, 2014).

[18] MBA, ''Commercial Real Estate/Multifamily Finance Quarterly Data Book'' (June, 2014).

[19] 12 U.S.C. 4563(c).

[20] Joint Center for Housing Studies, Harvard University, ''The State of the Nation's Housing,'' p.5 (2014).

[21] Enterprise data.

[22] Moody's/Real Capital Analytics, ''Composite CPPI Indices'' (January, 2014), *https://www.rcanalytics.com/Public/rca_cppi.aspx.*

multifamily property values usually spur increases in refinancings, property sales, and new construction activity. The impact of higher multifamily property values may be offset to some extent by rising interest rates. FHFA anticipates that multifamily property values will continue to increase in 2014, with more modest increases continuing during 2015–2017.

Multifamily vacancy rates and rents. During the housing crisis, vacancy rates for multifamily properties increased significantly and median asking rents declined. Since that time, vacancy rates have returned to lower levels, while rents have increased. Rental vacancy rates for multifamily units peaked at over 13 percent in the third quarter of 2009 but have declined each year since. Vacancy rates fell to around 9 percent in 2012 and have continued to average around 9 percent through 2013.[23] Median asking rents nationwide declined slightly between 2009 and 2011, from $708 in 2009 to $694 in 2011. Median asking rents have increased since 2011, reaching $734 in 2013 and $756 in the second quarter of 2014.[24] Both the average vacancy rates and median asking rents indicate that the market for multifamily housing will remain relatively strong, though trends in both measures are likely to moderate.

Multifamily building permits, starts and completions. Multifamily building permits and starts have recovered in recent years, after falling significantly after the housing market crisis. Multifamily building permits averaged 357,000 units annually between 2005 and 2008. The annual volume of multifamily building permits fell dramatically in 2009 and 2010, to approximately 130,000 units per year. The volume of permits has increased in the years since 2010, exceeding 340,000 units in 2013 and on pace to do the same in 2014.[25] Multifamily housing starts have followed the same pattern, averaging approximately 287,000 units annually between 2005 and 2008. Multifamily housing starts dropped to just under 100,000 units each year in 2009 and 2010, and have since increased, exceeding 293,000 units in 2013.[26]

Multifamily housing completions have followed a similar pattern, though as expected, the changes in volume have occurred somewhat later than the volume changes in permits and starts. Multifamily housing completions exceed 250,000 units each year from 2005 through 2009. The decline that was seen in multifamily building permits and housing starts in 2009 and 2010 occurred for multifamily housing completions in 2010 and 2011, when the number of multifamily units completed was below 150,000 units each year. Multifamily housing completions have also been slower to recover, reaching 186,000 units in 2013.[27] However, given the recent increases in volume for multifamily building permits and housing starts, multifamily housing completions are expected to increase in coming years.

3. Enterprise Multifamily Performance

The Enterprises have served a consistent and critical role in the multifamily market in the years since the financial crisis. In the final rule establishing the multifamily goals for 2012 through 2014, FHFA increased these goal levels compared to previous years, reflecting the Enterprises' increased market share since 2008. However, in anticipation of increased private market activity during 2012 through 2014, FHFA also decreased these goals each of those years with 2012 being the highest and 2014 being the lowest. As required by the Safety and Soundness Act, FHFA has considered the performance of the Enterprises in previous years (Factor 2) in establishing the multifamily housing goal benchmark levels for 2015 through 2017.

In previous years, FHFA established higher multifamily housing goal levels for Fannie Mae than for Freddie Mac in order to reflect the larger size and more established history of Fannie Mae's multifamily purchase business. Fannie Mae consistently financed more low-income and very low-income units than Freddie Mac every year between 2009 and 2013. The difference between the volume of low-income units financed by mortgages purchased by Fannie Mae relative to Freddie Mac has been relatively stable, with Fannie Mae's volume being 67,800 units higher in 2009, 53,500 units higher in 2010, 72,200 units higher in 2011, 77,400 units higher in 2012, and 71,500 units higher in 2013. The difference between the volume of very low-income units financed by mortgages purchased by Fannie Mae relative to Freddie Mac has varied more, with Fannie Mae's volume being 40,500 units higher in 2009, 24,300 units higher in 2010, 48,800 units higher in 2011, 48,800 units higher in 2012, and 21,300 units higher in 2013.[28]

Multifamily low-income housing goal. The multifamily low-income housing goal includes units affordable to low-income families, defined as families with incomes no greater than 80 percent of area median income. In 2013, both Enterprises reported that they exceeded their low-income multifamily goals. Fannie Mae purchased mortgages financing 326,597 such units, compared to the 2013 goal level of 265,000 units. Freddie Mac purchased mortgages financing 255,057 units, compared to the 2013 goal level of 215,000 units.

Starting in 2010, Fannie Mae and Freddie Mac have purchased a relatively stable percentage of low-income multifamily units relative to their total multifamily purchases, as is shown in Table 2. The share of low-income units purchased by Fannie Mae compared to its total purchases rose from 68 percent in 2009 to a range of 75 percent to 77 percent between 2010 and 2013. Similarly, Freddie Mac's low-income unit-eligible purchases rose from 65 percent in 2009 to a range of 75 percent to 79 percent between 2010 and 2013.[29]

[23] U.S. Census Bureau, ''Rental Vacancy Rates by Units in Structure.'' The vacancy rates reported by the U.S. Census Bureau are different from some other sources, but trends are similar. For example, data from CB Richard Ellis shows rental vacancy rates for multifamily units averaging over 7 percent in 2009 before falling to just under 5 percent in 2012 and 2013.

[24] U.S. Census Bureau, ''Median Asking Rent for the U.S. and Regions.'' The asking rents reported by the U.S. Census Bureau are different from some other sources, but trends are similar. For example, data from CB Richard Ellis shows average rent rates at $1,211 in 2009 and $1,191 in 2010, then increasing steadily to $1,339 in 2013.

[25] U.S. Census Bureau, ''New Privately Owned Housing Units Authorized by Building Permits in Permit-Issuing Places (In structures with 5 units or more).''

[26] U.S. Census Bureau, ''New Privately Owned Housing Started (In structures with 5 units or more).''

[27] U.S. Census Bureau, ''New Privately Owned Housing Units Completed (In structures with 5 units or more).''

[28] Enterprise data.

[29] Enterprise data.

TABLE 2—ENTERPRISE PAST PERFORMANCE ON THE LOW-INCOME MULTIFAMILY GOAL, 2006–13

[Goals and performance measured in low-income multifamily units financed]

Year	Fannie Mae				Freddie Mac			
	Goal	Performance	Total multifamily units financed	Low-income %	Goal	Performance	Total multifamily units financed	Low-income %
2013	265,00	326,597	430,751	76	215,000	255,057	341,921	75
2012	285,000	375,924	501,256	75	225,000	298,529	377,522	79
2011	177,750	301,224	390,526	77	161,250	229,001	290,116	79
2010	177,750	214,997	286,504	75	161,250	161,500	216,042	75
2009	NA	235,199	344,989	68	NA	167,026	256,346	65
2008	NA	450,850	653,060	69	NA	268,036	375,760	71
2007	NA	392,666	668,963	59	NA	298,746	388,072	77
2006	NA	313,620	427,130	73	NA	174,377	224,608	78

Source: Performance as reported by the Enterprise for 2013; official performance as determined by FHFA for 2010–12; performance if the goal had been in effect for 2006–09 as calculated by FHFA.''Low-income'' refers to units affordable to renters with incomes no greater than 80 percent of Area Median income (AMI), based on a rental proxy.

Note: Figures do not include any units financed by the purchase of commercial mortgage-backed securities (CMBS).

Multifamily very low-income subgoal. The multifamily very low-income housing subgoal includes units affordable to very low-income families, defined as families with incomes no greater than 50 percent of area median income. Enterprise purchases of mortgages that finance properties with rental units affordable to very low-income families over the 2010–2013 period is reflected in Table 3. From 2010 to 2013, Fannie Mae purchased mortgages financing an average of 81,000 such units each year, peaking at 108,878 units in 2012, and Freddie Mac purchased mortgages financing an average of 46,000 such units each year, peaking at 60,084 units in 2012.

In 2013, both Enterprises reported that they exceeded their very low-income multifamily goals. Fannie Mae purchased mortgages financing 78,071 such units, compared to the 2013 goal of 70,000 units. Freddie Mac purchased mortgages financing 56,979 units, compared to the 2013 goal of 50,000 units.

In recent years, Fannie Mae has purchased a higher percentage of very low-income units, although this difference was very small in 2013, as shown in Table 3. Fannie Mae's very low-income purchases were 18 percent of its overall multifamily purchases in 2009, rising to 22 percent in 2011 and 2012 and then falling to 18 percent in 2013. Freddie Mac's very low-income purchases were unusually low in 2009, at 8 percent of its overall multifamily purchases, but returned to a more normal level of 14 percent in 2010, and has fluctuated since then, increasing to 17 percent in 2013.[30]

TABLE 3—ENTERPRISE PAST PERFORMANCE ON THE VERY LOW-INCOME MULTIFAMILY SUBGOAL, 2006–13

[Goals and performance measured in very low-income multifamily units financed]

Year	Fannie Mae				Freddie Mae			
	Goal	Performance	Total multifamily units financed	Very low-income %	Goal	Performance	Total multifamily units financed	Very low-income %
2013	70,00	78,071	430,751	18	50,000	56,752	341,921	17
2012	80,000	108,878	501,256	22	59,000	60,084	377,522	16
2011	42,750	84,244	390,526	22	21,000	35,471	290,116	12
2010	42,750	53,908	286,504	19	21,000	29,656	216,042	14
2009	NA	60,765	344,989	18	NA	20,302	256,346	8
2008	NA	96,242	653,060	15	NA	45,154	375,760	12
2007	NA	88,901	668,963	13	NA	59,821	388,072	15
2006	NA	88,521	427,130	21	NA	34,638	224,608	15

Source: Performance as reported by the Enterprise for 2013; official performance as determined by FHFA for 2010–12; performance if the goal had been in effect for 2006–09, as calculated by FHFA. ''Very low-income'' refers to units affordable to renters with incomes no greater than 50 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include any units financed by the purchase of commercial mortgage-backed securities (CMBS).

[30] Enterprise data.

4. Ability of the Enterprises to Lead the Market in Making Multifamily Mortgage Credit Available and Need To Maintain Sound Financial Condition of the Enterprises

In setting the proposed multifamily housing goals, FHFA has considered the ability of the Enterprises to lead the market in making multifamily mortgage credit available (Factor 4). As discussed above, the Enterprises' share of the overall multifamily market increased in the years immediately following the financial crisis and has reduced in more recent years in response to growing private sector participation. Despite the Enterprises' reduced market share in the overall multifamily market, they should continue to demonstrate leadership in multifamily affordable housing lending, which includes supporting housing for tenants at different income levels in various geographic markets and in various market segments.

In setting the proposed multifamily housing goals, FHFA has also considered the importance of maintaining the Enterprises in sound and solvent financial condition (Factor 6). During the conservatorships, the delinquency and default performance of the Enterprise portfolios of loans on multifamily affordable housing properties has not been significantly different from the performance of loans on market rate properties, which experienced extremely low delinquency and foreclosure rates. The Enterprises should, therefore, be able to sustain or increase their volume of purchases of loans on affordable multifamily housing properties without impacting the Enterprises' safety and soundness or negatively affecting the performance of their total loan portfolio.

FHFA continues to monitor the activities of the Enterprises, both in FHFA's capacity as safety and soundness regulator and as conservator. If necessary, FHFA will make appropriate changes in the multifamily housing goals to ensure the Enterprises' continued safety and soundness.

B. Proposed Multifamily Housing Goal Benchmark Levels

Based on FHFA's consideration of each of the statutory factors as described above, the proposed rule would establish new benchmark levels for the multifamily housing goals that are at the same level as the current goals for Fannie Mae and are gradually increasing for Freddie Mac. While the proposed multifamily benchmark levels are lower than the Enterprises' actual low-income and very low-income purchases in 2012 and 2013, FHFA expects that Fannie Mae and Freddie Mac will play a smaller role in the overall multifamily market as private sector activity increases. The Enterprise share of the overall market between 2005 and 2007 was around 20 percent. As overall multifamily origination volumes fell in 2008 through 2010, the Enterprise share increased significantly, reaching almost 60 percent in 2009. The Enterprise share of the market has decreased since 2009 as overall multifamily origination volumes have increased. The Enterprise share of the market was just over 30 percent in 2013, and preliminary data for both Enterprises show a sharp decrease in multifamily purchases in the first half of 2014, compared to the first half of 2013. While these trends are likely to moderate, the Enterprise share of the overall multifamily mortgage market is expected to remain relatively low in 2015 through 2017.

Under these market circumstances, the proposed multifamily benchmark levels would require the Enterprises to continue to support affordable multifamily housing despite their decreasing role overall. Before finalizing the benchmark levels for the low-income and very low-income multifamily goals in the final rule, FHFA will review any additional data that becomes available about the multifamily performance of the Enterprises in 2014, along with any comments on the proposed multifamily housing goals.

Additionally, the proposed rule would continue to set the multifamily housing goal levels for Freddie Mac at lower levels than the multifamily housing goals for Fannie Mae. These lower multifamily goal levels reflect the smaller overall unit volume of Freddie Mac's multifamily business when compared to Fannie Mae's. The proposed rule would increase the multifamily goal levels for Freddie Mac by a small amount each year from 2015 through 2017, but Freddie Mac's multifamily goal levels would continue to be lower than Fannie Mae's. FHFA requests comment on whether the low-income and very low-income multifamily goals for Fannie Mae and Freddie Mac should be set at different levels based on their expected volumes, or whether Fannie Mae and Freddie Mac should be expected to meet the same multifamily goal levels, and if so, whether the same goal levels should apply starting in 2015, 2016 or 2017. Commenters are encouraged to address specifically whether it would be feasible for both Enterprises to meet the same multifamily goals starting in 2015, as well as what impact requiring the same goals starting in 2015 would have on the market or on the Enterprises.

The proposed rule would also change several definitions to ensure that any unit claimed as goals eligible is, in fact, a unit with affordable rents. These changes are expected, however, to have only a limited impact on the ability of the Enterprises to meet the 2015 through 2017 multifamily housing goals.

Low-income families multifamily housing goal. The low-income families multifamily housing goal is based on the total number of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of the area median income. The proposed rule would set the annual low-income multifamily housing goal for Fannie Mae at 250,000 units in each year from 2015 through 2017. This would be the same as the low-income multifamily housing goal for Fannie Mae for 2014. The proposed rule would gradually increase the annual low-income multifamily housing goal for Freddie Mac in each year from 2015 through 2017, from 200,000 units for 2014 to 210,000 units in 2015, 220,000 units in 2016, and 230,000 units in 2017.

Very low-income families multifamily subgoal. The very low-income families multifamily housing subgoal is based on the total number of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to very low-income families, defined as families with incomes less than or equal to 50 percent of the area median income. The proposed rule would set the annual very low-income multifamily subgoal for Fannie Mae at 60,000 units each year from 2015 through 2017. This would be the same as the very low-income multifamily subgoal for Fannie Mae for 2014. The proposed rule would gradually increase the very low-income multifamily subgoal for Freddie Mac in each year from 2015 through 2017. The very low-income families multifamily housing subgoal for Freddie Mac is currently set at 40,000 units for 2014. The proposed rule would increase this subgoal to 43,000 units in 2015, 46,000 units in 2016, and 50,000 units in 2017.

VI. Low-Income Housing Subgoal for Small Multifamily Properties

This proposed rule would establish a new low-income housing subgoal for small multifamily properties beginning in 2015. The Safety and Soundness Act requires the Enterprises to report on their volume of low-income small

multifamily purchases and gives FHFA discretion to add a multifamily subgoal for this category.[31] FHFA has not previously established a subgoal for affordable small multifamily properties, but proposes to do so in this rule.

The Safety and Soundness Act also gives FHFA discretion to define ''small multifamily properties'' either in terms of the number of units in the property or in terms of the size of the loan.[32] The proposed rule would define ''small multifamily properties'' as those with 5 to 50 units. FHFA is not proposing to define small multifamily properties in terms of loan amount because some larger multifamily properties with more than 50 units may obtain low-leverage financing, meaning the Enterprise loan is small but the property securing the loan is not. Including smaller loans on larger properties would tend to overstate the level of support that the Enterprises provide for small multifamily properties.

The proposed rule would initially set the new subgoal benchmark levels for the low-income housing subgoal for small multifamily properties at low levels relative to the overall size of the small multifamily mortgage market. The gradually increasing levels of the proposed low-income housing subgoal for small multifamily properties will allow FHFA to assess potential impacts of increased Enterprise participation in this segment of the market. FHFA welcomes comments on those potential impacts and will consider any comments received.

A. Factors Considered in Setting the Proposed Levels for the Low-Income Housing Subgoal for Small Multifamily Properties

The Safety and Soundness Act requires FHFA to consider the same six factors in setting the low-income housing subgoal for small multifamily properties that were considered in setting the low-income and very low-income multifamily housing goals: National multifamily mortgage credit needs; past performance of the Enterprises; multifamily mortgage market size; ability to lead the market; availability of public subsidies; and the need to maintain the sound financial condition of the Enterprises.[33] FHFA has considered each of these six statutory factors in setting the proposed benchmark levels for the low-income housing subgoal for small multifamily properties.

Because small multifamily loans are one component of the overall multifamily mortgage market, many of the same trends that were discussed previously in the context of the low-income and very low-income multifamily housing goals also apply to the small multifamily market. In general, FHFA expects that there will be an increasing volume of multifamily mortgage originations over the next several years, but that the Enterprises will purchase a decreasing share of this volume. FHFA recognizes the market for mortgages on small multifamily properties may also differ in important ways from the overall multifamily mortgage market. While information about the small multifamily mortgage market is limited, FHFA has considered the extent to which the broader trends applicable to the multifamily mortgage market are expected to be reflected for small multifamily mortgages to the extent information is available and will continue to do so.

1. The Small Multifamily Market: Size, National Mortgage Credit Needs and Availability of Public Subsidies

Small multifamily properties are a significant source of affordable rental housing. Small multifamily properties represent one-third of all multifamily rental units[34] and rents in small multifamily properties are often lower than rents in larger multifamily properties. The Enterprises have played a relatively limited role in supporting financing for small multifamily properties. The proposed low-income housing subgoal for small multifamily properties would provide an additional incentive for the Enterprises to support this important source of affordable rental housing. FHFA's consideration of the mortgage market for small multifamily properties addresses the size of the small multifamily mortgage market, national mortgage credit needs, and the availability of public subsidies (Factors 1, 3 and 5).

Small multifamily market size. There is limited data available on the overall size of the market for mortgages on small multifamily properties. Data on the multifamily mortgage market is generally reported based on loan balances rather than property size, which necessitates using loan balances to estimate the size of the market for multifamily properties that have between 5 and 50 units. Although using loan balances between $1 million and $3 million dollars will include some smaller balance loans on larger properties and will exclude some larger loans on smaller properties, it can provide an estimate of the size of the mortgage market for multifamily properties that have between 5 and 50 units.

According to data from the Mortgage Bankers Association (MBA), the volume of multifamily loans with balances from $1 million to $3 million originated in 2006 and 2007 was just over $34 billion each year. These volumes declined significantly in 2008 through 2010, falling as low as $8 billion in 2009. The volume of small multifamily loans has increased steadily since 2010, reaching $34 billion again in 2012. This represents over 25 percent of all multifamily mortgage loans originated in that year.

The trends in origination volumes for small multifamily loans have followed a similar pattern to those for the overall multifamily mortgage market. As discussed above, the size of the overall multifamily mortgage market in 2005 through 2007 averaged approximately $140 billion per year. The volumes decreased significantly in 2008 through 2010, reaching a low point of $52.5 billion in 2009. Since 2010, volumes have recovered, reaching $146 billion in 2012 and continuing to increase in 2013. FHFA expects the higher volumes to continue in 2014 through 2017 for both the overall multifamily mortgage market and the small multifamily segment of that market.

National multifamily mortgage credit needs. Small multifamily properties have characteristics that are different from larger properties, and as a result small multifamily properties have different financing needs. Small multifamily properties are more likely to be owned by an individual or small investor and less likely to be managed by a third party property management firm.[35] As a result, small multifamily properties are more likely to have informal documentation of the property's financial and other operating records.[36] This can make it more difficult for small multifamily property owners to obtain financing from some sources. Small multifamily properties are also often older than larger properties and tend to be more affordable than units in large

[31] *See* 12 U.S.C. 4563(a)(3).

[32] *See* 12 U.S.C. 4563(a)(3).

[33] 12 U.S.C. 4563(a)(4).

[34] U.S. Census Bureau, 2011 American Community Survey, ''General Housing Data,'' Table C–01–AH.

[35] ''Rental Housing Finance Survey,'' Tables 2b, 2c, 2d and 3 (March 27, 2013), *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-035.*

[36] *See* Abt Associates, ''An Assessment of the Availability and Cost of Financing for Small Multifamily Properties'' (August 2001), *http://abtassociates.com/reports/01-024.pdf.*

properties.[37] As a result, small multifamily properties are likely to generate less revenue per unit than larger properties.[38] While these factors make small multifamily properties an important source of affordable rental housing, they can also make financing more difficult to obtain for small multifamily property owners.

Availability of public subsidies. According to RHFS data, the availability of public subsidies for small multifamily properties is primarily through Section 8 rental assistance vouchers, although the data also shows that small multifamily properties are less likely than larger multifamily properties to contain subsidized rental units.[39] As discussed above, this is at least in part due to the fact that market rents for small multifamily properties are more likely to be affordable to low- and moderate-income families without using rent subsidies.

2. Enterprise Small Multifamily Performance

The Enterprises have played a significantly smaller role in the market for mortgages on small multifamily properties than their role in the overall multifamily mortgage market, and small multifamily loans were a very small percentage of each Enterprise's multifamily loan purchases. Small multifamily properties accounted for less than three percent of all units in multifamily properties financed by mortgages purchased by Fannie Mae in 2013 and for less than one percent of the total units in multifamily properties financed by mortgages Freddie Mac purchased.

Fannie Mae purchased mortgages financing 12,552 low-income units in 5 to 50 unit multifamily properties in 2010, 13,480 such units in 2011, 16,801 such units in 2012 and 13,827 such units in 2013. These volumes were significantly lower than Fannie Mae's volumes in the years before the mortgage crisis. Fannie Mae purchased mortgages financing at least 40,000 low-income units in small multifamily properties each year between 2006 and 2008, peaking at 58,931 such units in 2007. Freddie Mac played a much smaller role than Fannie Mae in the small multifamily property market, purchasing mortgages financing 365 low-income units in small multifamily properties in 2010, 691 such units in 2011, 829 such units in 2012, and 1,128 such units in 2013. Table 4 reflects the number of low-income units in small multifamily properties financed by mortgages purchased by the Enterprises in 2006–2013.

TABLE 4—ENTERPRISE FUNDING OF LOW-INCOME UNITS IN SMALL MULTIFAMILY PROPERTIES, 2006–13

["Small multifamily properties" are those with 5–50 units]

Year	Enterprise					
	Fannie Mae			Freddie Mac		
	LI units	Total small units	Low-income %	LI units	Total small units	Low-income %
2013	13,827	21,764	63.5	1,128	2,375	47.5
2012	16,801	26,479	63.5	829	2,194	37.8
2011	13,480	22,382	60.2	691	2,173	31.8
2010	12,552	20,810	60.3	459	1,978	23.2
2009	13,466	21,934	61.4	528	1,619	32.6
2008	43,782	82,706	52.9	1,879	3,391	55.4
2007	59,015	111,221	53.1	2,147	3,522	61.0
2006	49,631	60,174	67.5	773	1,467	52.7

Source: Funding as reported by the Enterprise for 2013; as calculated by FHFA for 2006–12 "Low-income" refers to units affordable to renters with incomes no greater than 80 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include units financed by the purchase of commercial mortgage-backed securities (CMBS).

3. Additional Factors: Ability of the Enterprises To Lead the Market in Making Small Multifamily Mortgage Credit Available and Need To Maintain Sound Financial Condition of the Enterprises

In setting the proposed low-income housing subgoal for small multifamily properties, FHFA has considered the ability of the Enterprises to lead the market in making multifamily mortgage credit available (Factor 4). As discussed above, the Enterprises have played a smaller role in the market for mortgages on small multifamily properties than their role in the overall multifamily mortgage market. Both Enterprises currently purchase some mortgages on small multifamily properties, though Freddie Mac purchases few such mortgages at this time. The new low-income housing subgoal for small multifamily properties would encourage the Enterprises to increase their participation in the small multifamily mortgage market. FHFA will continue to assess the impact of Enterprise participation in the small multifamily mortgage market and may adjust the benchmark levels for the low-income housing subgoal for small multifamily properties as necessary.

In setting the proposed low-income housing subgoal for small multifamily properties, FHFA has also considered the importance of maintaining the Enterprises in sound and solvent financial condition (Factor 6). The delinquency rates for Fannie Mae's overall multifamily loan purchases are very low, and the delinquency rates are also very low for the subset of those loans that are on small multifamily properties. There is less data available on the performance of small multifamily loans held by banks and thrifts, since detailed reporting data is not available or is combined with reporting on other income-producing properties. However, there is no evidence to suggest that expanding the Enterprises' support for small multifamily properties will affect their financial condition or will negatively impact the performance of their loan portfolios as long as

[37] "Rental Housing Finance Survey," Tables 2b, 2c, and 2d (March 27, 2013), *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-035.*

[38] "Rental Housing Finance Survey," Tables 2b, 2c, and 2d (March 27, 2013), *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-035.*

[39] "Rental Housing Finance Survey," Table 3 (March 27, 2013), *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-035.*

prudential judgments about such loans continue to be made.

FHFA continues to monitor the activities of the Enterprises, both in FHFA's capacity as safety and soundness regulator and as conservator. If necessary, FHFA will make any appropriate changes in the low-income housing subgoal for small multifamily properties to ensure their continued safety and soundness.

B. Proposed Benchmark Levels for the Low-Income Housing Subgoal for Small Multifamily Properties

Proposed § 1282.13(d) would establish different small multifamily subgoal levels for each of the Enterprises, with Fannie Mae having higher requirements than Freddie Mac.[40] The annual subgoal proposed for Fannie Mae would be at least 20,000 low-income units for 2015, at least 25,000 such units for 2016, and at least 30,000 such units for 2017. The annual subgoal proposed for Freddie Mac would be at least 5,000 low-income units for 2015, at least 10,000 such units for 2016, and at least 15,000 such units for 2017.

In setting the proposed benchmark levels for the low-income housing subgoal for small multifamily properties, FHFA has considered the limited role that the Enterprises have played in the past and the challenges in financing small multifamily properties. The proposed rule would gradually increase the level of activity of the Enterprises in this market, allowing FHFA to assess the impacts of increased Enterprise purchases of mortgages on small multifamily properties. The proposed subgoal levels for Fannie Mae are higher than the proposed subgoal levels for Freddie Mac because FHFA recognizes that Freddie Mac's entry into the small multifamily market would entail adjustments to its staffing, loan programs, and underwriting protocols. However, setting gradually increasing subgoal levels would provide an incentive for Freddie Mac to develop an effective small multifamily property lending program.

The challenges in providing financing for small multifamily properties include a lack of standardization, which can make the credit risk of small loans more difficult and time-consuming to assess. The lack of standardization can also make the origination process more costly and can make it more difficult to include small loans in securitizations for sale to investors. While small multifamily properties may tend to be more affordable than larger properties, it may be relatively less profitable to originate and service small loans. Many small multifamily property lenders are banks that have a retail presence in communities and originate loans for portfolio without securitizing them. The variation among lenders that support small multifamily lending also makes sourcing, pooling and securitizing small multifamily loans a greater challenge for the Enterprises.[41]

The challenges in supporting mortgage lending for small multifamily properties are even greater for properties with 24 or fewer units than for properties with between 25 and 50 units. While the low-income subgoal for small multifamily properties would include all properties with 5 to 50 units, FHFA expects that most Enterprise purchases of mortgages on small multifamily properties will be on properties between 25 and 50 units. The 2012 Rental Housing Finance Survey (RHFS) provides information on the characteristics of multifamily properties that have 5 to 24 units and properties that have 25 to 49 units.[42] Multifamily properties that have 25 to 49 units, unlike smaller 5 to 24 unit properties, have operating characteristics that are similar to those of 50+ unit properties. For example, 25 to 49 unit properties and 50+ unit properties are more likely to be operated by a third party property management firm, have a mortgage, and be newer than 5 to 24 unit properties. The Enterprises should be able to provide additional liquidity to these larger small multifamily properties (*i.e.,* 25 to 50 units), in light of the similarities of this property group to larger multifamily properties. In fact, data provided by Fannie Mae shows that about 73 percent of all small family units it financed in 2013 were in 25 to 50 unit properties.

While the new low-income small multifamily subgoal would require the Enterprises to increase their activity in the small multifamily markets, the proposed subgoal levels are low relative to the size of the overall small multifamily market. By proposing relatively low subgoal levels initially, FHFA will have an opportunity to assess the impact of the new subgoal. In the meantime, FHFA welcomes comments on the market impacts that are likely to result if the Enterprises increase their purchases of mortgages on small multifamily properties. For example, if there is unmet demand for different lending products, it is possible that additional support from the Enterprises could result in a wider array of long-term, fixed-rate financing options to small multifamily property borrowers. Fannie Mae and Freddie Mac might be able to offer small multifamily property owners better mortgage terms (10-year fixed-rate) and lower financing costs than other sources of financing. Owners of small multifamily properties are more likely to have an Adjustable Rate Mortgage (ARM) or a balloon mortgage than owners of large multifamily properties.[43] ARMs usually have loan terms ranging from 1 to 5 years, with frequent rate adjustments that are based on changes to the LIBOR index, while balloon mortgages must be paid off after a specific time period, usually five years. Without long-term financing, small multifamily property owners may have to raise rents or reduce expenses (or defer property maintenance) if adjustable interest rates rise. Fixed rate financing also provides small multifamily property owners with a predictable monthly mortgage payment for a longer loan term. These savings would lock in lower owner expenses for a multi-year period and may result in lower and more stable rents for low-income tenants. On the other hand, if the current market for lending to small multifamily properties is providing adequate long-term, fixed rate financing options for small multifamily property owners and investors, it is possible that the Enterprises would simply be competing on the same terms with existing sources of liquidity for small multifamily properties.

FHFA welcomes comment on all aspects of the proposed small multifamily subgoals, including the feasibility of the proposed goal levels for Fannie Mae and Freddie Mac, as well as on possible impacts that may result from increased Enterprise purchases of mortgages on small multifamily properties.

VII. Reporting Requirements for Single-Family Rental Units

Starting in 2015, FHFA plans to require the Enterprises to submit more

[40] The proposed rule would also make a number of conforming changes throughout part 1282 to reflect the addition of this proposed new small multifamily subgoal.

[41] *See* Fannie Mae, ''Fannie Mae's Role in the Small Multifamily Loan Market'' (First Quarter 2011), *https://www.fanniemae.com/content/fact_sheet/wpmfloanmkt.pdf.*

[42] Rental Housing Finance Survey (2012), *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-035.* Although the RHFS data does not match FHFA's proposed definition of small multifamily properties precisely (RHFS uses 5 to 49 units instead of 5 to 50 units), the difference is not material.

[43] ''Rental Housing Finance Survey,'' Tables 2b, 2c, 2d and 3 (March 27, 2013), *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-035.*

detailed information regarding Enterprise purchases of mortgages secured by single-family rental properties, whether they are investor-owned or owner-occupied (with one or more rental units in addition to the owner-occupied unit). This reporting would fall within the scope of the existing regulation, so no changes to the text of the regulation are necessary. A description of FHFA's plans for additional reporting is included in this section of the preamble in order to provide an opportunity for the public to provide feedback to FHFA.

Single-family rental units make up a significant percentage of the housing stock, especially the affordable housing stock. The housing goals in effect since 2010 cover single-family owner-occupied properties and multifamily rental properties, but the housing goals do not include or track rental units in single-family buildings. Counting all single-family rental units would include rental units in owner-occupied single-family properties and rental units in investor-owned single-family rental properties.

The current housing goals regulation requires the Enterprises to report annually to FHFA in their Annual Mortgage Reports (AMRs) on their purchases of all mortgages on owner-occupied and rental properties, regardless of whether the mortgage may be counted for purposes of the housing goals.[44] The regulation provides that the AMRs must include loan-level data on each mortgage purchased, as well as aggregations compiled by the Enterprises in a format prescribed by FHFA. The AMRs currently submitted to FHFA by the Enterprises include tables on various aspects of multifamily rental units financed, including the distribution of multifamily units by affordability of rent (AMR Table 3), by minority concentration of census tract (AMR Table 8), and by state (AMR Table 10B).

FHFA plans to revise the tables that the Enterprises will be required to submit so that the tables include rental units in all single-family owner-occupied and investor-owned properties. In this way, the AMRs will provide more complete information on the Enterprises' financing of all rental units, whether in multifamily or in single-family rental properties. The additional information that is reflected in the tables will provide insight into the extent to which Enterprise purchases are supporting single-family rental properties that otherwise meet the criteria for each of the single-family housing goals applicable to owner-occupied properties.

VIII. Section-by-Section Analysis of Other Proposed Changes

The proposed rule would also revise other provisions of the housing goals regulation, as discussed below.

A. Changes to Definitions—Proposed § 1282.1

The proposed rule includes changes to definitions used in the current housing goals regulation, including: (1) Definitions related to rent and utilities; (2) the definition of ''dwelling unit''; and (3) other definitions.

1. Definitions Related to Rent and Utilities

Definition of ''rent.'' The proposed rule would consolidate and simplify several terms that are defined separately in the current rule. The proposed rule would delete the separate definitions for ''contract rent'' and ''utility allowance,'' and the substance of those definitions would be included in a revised definition of ''rent.'' In addition, the proposed rule would consolidate all of the current provisions related to unoccupied units, including model units and rental offices, into a single provision to be located at § 1282.15(d)(3).

As proposed, the revised definition of rent would mean the actual rent for a dwelling unit, or the average rent by unit size for a particular property. It would include the combined rent for all bedrooms in the dwelling unit. To ensure comparable measurement of affordability, rent would take the cost of utilities into account, either by using rents that include utilities, or, if the rents do not include utilities, by adding the actual cost of utilities or a utility allowance.

Utility allowances. Under the current rule, FHFA requires the Enterprises to take into account the cost of utilities for rental units in determining affordability for purposes of the housing goals. The current definition of ''rent'' provides that if the contract rent includes all utilities, the Enterprises must use the contract rent to determine affordability. If the contract rent does not include all utilities, the Enterprises may use either: (a) Data on the actual cost of utilities paid by the tenant but not included in the contract rent, or (b) a ''utility allowance.''

The proposed rule would expand the sources of information that may be used for determining utility allowances. The current definition of ''utility allowance'' allows the use of either a nationwide average utility allowance or the utility allowance established under the U.S. Department of Housing and Urban Development (HUD) Section 8 Program for the area where the property is located. In addition to using the actual cost of utilities, the proposed rule would allow the Enterprises to use any of the following options: (a) A nationwide average utility allowance provided by FHFA; (b) the utility allowance established under the HUD Section 8 Program for the area where the property is located; or (c) the utility allowance established by the state or local housing finance agency for use in determining the affordability of low-income housing tax credit properties for the area where the property is located.

FHFA currently relies on nationwide utility allowances that were issued by HUD, the Enterprises' former mission regulator, prior to the creation of FHFA in 2008. These averages were based on the American Housing Survey (AHS) for 2005, and they also depend on the size of the unit and whether it is in a multifamily or single-family property. The current averages are as follows:

Type of property	Number of bedrooms			
	Efficiency	1	2	3 or more
Multifamily	$74	$79	$112	$152
Single-family	74	112	158	213

Separate from this rulemaking, FHFA plans to issue updated figures for the nationwide average utility allowance option, as more recent AHS data becomes available. Because the nationwide average utility allowance numbers are not included in the regulation itself, FHFA will provide any updated nationwide average utility

[44] 12 CFR 1282.62(b).

allowances to the Enterprises by letter. These letters will be posted on FHFA's Web site.

Based on the most recent AHS data currently available, the revised nationwide average utility allowances would be as follows:

Type of property	Number of bedrooms			
	Efficiency	1	2	3 or more
Multifamily	$62	$93	$131	$177
Single-family	91	125	184	253

These numbers may be updated further when new AHS data becomes available. Although the nationwide average utility allowance numbers are not included in the regulation itself, FHFA welcomes comments on the preliminary numbers provided above.

Definition of ''rental unit.'' The current rule includes separate definitions for ''rental housing'' and ''rental unit.'' The definitions are substantially the same, so the proposed rule would streamline the rule by deleting the term ''rental housing'' in § 1282.1, and by replacing ''rental housing'' with ''rental units'' in § 1282.17, the only other place that the term ''rental housing'' appears.

Definition of ''utilities.'' The current rule excludes charges for cable and telephone services from the definition of ''utilities.'' The proposed rule would revise the existing definition of ''utilities'' to expand the list of excluded services. The revised definition would exclude all subscription-based television, telephone and internet services (regardless of whether provided by a cable provider or other provider).

2. Definition of ''Dwelling Unit''—Shared Living Arrangements

The proposed rule would revise the definition of ''dwelling unit'' to include only units with complete plumbing and kitchen facilities. The revised definition is intended to address shared living arrangements, where separate individuals rent separate bedrooms but share common areas and cooking and sanitary facilities. In those circumstances, all bedrooms sharing the same plumbing and kitchen facilities would be treated as a single dwelling unit. For example, four individuals living in a shared living arrangement with separate bedrooms but with shared bathrooms and kitchen would be considered a single dwelling unit with four bedrooms rather than four efficiency units. For purposes of determining affordability under the housing goals, the rent for the dwelling unit would be the aggregate of all rent payments made by all of the individuals residing in the dwelling unit, even if each individual who resides in a bedroom has entered into a separate lease agreement or if the bedrooms have separate locks.

This change is intended to clarify the appropriate calculation of rent for dwelling units in student housing and seniors housing that involve group living or shared living arrangements in a single dwelling unit.

3. Additional Definition Changes

This proposed rule would remove two definitions that are not used anywhere in the current rule, other than the definitions themselves: ''HMDA'' and ''working day.''

The proposed rule would also revise the definition of ''families in low-income areas'' to remove the reference to ''block numbering areas.'' This change would conform the words used in the definition to the terminology currently used by the U.S. Census Bureau. The proposed rule would also revise the existing definition of ''HOEPA mortgage'' to reflect renumbering in the statute cited in the definition.

Other definitional changes in § 1282.1 are discussed below in the corresponding section dealing with the substantive provisions to which the definitions relate. These changes include: (i) Deleting the definitions of ''mortgage with unacceptable terms or conditions'' and ''rental housing''; and (ii) adding new definitions for ''efficiency,'' ''seniors housing unit,'' ''skilled nursing unit,'' and ''small multifamily property.''

B. Determining Affordability—Proposed § 1282.15

The proposed revisions discussed below would amend the existing rule by revising the process for determining affordability. Some provisions are being revised or eliminated because they are no longer necessary based on the affordability information that is available to the Enterprises. Other provisions are being amended or added to provide greater clarity and to minimize cases where a unit may be treated as affordable when it actually is not.

1. Use of Median Incomes

The proposed rule would revise § 1282.15(b)(1) to provide that affordability would be determined based on the area median income as of the date the mortgage loan originated, rather than the date of the mortgage application. The data that is reported to the Enterprises typically includes an origination date, and this date is used by the Enterprises for purposes of determining affordability. This change would conform the regulatory language to the existing practice of the Enterprises.

2. No Estimation of Affordability for Single-Family Owner-Occupied Units

Currently, the housing goals rule allows the Enterprises to estimate the affordability of single-family owner-occupied properties where the borrower income is not available. The proposed rule would revise § 1282.15(b) by removing the affordability estimation provisions in paragraphs (b)(2) and (b)(3) and by providing that mortgages where the borrower's income is not available would not be counted in the numerator for any of the housing goals. Mortgages where the borrower's income is not available would still be included in the denominator. This treatment of mortgages with missing borrower income would be similar to the treatment of HOEPA loans under § 1282.16(d).

3. Multifamily Affordability Based on Rents, Not Incomes

The proposed rule would revise § 1282.15(d), including removing paragraph (d)(1), to provide that affordability for rental housing will be determined based solely on rents. The current rule provides that affordability for rental housing is to be determined based on the tenant's income, if available, and based on rents if the tenant's income is not available. Because lenders generally do not collect income information on tenants, the Enterprises use rents in all cases (except seniors housing units) to determine affordability for purposes of the housing goals. Therefore, this change would conform the rule to the Enterprises'

actual practices and would recognize the general unavailability of tenant income data. The proposed revision also would more closely align the rule language with section 1333(c) of the Safety and Soundness Act, which provides that FHFA shall evaluate the performance of the Enterprises under the multifamily housing goals ''based on whether the rent levels are affordable.''

4. Reduced Cap on Estimating Affordability for Multifamily Properties

The proposed rule would also revise § 1282.15(e)(3) to reduce the number of multifamily units for which the Enterprise is permitted to estimate the rental amount. An Enterprise is permitted to use estimated rent for purposes of determining affordability, but only in the case of missing data or information. Currently, § 1282.15 permits an Enterprise to estimate affordability for up to 10 percent of its multifamily units in a given year. The proposed rule would reduce this cap to 5 percent.

Missing data rates for multifamily mortgages purchased by the Enterprises are generally very low, given the Enterprises' requirements for submission of underwriting and property level information from its lenders as of the date of mortgage acquisition. However, estimating rent affordability will continue to be necessary for seniors housing where expenses for resident services are included in the rent. Seniors housing units with such additional services are currently excluded from the cap on estimating affordability because of the difficulty separating out housing and non-housing related expenses. The proposed rule would no longer exclude seniors housing from the cap on estimating affordability. Although estimation will continue to be required to determine affordability for seniors housing with additional services, the volumes of such purchases by the Enterprises are relatively small, such that estimation would continue to be possible for the Enterprises even with a 5 percent cap.

5. Reliance on Subsidy Program Requirements for Determining Affordability of Rents

FHFA is also proposing a new counting rule for rental housing where affordability of the rents can be determined based on affordability restrictions imposed by local, state or federal affordable housing subsidy program requirements. Proposed § 1282.15(d)(2) would permit an Enterprise to determine affordability of the units based on the maximum permitted income level for a tenant or a prospective tenant or the maximum permitted rent in the units that are subject to an affordability restriction under any local, state or federal program. In this way, the Enterprises would be permitted to automatically receive goals credit for any units they finance that are deemed to be affordable by the applicable subsidy program. An example of an applicable subsidy program includes low-income housing tax credit units, with units restricted for occupancy by tenants at 50 percent of area median income receiving credit toward the very low-income multifamily housing subgoal and units restricted at 60 percent of area median income receiving credit toward the low-income multifamily housing goal. The Enterprises would also be required to show that the tax credit or other monitoring agency that exercises regulatory oversight has determined that the units are in compliance with the affordability restrictions.

6. Missing Bedroom Data

The proposed rule would revise § 1282.15(e)(1) to provide that rental units for which bedroom data are missing shall be considered efficiencies for the purposes of calculating unit affordability. Proposed § 1282.1 would add a definition of ''efficiency'' to mean a dwelling unit having no separate bedrooms, or 0 bedrooms. Determining affordability of a rental unit requires adjustments to household size based on the number of bedrooms in a unit. However, this adjustment is not possible when bedroom data is unavailable. The proposed rule seeks to balance the effect of missing bedroom data with proper administration of the regulation by recognizing that the Enterprise in fact purchased the mortgage secured by the rental unit but only giving credit if it qualifies for the lowest-rent unit permitted to receive goals credit under the rule.

7. Changes To Reflect U.S. Census Bureau Terminology

Section 1282.15(g)(2) would be revised to eliminate outdated terminology. Due to changes implemented by the U.S. Census Bureau, it is no longer necessary to include references to the ''block-group enumeration district'' or the ''nine-digit zip code,'' or to include the option to use other geographic divisions to address ''split areas.''

C. Skilled Nursing Units—Proposed § 1282.16(b)(15)

Proposed § 1282.16(b)(15) would codify the existing treatment of skilled nursing units, which is to exclude them from counting for purposes of the housing goals. ''Skilled nursing units'' would be defined as units in multifamily properties that are licensed to provide medical services to seniors. Skilled nursing units differ substantially from other types of housing units in that they are intended to be used for medical purposes, and housing is incidental to those purposes.

D. Determining Affordability for Blanket Loans on Cooperative Housing—Proposed § 1282.16(c)(5)

As discussed elsewhere, the proposed rule would revise § 1282.15(d) to require the Enterprises to use rent levels to determine the affordability of rental units. In the case of blanket loans on housing cooperatives (*i.e.,* a loan that is secured by the entire property), there are no rent data available because all units are owned by the cooperative in which each unit resident owns shares. Owning shares allows the holder to occupy one or more units in the property. Shareholders pay a monthly fee to cover expenses for common area upkeep and maintenance and to pay their pro rata share of any blanket loan payments. In 2013, blanket loans on cooperative housing accounted for 2.7 percent and 1.4 percent of multifamily mortgages purchased by Fannie Mae and Freddie Mac, respectively.

Historically, the Enterprises have used an estimated rent methodology (or ''rent proxy'') to determine the percentage of low- and very low-income eligible units in cooperative properties without rent information.[45] This estimate permitted the Enterprises to use the percentage of low- and very low-income affordable rental units (by unit size) located in the census tract where the cooperative property is located. For example, if a cooperative property is in a census tract where properties average a certain percentage of low- and very low-income units, then the cooperative property would be assumed to have the same percentage of low- and very low-income units.

In some geographic areas, particularly in some parts of New York City, the rent estimation methodology may significantly overstate the number of low- and very low-income units eligible for goals credit in a specific cooperative property. This is because some census tracts in these geographic areas have great variations in unit rents, resulting from the large number of subsidized, rent controlled, and rent stabilized units that are in close proximity to luxury market rate housing.

[45] 12 CFR 1282.15(e).

Due to these concerns, proposed § 1282.16(c)(5) would provide that the affordability of units securing a blanket loan on a cooperative property be determined solely on the basis of comparable market rents that were used by the lender in underwriting the blanket loan. If the underwriting rents are not available for the blanket loan on a cooperative property, the units may not be counted toward achievement of the multifamily housing goals.

Share loans used by residents to finance the purchase of a cooperative unit would remain eligible for credit under the single-family housing goals, even if the Enterprise also holds a blanket loan on the same cooperative property that may be eligible for multifamily housing goals credit.

E. Seniors Housing—Proposed § 1282.16(c)(15)

The proposed rule would codify the existing treatment of seniors housing under the housing goals rule. Proposed § 1282.1 would define a ''seniors housing unit'' as a dwelling unit in a multifamily property in which occupancy is restricted to households with at least one individual age 55 or above. In 2013, mortgages backed by seniors housing units accounted for 2.6 percent and 2.2 percent of multifamily mortgages purchased by Fannie Mae and Freddie Mac, respectively.

The proposed rule would not permit seniors housing units with large up-front fees to be counted for purposes of the multifamily housing goals. Currently, seniors housing units are counted for purposes of the housing goals, provided that the units meet the requirements that apply generally for multifamily housing. However, some seniors housing units require that prospective residents pay a large up-front fee as a condition of occupancy in addition to the monthly rent. Such up-front fees are a form of prepaid rent and can amount to tens or even hundreds of thousands of dollars. The proposed rule would exclude such units from the housing goals because the existence of the large up-front fees makes it difficult to assess affordability, and because in most instances the large up-front fees mean that the units would not be affordable to low-income or very low-income families anyway.

For purposes of determining affordability, the proposed rule would differentiate between seniors housing units based on whether additional services are included in the monthly rent paid by the tenant. Seniors housing units with no additional services would be treated as ordinary multifamily units with affordability determined based on the unit rent. Seniors housing units for which additional services are included in the monthly rent would be treated as units with missing data, allowing the Enterprises to estimate unit affordability using the rent proxy method.

F. Mortgages With Unacceptable Terms or Conditions—Proposed § 1282.16(d)

The proposed rule would amend the housing goals provision in § 1282.16(d) that prohibits the Enterprises from receiving housing goals credit for purchases of certain types of mortgages. The proposed rule would eliminate the reference to ''mortgages with unacceptable terms or conditions'' in § 1282.16(d), and it would also remove the definition of ''mortgage with unacceptable terms or conditions'' in § 1282.1. The proposed rule would maintain the current prohibition on receiving housing goals credit for purchases of HOEPA mortgages.

The current rule defines ''mortgages with unacceptable terms or conditions'' to include single-family mortgages with excessive interest rates or costs, mortgages with certain prepayment penalties, and mortgages with prepaid credit life insurance. ''Mortgages with unacceptable terms or conditions'' also currently include mortgages with terms contrary to banking regulator guidance on nontraditional and subprime lending and mortgages originated using practices that do not comply with fair lending requirements.

FHFA is proposing to eliminate the provisions related to ''mortgages with unacceptable terms or conditions'' in order to reflect the regulatory changes in effect as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Act seeks to promote responsible lending practices by, for example, prohibiting no documentation lending and single-premium credit insurance financing. In addition, the law defines a class of mortgages as ''Qualified Mortgages'' that restrict certain mortgage terms. FHFA has required the Enterprises to limit purchases to those that meet Qualified Mortgage product characteristics. As a result of this FHFA requirement and the Enterprises' own mortgage purchase eligibility criteria, the Enterprises purchase virtually no mortgages that would have been considered ''mortgages with unacceptable terms and conditions'' under the current housing goals.

In addition, the housing goals are not the most effective regulatory tool available for FHFA to discourage purchases of predatory or otherwise unsuitable mortgages. FHFA has regulatory authority to directly prohibit purchases of any types of mortgages it determines are unsuitable. To the extent FHFA identifies any types of mortgages that meet Qualified Mortgage product criteria yet are not suitable for the Enterprises or for borrowers, FHFA may restrict Enterprise purchases of such mortgages in the future.

G. Housing Goals Guidance—Proposed § 1282.16(e)

Section 1282.16(e) of the current rule provides that FHFA may from time to time issue determinations regarding the appropriate treatment of particular transactions or classes of transactions under the housing goals. The proposed rule would renumber this paragraph as § 1282.16(d) and would add a new provision requiring FHFA to make any determinations issued under the paragraph available to the public on FHFA's Web site, *www.fhfa.gov.*

This change is intended to ensure that both Enterprises and any other interested parties are aware of any guidance that FHFA provides to either Enterprise regarding the appropriate housing goals treatment of any transactions in which they may engage, whether or not those transactions are covered in the housing goals regulation. FHFA and its predecessor agency, HUD, from time to time have issued guidance on particular issues. This proposed rule would incorporate a number of those past determinations, such as the appropriate treatment of seniors housing units or skilled nursing units, into the text of the regulation. To promote clear and consistent treatment of all transactions engaged in by either Enterprise, FHFA will make any other guidance that is issued available on FHFA's Web site.

IX. Comments Requested on Specific Topics

As noted above, FHFA encourages commenters to address all aspects of the proposed rule, including the proposed benchmark levels for each of the housing goals, the possible changes to the retrospective market approach, and the other changes described in this preamble and rule. In addition, FHFA requests comments on the specific topics described in this section.

A. Blanket Loans on Manufactured Housing Parks

A blanket loan on a manufactured housing park is a loan secured by land that has been developed for the placement of manufactured homes. Fannie Mae currently purchases blanket loans on manufactured housing parks, and Freddie Mac has also recently announced a loan program to do so.

However, blanket loans on manufactured housing parks are currently excluded from the housing goals. This treatment is different from the treatment of blanket loans on cooperative buildings and condominium projects, purchases of which are treated as mortgage purchases for purposes of the multifamily housing goals.

The proposed rule would not change the current treatment of blanket loans on manufactured housing parks under the housing goals. However, FHFA is requesting comment on whether this policy should be changed. FHFA may make a determination in the final rule on whether or not to allow blanket loans on manufactured housing parks to be counted for purposes of the multifamily housing goals. Alternatively, FHFA may instead defer consideration of the appropriate treatment of blanket loans on manufactured housing parks under the housing goals and instead address it as part of the separate, upcoming proposed rulemaking on the duty to serve underserved markets under section 1335 of the Safety and Soundness Act.[46]

Allowing blanket loans on manufactured housing parks to be counted for purposes of the multifamily housing goals could encourage additional support for a form of housing that is particularly important for low-income and very low-income families. In addition, many parks are in rural areas where real estate loans are difficult to obtain or have unfavorable interest rates and terms. Additional Enterprise purchases of blanket loans on manufactured housing parks may increase access to fixed rate, long term financing at a relatively low interest rate.

If FHFA determines to include such loans, FHFA invites comments on whether goals eligibility for manufactured housing parks should be considered only for parks that are cooperatively owned by their residents, or if goals eligibility should also include investor-owned rental parks. Many investor-owned parks do not provide resident protections against steep rent increases, lease cancellations, or redevelopment of the property for other uses. It is more difficult and costly for a manufactured housing park resident to move than a resident of a typical ''brick and mortar'' rental property. However, it is possible that increased Enterprise activity in this area could result in more favorable loan terms for park owners, which could in turn reduce the need for owners to raise rents. Residents could also benefit from additional eligibility standards for manufactured housing parks that, for example, Fannie Mae currently imposes.

If FHFA allows blanket loans on manufactured housing parks to be counted for purposes of the housing goals under the final rule, FHFA would consider defining ''manufactured housing park'' as ''a tract of land under unified ownership developed for the purpose of providing individual rental spaces for the placement of manufactured homes within its boundaries.'' FHFA would also consider limiting housing goals credit to occupied units located in the park, rather than the total number of rental spaces available. FHFA also requests comment on how to determine whether units are affordable or not, particularly if rents are not available or do not include the full cost of housing for residents.

Finally, if FHFA allows blanket loans on manufactured housing parks to be counted for purposes of the housing goals, the proposed goal levels would be relatively easier for the Enterprises to achieve. For example, between 2011 and 2013, Fannie Mae's annual volume of purchases of blanket loans on manufactured housing parks ranged from $500 million to $1 billion.[47] While those volumes are small relative to Fannie Mae's overall multifamily purchases, they are large enough that counting blanket loans on manufactured housing parks could increase to the measured performance of Fannie Mae on the multifamily housing goals. As a result, FHFA encourages commenters to address whether the proposed levels of the multifamily housing goals should be increased to reflect the expanded scope of the goals if FHFA allows blanket loans on manufactured housing parks to be counted.

B. Measurement of the Market

FHFA's measurement of the single-family mortgage market, which is used to set the benchmark levels and determine the retrospective market share for the single-family housing goals, is intended to reflect the portion of the overall single-family market that is eligible for purchase by the Enterprises. However, in defining the measurement of the market, FHFA currently excludes mortgages with ''rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data.''[48] Some mortgages purchased by the Enterprises may have rate spreads that exceed 150 basis points above the average prime offer rate while still meeting the Enterprises' established underwriting criteria (which exclude HOEPA loans) and the limitation on purchasing loans that do not meet the Qualified Mortgage product characteristics. FHFA requests comment on whether mortgages with rate spreads that exceed 150 basis points above the average prime offer rate should continue to be excluded from FHFA's measurement of the market. FHFA encourages commenters to also address whether the current cut-off of 150 basis points above the applicable average prime offer rate should be maintained, or whether a higher rate spread threshold should be established.

X. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, under the authority of 12 U.S.C. 4511, 4513 and

[46] 12 U.S.C. 4565.

[47] Fannie Mae, Fact Sheet, ''Fannie Mae Multifamily Mortgage Business Information'' (May 2014), *https://www.fanniemae.com/content/fact_sheet/multifamily-business-information-may-2014.pdf.*

[48] 12 CFR 1282.12(b)(5).

4526, FHFA proposes to amend part 1282 of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter E—Housing Goals and Mission

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

■ 2. Amend § 1282.1 as follows:

■ a. Remove the definitions of ''Contract rent,'' ''HMDA,'' ''Mortgage with unacceptable terms or conditions,'' ''Rental housing,'' ''Utility allowance,'' and ''Working day'';

■ b. Revise the definitions of ''Dwelling unit,'' ''Families in low-income areas,'' ''HOEPA mortgage,'' ''Rent,'' and ''Utilities''; and

■ c. Add definitions for ''Efficiency,'' ''Seniors housing unit,'' ''Skilled nursing unit,'' and ''Small multifamily property'' in alphabetical order.

The revisions and additions read as follows:

§ 1282.1 Definitions.

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Dwelling unit means a room or unified combination of rooms with complete plumbing and kitchen facilities intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

Efficiency means a dwelling unit having no separate bedrooms, or 0 bedrooms.

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Families in low-income areas means:

(i) Any family that resides in a census tract in which the median income does not exceed 80 percent of the area median income;

(ii) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(iii) Any family with an income that does not exceed area median income that resides in a designated disaster area.

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HOEPA mortgage means a mortgage covered by section 103(bb) of the Home Ownership and Equity Protection Act (HOEPA) (15 U.S.C. 1602(bb)), as implemented by the Bureau of Consumer Financial Protection.

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Rent means the actual rent or average rent by unit size for a dwelling unit.

(i) Rent is determined based on the total combined rent for all bedrooms in the dwelling unit, including fees or charges for management and maintenance services and any utility charges that are included.

(A) Rent concessions shall not be considered, *i.e.,* the contract rent is not decreased by any rent concessions.

(B) Rent is net of rental subsidies, *i.e.,* the contract rent is decreased by any rental subsidy.

(ii) When the contract rent does not include all utilities, the rent shall also include:

(A) The actual cost of utilities not included in the contract rent;

(B) The nationwide average utility allowance, as issued periodically by FHFA;

(C) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located; or

(D) The utility allowance for the area in which the unit is located, as established by the state or local housing finance agency for determining the affordability of low-income housing tax credit properties under section 42 of the Internal Revenue Code (26 U.S.C. 42).

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Seniors housing unit means a dwelling unit in multifamily housing where the property is restricted to occupancy by households with individuals who are age 55 and over.

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Skilled nursing unit means a unit in a multifamily property that is dedicated to providing licensed medical care services to individuals who are age 55 and over.

Small multifamily property means any multifamily property with at least 5 dwelling units but no more than 50 dwelling units.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for subscription-based television, telephone or internet service.

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■ 3. Amend § 1282.11 by revising paragraph (a)(1) to read as follows:

§ 1282.11 General.

(a) * * *

(1) Three single-family owner-occupied purchase money mortgage housing goals, a single-family owner-occupied purchase money mortgage housing subgoal, a single-family refinancing mortgage housing goal, a multifamily special affordable housing goal and two multifamily special affordable housing subgoals;

* * * * *

■ 4. Revise § 1282.12 to read as follows:

Alternative 1—§ 1282.12

§ 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either:

(1) The share of the market that qualifies for the goal; or

(2) The benchmark level for the goal.

(b) *Size of market.* The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016 and 2017 shall be 23 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) *Very low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of

mortgages for very low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016 and 2017 shall be 7 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) *Low-income areas housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) A benchmark level which shall be set annually by FHFA notice based on the benchmark level for the low-income areas housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(f) *Low-income areas housing subgoal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income census tracts or for moderate-income families in minority census tracts shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016 and 2017 shall be 14 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) *Refinancing housing goal.* The percentage share of each Enterprise's total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2015, 2016 and 2017 shall be 27 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

Alternative 2—§ 1282.12

§ 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds the benchmark level for the goal.

(b) *Low-income families housing goal.* For 2015, 2016 and 2017, the benchmark level for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing that consist of mortgages for low-income families shall be 23 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(c) *Very low-income families housing goal.* For 2015, 2016 and 2017, the benchmark level for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing that consist of mortgages for very low-income families shall be 7 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) *Low-income areas housing goal.* For 2015, 2016 and 2017, the benchmark level for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing that consist of mortgages for families in low-income areas shall be set annually by FHFA notice based on the benchmark level for the low-income areas housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(e) *Low-income areas housing subgoal.* For 2015, 2016 and 2017, the benchmark level for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing that consist of mortgages for families in low-income census tracts or for moderate-income families in minority census tracts shall be 14 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(f) *Refinancing housing goal.* For 2015, 2016 and 2017, the benchmark level for each Enterprise's purchases of refinancing mortgages on owner-occupied single-family housing that consist of refinancing mortgages for low-income families shall be 27 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

Alternative 3—§ 1282.12

§ 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the goal.

(b) *Size of market.* The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income families housing goal.* Each year, the percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(d) *Very low-income families housing goal.* Each year, the percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(e) *Low-income areas housing goal.* Each year, the percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of

mortgages for families in low-income areas shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(f) *Low-income areas housing subgoal.* Each year, the percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income census tracts or for moderate-income families in minority census tracts shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(g) *Refinancing housing goal.* Each year, the percentage share of each Enterprise's total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

■ 5. Revise § 1282.13 to read as follows:

§ 1282.13 Multifamily special affordable housing goal and subgoals.

(a) *Multifamily housing goal and subgoals.* An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal or subgoal, respectively.

(b) *Multifamily low-income housing goal.* (1) For the year 2015, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 250,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 210,000 such dwelling units.

(2) For the year 2016, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 250,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 220,000 such dwelling units.

(3) For the year 2017, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 250,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 230,000 such dwelling units.

(c) *Multifamily very low-income housing subgoal.* (1) For the year 2015, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 43,000 such dwelling units.

(2) For the year 2016, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 46,000 such dwelling units.

(3) For the year 2017, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 50,000 such dwelling units.

(d) *Small multifamily low-income housing subgoal.* (1) For the year 2015, the benchmark level for each Enterprise's purchases of mortgages on small multifamily properties affordable to low-income families shall be, for Fannie Mae, at least 20,000 dwelling units affordable to low-income families in small multifamily properties financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 5,000 such dwelling units.

(2) For the year 2016, the benchmark level for each Enterprise's purchases of mortgages on small multifamily properties affordable to low-income families shall be, for Fannie Mae, at least 25,000 dwelling units affordable to low-income families in small multifamily properties financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 10,000 such dwelling units.

(3) For the year 2017, the benchmark level for each Enterprise's purchases of mortgages on small multifamily properties affordable to low-income families shall be, for Fannie Mae, at least 30,000 dwelling units affordable to low-income families in small multifamily properties financed by mortgages purchased by Fannie Mae, and for Freddie Mac, at least 15,000 such dwelling units.

■ 6. Amend § 1282.15 by revising paragraphs (b), (c), (d), (e) and (g)(2), to read as follows:

§ 1282.15 General counting requirements.

* * * * *

(b) *Counting owner-occupied units.* (1) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level, *i.e.,* low- or very low-income, the income of the mortgagors is compared to the median income for the area at the time the mortgage was originated, using the appropriate percentage factor provided under § 1282.17.

(2) Mortgage purchases financing owner-occupied single-family properties for which the income of the mortgagors is not available shall be included in the denominator for the single-family housing goals and subgoal, but such mortgages shall not be counted in the numerator of any single-family housing goal or subgoal.

(c) *Counting dwelling units for multifamily housing goal and subgoals.* Performance under the multifamily housing goal and subgoals shall be measured by counting the number of dwelling units that count toward achievement of a particular housing goal or subgoal in all multifamily properties financed by mortgages purchased by an Enterprise in a particular year. Only dwelling units that are financed by mortgage purchases, as defined by FHFA, and that are not specifically excluded as ineligible under § 1282.16(b), may be counted for purposes of the multifamily housing goal and subgoals.

(d) *Counting rental units.*—(1) *Use of rent.* For purposes of counting rental units toward achievement of the multifamily housing goal and subgoals, mortgage purchases financing such units shall be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal and subgoals. A rent is affordable if the rent does not exceed the maximum levels as provided in § 1282.19.

(2) *Affordability of rents based on subsidy program requirements.* Where a multifamily property is subject to an affordability restriction under a housing subsidy program that establishes the maximum permitted income level for a tenant or a prospective tenant or the maximum permitted rent, the

affordability of units in the property may be determined based on the maximum permitted income level or maximum permitted rent established under such housing program for those units. This income level shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17, or as provided in § 1282.18 if family size is not known.

(3) *Unoccupied units.* Anticipated rent for unoccupied units may be the market rent for similar units in the neighborhood as determined by the lender or appraiser for underwriting purposes. A unit in a multifamily property that is unoccupied because it is being used as a model unit or rental office may be counted for purposes of the multifamily housing goal and subgoals only if an Enterprise determines that the number of such units is reasonable and minimal considering the size of the multifamily property.

(4) *Timeliness of information.* In evaluating affordability under the multifamily housing goal and subgoals, each Enterprise shall use tenant and rental information as of the time of mortgage acquisition.

(e) *Missing data or information for multifamily housing goal and subgoals.* (1) Rental units for which bedroom data are missing shall be considered efficiencies for purposes of calculating unit affordability.

(2) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the multifamily housing goal or subgoals because rental data is not available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information by multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal and subgoal, as determined by FHFA based on the most recent decennial census.

(3) The estimation methodology in paragraph (e)(2) of this section may be used up to a nationwide maximum of 5 percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. Multifamily rental units in excess of this maximum, and any units for which estimation information is not available, shall not be counted for purposes of the multifamily housing goal and subgoals.

* * * * *

(g) * * *

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract; or

(ii) A census place code.

* * * * *

■ 7. Amend § 1282.16 as follows:

■ a. Remove the second ''and'' from paragraph (b)(14);

■ b. Revise paragraph (b)(15) and add new paragraph (b)(16);

■ c. Revise paragraph (c)(5) and add new paragraph (c)(15);

■ d. Revise paragraph (d); and

■ e. Revise paragraph (e).

The revisions and additions read as follows:

§ 1282.16 Special counting requirements.

* * * * *

(b) * * *

(15) Skilled nursing units; and

(16) Any combination of factors in paragraphs (b)(1) through (b)(15) of this section.

(c) * * *

(5) *Cooperative housing and condominiums.* (i) The purchase of a mortgage on a cooperative housing unit (''a share loan'') or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals. Such a purchase shall be counted in the same manner as a mortgage purchase of single-family owner-occupied units.

(ii) The purchase of a mortgage on a cooperative building or a mortgage on a condominium project shall be treated as a mortgage purchase for purposes of the housing goals. The purchase of a mortgage on a cooperative building shall be counted in the same manner as a mortgage purchase of a multifamily rental property, except that affordability must be determined based solely on the comparable market rents used in underwriting the blanket loan. If the underwriting rents are not available, the loan shall not be treated as a mortgage purchase for purposes of the housing goals. The purchase of a mortgage on a condominium project shall be counted in the same manner as a mortgage purchase of a multifamily rental property.

(iii) Where an Enterprise purchases both a mortgage on a cooperative building and share loans for units in the same building, both the mortgage on the cooperative building and the share loans shall be treated as mortgage purchases for purposes of the housing goals. Where an Enterprise purchases both a mortgage on a condominium project and mortgages on individual dwelling units in the same project, both the mortgage on the condominium project and the mortgages on individual dwelling units shall be treated as mortgage purchases for purposes of the housing goals.

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(15) *Seniors housing units.* The purchase of a mortgage on seniors housing units where life or health care services are included in the rent shall be treated as a mortgage purchase for purposes of the housing goals, unless prospective residents are required to pay an entrance fee (other than application processing fees, first-month advanced rent payments, or security deposit fees), in addition to any monthly rent or service fee. Seniors housing units that do not include additional services in the rent shall be treated as multifamily dwelling units for purposes of the housing goals. Seniors housing units that include additional services in the rent shall be treated as multifamily dwelling units with missing data for purposes of determining affordability.

(d) *HOEPA mortgages.* HOEPA mortgages shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable single-family housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals. FHFA will make any such determinations available to the public on FHFA's Web site, *www.fhfa.gov.*

■ 8. Amend § 1282.17 by replacing the phrase ''rental housing'' with ''rental units''.

■ 9. Amend § 1282.20 by revising paragraph (b) to read as follows:

§ 1282.20 Determination of compliance with housing goals; notice of determination.

* * * * *

(b) *Multifamily housing goal and subgoals.* The Director shall evaluate

each Enterprise's performance under the multifamily low-income housing goal, the multifamily very low-income housing subgoal, and the small multifamily low-income housing subgoal, on an annual basis. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet a multifamily housing goal or subgoal established by this subpart, the Director shall notify the Enterprise in writing of such preliminary determination.

* * * * *

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix: Additional Discussion Concerning The Proposed Single-Family Housing Goals

This Appendix provides additional discussion concerning FHFA's proposed benchmark levels for the single-family goals and subgoals. FHFA uses market models, which incorporate economic and housing data variables, to predict market performance for each goal and subgoal. FHFA's consideration of the required statutory factors when setting the proposed benchmark levels includes the estimates from these models and the Enterprises' past performance. The first section in this Appendix examines the factors considered as part of FHFA's market model. The second section discusses additional factors considered in FHFA's review. The third and final section discusses the performance of the Enterprises against the single-family goals and FHFA's estimates of market performance for the years 2010 through 2013.

I. Factors Considered in FHFA's Market Models

FHFA uses a market model to project the future market size for each of the goals and subgoals for each year from 2015 through 2017. These projections are referred to as the ''estimated market performance.'' A full discussion of these estimates is included in the supporting document: *The Size of the Affordable Mortgage Market: 2015–2017 Enterprise Single-Family Housing Goals.*[49]

''Market size'' is one of the seven statutory factors considered by FHFA in setting the single-family housing goals. In addition to market size, the market model also incorporates FHFA's consideration of three more of the seven statutory factors: National housing needs; economic, housing, and demographic conditions; and other reliable mortgage data. FHFA uses a variety of data sources to obtain current data and future forecasts on the key variables used in the market model. These sources include: the American Housing Survey (AHS); U.S. Census Bureau demographics; commercial sources such as Moody's and other industry and trade research sources, such as the Mortgage Bankers Association (MBA), Inside Mortgage Finance Publications, National Association of Realtors (NAR), National Association of Home Builders (NAHB), and the Commercial Mortgage Securities Association. The FHFA Monthly Interest Rate Survey (MIRS) is used to complement forecast models for home purchase loan originations by making intra-annual adjustments prior to the public release of Home Mortgage Disclosure Act (HMDA) mortgage data. FHFA also uses data and information from Wells Fargo, PNC Bank, Fannie Mae, Freddie Mac, and The Wall Street Journal Survey, as well as market and economic data from the Bureau of Labor Statistics, the Federal Reserve Board, the Department of Commerce Bureau of Economic Analysis, and FedStats.

Each of the variables used in the market models is discussed in more detail below.

Unemployment rate. The unemployment rate is included in the market models for estimating market size for the low-income home purchase goal, the very low-income home purchase goal, and the low-income areas home purchase subgoal. Unemployment rates and the ability of borrowers to find and maintain jobs are key factors in the decision of buyers to purchase homes, as well as in the decisions of financial institutions to lend, since employment impacts income levels, debt levels, and credit scores. The unemployment rate has steadily fallen from 9.1 percent in August 2011 to 6.1 percent in June 2014. The unemployment rate is expected to fall to an average of 5.9 percent in 2015, 5.6 percent in 2016, and 5.7 percent in 2017. Nevertheless, the labor force participation rate has declined from 66.1 percent in June 2004 to 64 percent in June 2011 and 63.5 percent in June 2013.[50] It remains at 62.8 percent for the third consecutive month as of June 2014,[51] significantly lower than the labor force participation rate in June 2004 (66.1 percent).

Home sales. Home sales are included in the market models for estimating market size for the low-income home purchase goal. For a given level of market demand for housing, when there are more homes for sale, potential home buyers have more options, houses are priced more competitively, and the search costs to find affordable housing decrease. Historical volumes for sales of both new and existing houses are shown in Table 5 along with forecasts for 2014–2017. For 2013, NAR reported that existing single-family home sales were 4.48 million, up by 8.6 percent from 2012. Although existing home sales increased by 2.6 percent in June 2014, the sales pace is still 2.3 percent lower than in June 2013.[52] New home sales for 2013, as reported by the Department of Housing and Urban Development (HUD) and the U.S. Census Bureau, were 429,000, up by 16.6 percent from 2012. Nevertheless, new home sales fell 3.2 percent in the first quarter of 2014 relative to the prior quarter. New home sales in June 2014 fell 8.1 percent from the previous month and were 11.5 percent below new home sales in June 2013.[53]

Interest rates and mortgage interest rates. Interest rates and mortgage interest rates are included in the market models for estimating market size for the low-income home purchase goal and the low-income refinancing goal. Affordability in the mortgage market depends in part on the interest rate environment. Mortgage interest rates are affected by many factors. Trends in interest rates on longer term financial instruments, such as mortgages, typically follow the fluctuations of the 10-Year Treasury note yield, with approximately a 165 to 170 basis point (*i.e.,* 1.65 percent to 1.70 percent) interest rate spread between the 30-year mortgage rate and the 10-Year Treasury note yield, reflecting the differences in liquidity and credit risk expected for the 2015 through 2017 period. This is similar to the past five years, but lower than the 181 basis point average spread during 2005 through 2008.

Mortgage interest rates are included in the market models for estimating market size for the low-income home purchase goal and the low-income refinancing goal. The longer-term 30-year fixed-rate mortgage interest rate, after falling to a low of 3.4 percent in the fourth quarter of 2012, has gradually risen to 4.2 percent in the second quarter of 2014.[54] Shorter term fixed- and adjustable-rate mortgage interest rates remain at historical lows. Freddie Mac reported that the one-year adjustable-rate mortgage rate averaged 2.4 percent in the second quarter of 2014.[55] As the economic recovery continues, it is expected that interest rates, particularly longer term interest rates, will rise. For the 2015–2017 period, as shown in Table 5, forecasts show that all interest rates are expected to increase, including the interest rate on a 30-year fixed-rate mortgage, which is expected to increase to 4.9 percent by 2015 and 5.4 percent by 2016.

Inflation rate. The inflation rate is included in the market models for estimating market size for the very low-income home purchase goal. The monthly Consumer Price Index, excluding food and energy (Core CPI), has risen at an average year-over-year rate of 1.9 percent in 2012, 1.7 percent in 2013 and 1.8 percent in the first half of 2014. The increase in the Core CPI is expected to remain at or below 2.0 percent through 2017.[56]

Affordability index. The NAR Housing Affordability Index is included in the market models for estimating market size for the low-income areas home purchase subgoal.

[49] For more information (specifically which economic indicators each entity forecasts), see ''The Size of the Affordable Mortgage Market: 2015–2017 Enterprise Single-Family Housing Goals,'' published at FHFA's Web site, *http://www.fhfa.gov/PolicyProgramsResearch/Research.*

[50] Bureau of Labor Statistics, ''Labor Force Statistics from the Current Population Survey'' (Series ID: LNS 11300000).

[51] Bureau of Labor Statistics, News Release, ''The Employment Situation—June 2014'' (July 3, 2014).

[52] National Association of Realtors, News Release, ''Existing Home Sales Up in June'' (July 22, 2014).

[53] U.S. Census Bureau News (Joint Release with U.S. Department of Housing and Urban Development), ''New Residential Sales in June 2014'' (July 24, 2014); HUD PD&R ''National Housing Market Summary,'' First Quarter 2014 (May 2014).

[54] Freddie Mac, ''Primary Mortgage Market Survey'' (2012–2014); Freddie Mac, ''U.S. Economic and Housing Market Outlook'' (July 2014).

[55] Freddie Mac, ''Primary Mortgage Market Survey'' (July 3, 2014).

[56] Bureau of Labor Statistics, News Release—Consumer Price Index, June, 2014 (July 22, 2014).

Affordability is interrelated with other factors in the models, such as home prices and mortgage rates.

NAR's composite index of housing affordability for December 2013 showed that families earning the median income had 168.4 percent of the income needed to purchase a median-priced existing single-family home, which is lower than the peak annual level of 196.5 percent reached in 2012, but still very high by historical standards.[57] The housing affordability index rose in the first quarter of 2014, but subsequently fell to 159.3 percent for May 2014. Zillow research has indicated that the share of income needed to afford the mortgage payments on a median-priced home has risen from a low of under 13 percent at the end of 2012 to 15.1 percent in the fourth quarter of 2013.

The impact of rising mortgage rates, as well as higher home prices, could impact borrowers in lower income brackets to a greater degree than borrowers in higher income brackets due to the higher payments needed with rising house prices and higher mortgage interest rates. This, in turn, could lead to fewer borrowers in lower income brackets relative to the number of borrowers in higher income brackets.

While few recent studies have examined the impact of house price changes on affordability for borrowers by income bracket, a recent study examined the impact of mortgage interest rate increases on housing affordability. The study found that various metropolitan statistical areas (MSAs) have significant differences in affordability and that, using DTI (debt-to-income ratios) and LTV (loan-to-value ratios) to measure affordability, in 19 of the 37 largest MSAs the median house price was above the maximum affordable price as of August 2013. If mortgage rates rose to 6 percent, only 4 of the 37 would be affordable.[58]

Median house prices. Median house prices are included in the market models for estimating market size for the low-income home purchase goal, and the FHFA House Price Index is included in the market models for estimating market size for the very low-income home purchase goal. In periods of house price appreciation, home sales and mortgage originations increase as the expected return on investment rises. In periods of price depreciation or price uncertainty, home sales and mortgage originations decrease as risk-averse homebuyers are reluctant to enter the market. House prices generally fell during 2009 through 2011, but turned around in 2012 with an increase of 5.6 percent in FHFA's Purchase Only House Price Index. In 2013, home prices increased at a rate of 7.6 percent. House prices are expected to continue to increase through 2017 (see Table 5), although price gains may be slowing. Indeed, although the FHFA House Price Index in the first quarter of 2014 rose 1.3 percent and had risen for 11 consecutive quarters, it rose by less than the 1.9 percent increase in the first quarter of 2013. The FHFA House Price Index rose 0.5 percent in May 2014 relative to the prior month and was up 5.5 percent from the previous year.[59] Similarly, the median sales price of existing homes in June 2014 was up 4.3 percent from the prior year.[60]

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[57] *See* National Association of Realtors, ''Housing Affordability Index,'' *http://www.realtor.org/research/research/housinginx.*

[58] Lan Shi and Laurie Goodman. ''The Impact of Mortgage Rate Increases on Housing Affordability,'' Urban Institute, Housing Finance Policy Center (November, 2013).

[59] FHFA News Release, ''U.S. House Prices Up 0.4% in May'' (July 22, 2014).

[60] National Association of Realtors, News Release, ''Existing Home Sales Up in June'' (July 22, 2014).

Table 5
Economic, Housing and Mortgage Market Outlook

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Inflation Rate (CPI, Y/Y % Change)	1.6%	1.4%	1.3%	3.3%	1.9%	1.2%	1.2%	1.4%	2.1%	2.1%
Core Infl. Rate (CPI, Y/Y % Change)	2.0%	1.7%	0.7%	2.2%	1.9%	1.7%	1.7%	1.6%	1.9%	2.0%
Core Infl. Rate (PCE, Y/Y % Change)	1.6%	1.4%	1.0%	1.8%	1.7%	1.2%	1.2%	1.1%	1.3%	n.a.
Unemployment Rate	5.8%	9.3%	9.6%	8.9%	8.1%	7.3%	6.3%	5.8%	5.5%	5.6%
10-Year Treasury Yield	3.7%	3.3%	3.2%	2.8%	1.8%	2.4%	2.8%	3.4%	4.0%	4.2%
1-Year Treasury Yield	1.8%	0.5%	0.3%	0.2%	0.2%	0.1%	0.1%	0.4%	1.8%	n.a.
Prime Rate	5.1%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.5%	4.9%	5.9%
Federal Funds Target Rate	1.93%	0.16%	0.18%	0.10%	0.14%	0.11%	0.12%	0.53%	1.80%	n.a.
Housing Starts [1]	899	554	585	612	784	930	1,023	1,250	1,305	1,069
Housing Starts, 1-Unit [1]	616	443	471	435	537	621	666	889	1,155	n.a.
Total Home Sales [2]	4,588	4,710	4,502	4,586	5,030	5,505	5,336	5,747	5,401	4,834
New Home Sales [1]	482	374	321	307	368	430	462	576	618	518
Existing Home Sales [1]	4,106	4,336	4,181	4,279	4,662	5,074	4,874	5,171	4,783	4,316
Single-Family Originations [3]	$1,500	$1,815	$1,698	$1,262	$1,750	$1,755	$1,093	$1,104	$924	$950
Refinance Mortgage Share [4]	50%	64%	63%	68%	69%	61%	39%	27%	18%	13%
FHA Home Purchase Market Share [5]	25%	36%	35%	30%	26%	24%	20%	20%	n.a.	n.a.
ARM Market Share	7%	4%	5%	5%	5%	7%	11%	14%	n.a.	n.a.
Investor Share	13.4%	10.8%	11.7%	13.2%	13.2%	12.8%	11.0%	10.6%	10.4%	10.6%
30-Year Mortgage Fixed Rate [6]	6.0%	5.0%	4.7%	4.5%	3.7%	4.0%	4.3%	4.9%	5.4%	4.2%
5/1 ARM Rate [6]	5.7%	4.8%	3.8%	3.3%	2.8%	2.9%	3.2%	3.8%	n.a.	n.a.
1-Year ARM Rate [6]	5.2%	4.7%	3.8%	3.0%	2.7%	2.6%	2.5%	2.9%	4.2%	n.a.
Change in Housing Prices (FHFA ALL) [7]	-6.4%	-4.7%	-1.6%	-2.9%	-0.7%	4.9%	8.5%	6.7%	n.a.	n.a.
Change in Housing Prices (FHFA PO) [8]	-9.9%	-1.9%	-3.9%	-2.2%	5.6%	7.7%	6.5%	3.4%	2.3%	1.9%
Change in Housing Prices (CS HPI) [9]	-19.2%	-4.5%	-0.6%	-3.8%	4.6%	13.7%	4.7%	2.9%	3.2%	n.a.
Housing Affordability Index [10]	153	171	177	196	200	166	144	111	107	115
Median Sales Price - New Homes [11]	$230	$215	$221	$224	$242	$265	$277	$287	n.a.	n.a.
Median Sales Price - Existing Homes [11]	$197	$173	$172	$165	$175	$196	$205	$211	$211	$215

Note: Shaded area indicates historical values. Forecasts are an average forecast of Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, PNC Financial, the National Association of Home Builders, Standard and Poor's, the Wall Street Journal Survey, the Conference Board and the Federal Open Market Committee.

[1] Thousands of units

[2] Thousands of units, forecasted amount does not equal the sum of the existing plus new home sales because of differences in forecasts.

[3] MBA, Billions of dollars

[4] The refinance shares for 2008-2012 are calculated from Home Mortgage Disclosure Act (HMDA) data. The refinance share for 2013 is what is reported by MBA.

[5] The FHA market shares for 2008-2012 are calculated from HMDA data. Preliminary estimates for 2013 are calculated from new home sales data (Census Bureau), scaled to match the 2008-2012 FHA market share.

[6] Freddie Mac, Primary Mortgage Market Survey

[7] FHFA House Price Index, all transactions (Q4/Q4 % Change)

[8] FHFA House Price Index, purchase transactions only (Q4/Q4 % Change)

[9] Standard & Poor's Case-Shiller 10 City Index (Q4/Q4 % Change)

[10] National Association of Realtors

[11] Thousands of dollars

n.a. Not available at this time.

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Refinance rate. The refinance rate is included in the market models for estimating market size for the low-income refinancing goal. The size of the entire refinance

mortgage market has an impact on the share of affordable refinance mortgages (defined as refinance mortgages for borrowers making 80 percent or less of area median income) and thus on the development of the benchmark for the Enterprises for the low-income refinancing goal. Refinance mortgage volume has historically increased when the refinancing of mortgages is motivated by low interest rates, *i.e.,* ''rate-and-term refinances,'' and this increased volume is typically dominated by higher-income borrowers. Consequently, in periods of low interest rates, the share of lower-income borrowers often decreases. Because interest rates and mortgage rates are currently increasing after an extended period of low rates, the low-income share of borrowers who are refinancing increases.[61]

II. Additional Factors Considered

FHFA has also considered other variables that indirectly impact the variables in the market model. For example, homeowner vacancy rates impact the supply of homes, which, in turn, impacts home prices. Home prices are key in several of the market models for various goals and subgoals. The homeowner vacancy rate—the proportion of housing inventory for homeowners that is vacant and for sale—was 1.7 percent in 2004, but increased thereafter, to 2.8 percent in 2008. This rate has declined to 2.0 percent in 2012 and 2013, but is still somewhat elevated.[62] The housing supply may also be impacted by the inventory of distressed and at-risk homes that have not yet completed the foreclosure process, and so may not be reflected in the vacancy rate.

Foreclosure filings and negative equity indirectly impact other variables in the market model, such as house prices. Although the number of homes with foreclosure filings fell 34 percent relative to the peak level of 2.87 million in 2010, 1.89 million homes were foreclosed on in 2011.[63] Foreclosure filings have fallen since 2011, to 1.84 million in 2012 and 1.36 million in 2013, but they still remain high by historical standards.[64] FHFA has estimated that in 2011, less than 10 percent of borrowers with Enterprise loans had negative equity in their homes (9.9 percent in June 2011), whereas loans backing private label securities were more than three times more likely to have negative equity (35.5 percent in June 2011).[65] The figures were lower for December 2013 (7.2 percent for Fannie Mae and 10 percent for Freddie Mac), which were both below CoreLogic's figure for all mortgaged homes, estimated at 13.3 percent in the fourth quarter of 2013. Since the latter figure includes homes with mortgages backed by the Enterprises, the negative equity share was much higher for non-Enterprise loans.

House prices and other variables in the market model may also be indirectly affected by changes in underwriting standards. According to the Board of Governors of the Federal Reserve System's Senior Loan Officer Opinion Survey, many surveyed lenders reported tightening underwriting standards between 2007 and 2009. As of the January 2014 survey, lenders had not reported easing underwriting standards in significant numbers.[66] Stricter and less flexible underwriting standards are likely to affect overall mortgage origination volumes, and are likely to have a significant impact on low-income and very low-income borrowers.

Demographic characteristics are considered by FHFA, although they are not directly included in the market models. Assessment of demographic conditions is helpful in understanding trends in the performance of the Enterprises in the single-family and multifamily goals, as well as in understanding the trends in house prices and sales in particular geographic areas. The share of minority households has grown relative to white households between 1993 and 2013.[67] The Harvard University Joint Center for Housing Studies has provided household projections for various demographic groups and age groups from 2015–2035 which suggest significant estimated growth in Hispanic households, followed by Asian households. Their middle projections for households suggest that Hispanic households will grow from 16.4 million in 2015 to 27 million in 2035, while Asian and other households will grow from 8.3 million households in 2015 to 12.9 million households in 2035. Black households are projected to expand from 15.7 million households in 2015 to 19.9 million households in 2035. White households are forecast to grow most slowly, expanding from 84.8 million in 2015 to 88.2 million in 2035.[68]

While overall homeownership rates have declined by 0.3 percentage points in 2012–2013, dropping to 65.1 percent, declines have been greater for minority families, with a 4 percentage point decline from the peaks for Asian and other households and Hispanic households and a 6 percentage point decline from the peak for black households. The gap between the homeownership rates for white and black households has expanded from 25.9 percentage points in 2001 to 29.5 percentage points in 2013.[69] The denial rate for conventional loan applications in the demographic category for white households was 11.6 percent in 2012, which was significantly lower than the denial rates in the respective demographic categories for black (32 percent), Hispanic (20.5 percent), and Asian (14.5 percent) households.[70]

III. The Performance and Effort of the Enterprises Toward Achieving the Single-Family Housing Goals in Previous Years and Future Market Estimates

This portion of the Appendix is divided into two sections. The first section discusses the performance, benchmark levels, and single-family goals and subgoal for the Enterprises for 2010–2013. The second section discusses FHFA's estimates of market performance.

A. Enterprise Benchmark Levels and Performance: 2010–2013

The figures shown in Tables 6–9 for 2010–2012 are official performance results as determined by FHFA, based on analysis of loan-level information submitted by the Enterprises. The figures shown for 2013 are performance numbers as reported by the Enterprises to FHFA in March 2014. Official performance results for 2013 will be determined and reported by FHFA later in 2014, after release of the 2013 HMDA data in September.

The Safety and Soundness Act requires FHFA to consider the percentage of goal-qualifying mortgages under each housing goal, as calculated based on HMDA data for the three most recent years for which data are available.[71] FHFA has incorporated these measurements in the goals themselves, through the retrospective market levels. The HMDA performance numbers are given in the tables below for each of the single-family housing goals.

Low-income home purchase goal. The low-income home purchase goal applies to mortgages made to ''low-income families,'' defined as families with incomes no greater than 80 percent of area median income. As indicated in Table 6, the benchmark level for this goal was 27 percent for both 2010 and 2011, but both Enterprises' performance fell short of this level in both years. Both Enterprises' performance on this goal also lagged that of the primary mortgage market in both 2010 and 2011 (27.2 percent and 26.5 percent, respectively). This market share figure is included in the last column in Table

[61] The Home Affordable Refinance Program (HARP), which became effective in March 2009 and was expanded in 2011, is an effort to enhance the opportunity for many homeowners to refinance. Homeowners with loan-to-value ratios above 80 percent whose mortgages are owned or guaranteed by Fannie Mae or Freddie Mac and who are current on their mortgages have the opportunity to reduce their monthly mortgage payments to take advantage of historically low mortgage interest rates.

[62] Federal Reserve Bank of St. Louis, ''Home Vacancy Rate for the United States,'' *http://research.stlouisfed.org/fred2/series/USHVAC.*

[63] *See* ''2011 Year-End Foreclosure Report: Foreclosures on the Retreat'' (January 9, 2012), *http://www.realtytrac.com/content/foreclosure-market-report/2011-year-end-foreclosure-market-report-6984.*

[64] *See* ''1.4 Million U.S. Properties with Foreclosure Filings in 2013 Down 26 Percent to Lowest Annual Total Since 2007'' (January 13, 2014), *http://www.realtytrac.com/content/foreclosure-market-report/2013-year-end-foreclosure-market-report-7963.*

[65] *See http://www.fhfa.gov/Media/PublicAffairs/Documents/Letter-To-Congress-Principal-Forgiveness_12312.pdf.*

[66] *See* Board of Governors of the Federal Reserve System, ''January 2014 Senior Loan Officer Opinion Survey'' (Feb. 3, 2014), *http://www.federalreserve.gov/boarddocs/snloansurvey/201402/fullreport.pdf.*

[67] Joint Center for Housing Studies, Harvard University, ''The State of the Nation's Housing: 2014,'' p. 18.

[68] Daniel McCue, ''Baseline Household Projections for the Next Decade and Beyond,'' Harvard University Joint Center for Housing Studies, Table A–1b, p. 30 (March, 2014).

[69] Joint Center for Housing Studies, Harvard University, ''The State of the Nation's Housing: 2014,'' p. 17.

[70] Neil Bhutta and Glenn B. Canner, ''Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data and Matched HMDA-Credit Record Data,'' Federal Reserve Bulletin, Vol. 99, No. 4, Table 13A, p. 29 (November 2013).

[71] 12 U.S.C. 4562(e)(2)(A).

6, which reflects the low-income share of all conventional conforming home purchase mortgages originated in the primary mortgage market for the corresponding year, based on FHFA's analysis of HMDA data.

The low-income home purchase benchmark level was lowered from 27 percent for 2010–2011 to 23 percent for 2012–2014. As indicated in Table 6, both Enterprises' performance exceeded this level for 2012. Fannie Mae's reported performance of 23.8 percent exceeded this benchmark level for 2013, while Freddie Mac's reported performance of 21.8 percent for 2013 fell short of the benchmark level. Later in 2014, FHFA will determine the Enterprises' official performance figures for 2013 and the low-income share of the primary home purchase mortgage market for 2013, based on 2013 HMDA data.

Fannie Mae's performance on this goal was essentially unchanged between 2010 and 2012, before falling in 2013. Freddie Mac's performance was more uneven, falling in 2011, rising in 2012, and falling again in 2013.

TABLE 6—ENTERPRISE PAST PERFORMANCE ON THE LOW-INCOME HOME PURCHASE GOAL, 2006–13

Year	Type of home purchase (HP) mortgages	Benchmark	Performance		Market share (HMDA)
			Fannie Mae	Freddie Mac	
2013	Low-income HP Mortgages		193,660	93,425	
	Total HP Mortgages		814,066	429,086	
	Low-Inc. % of HP Mortgages	23%	23.8%	21.8%	NA
2012	Low-Income HP Mortgages		162,486	70,393	
	Total HP Mortgages		633,627	288,007	
	Low-Inc. % of HP Mortgages	23%	25.6%	24.4%	26.6%
2011	Low-Income HP Mortgages		120,597	60,682	
	Total HP Mortgages		467,066	260,796	
	Low-Inc. % of HP Mortgages	27%	25.8%	23.3%	26.5%
2010	Low-Income HP Mortgages		120,430	82,443	
	Total HP Mortgages		479,200	307,555	
	Low-Inc. % of HP Mortgages	27%	25.1%	26.8%	27.2%
2009	Low-Income HP Mortgages		148,423	105,719	
	Total HP Mortgages		582,673	415,897	
	Low-Inc. % of HP Mortgages	NA	25.5%	25.4%	29.6%
2008	Low-Income HP Mortgages		226,290	158,896	
	Total HP Mortgages		977,852	655,156	
	Low-Inc. % of HP Mortgages	NA	23.1%	24.3%	25.5%
2007	Low-Income HP Mortgages		383,129	248,434	
	Total HP Mortgages		1,471,242	1,008,064	
	Low-Inc. % of HP Mortgages	NA	26.0%	24.6%	26.1%
2006	Low-Income HP Mortgages		359,609	197,900	
	Total HP Mortgages		1,295,956	895,049	
	Low-Inc. % of HP Mortgages	NA	27.7%	22.1%	24.2%

Source: Performance as reported by the Enterprises for 2013; official performance as determined by FHFA for 2010–12; performance as if the goal had been in effect, as calculated by FHFA, for 2006–09.

"Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Note: An Enterprise passes a goal if (1) its performance matches or exceeds the pre-set benchmark level, or (2) if its performance falls short of the benchmark level but equals or exceeds the corresponding share of conventional conforming mortgages originated in the primary mortgage market, as determined by FHFA's analysis of Home Mortgage Disclosure Act (HMDA) data for the year, shown in the last column.

Very low-income home purchase goal. The very low-income home purchase goal applies to mortgages made to "very low-income families," defined as families with incomes no greater than 50 percent of area median income.

The very low-income home purchase goal was lowered from 8 percent for 2010–2011 to 7 percent for 2012–2014. As shown in Table 7, both Enterprises' performance exceeded this level for 2012 with Fannie Mae's performance of 7.3 percent and Freddie Mac's performance of 7.1 percent. However, both Enterprises fell short of the benchmark level for 2013, when Fannie Mae's reported performance was 6.0 percent and Freddie Mac's reported performance was 5.5 percent. Later in 2014, FHFA will determine the Enterprises' official performance figures for 2013 and the very low-income share of the primary home purchase mortgage market for 2013, based on 2013 HMDA data.

While the recovery in the home purchase market between 2012 and 2013 resulted in significantly higher volumes of home purchase mortgages at the Enterprises, the volume of very low-income home purchase mortgages did not increase by nearly as much. Between 2012 and 2013, the volume of Fannie Mae's purchases of very low-income home purchase mortgages increased by 5 percent, while its overall volume of home purchase mortgages increased by 28 percent. As a result, Fannie Mae's goal performance fell from 7.3 percent in 2012 to 6.0 percent in 2013. Similarly, the volume of Freddie Mac's purchases of very low-income home purchase mortgages increased by 16 percent, while its overall volume of home purchase mortgages increased by 49 percent. As a result, Freddie Mac's goal performance fell from 7.1 percent in 2012 to 5.5 percent in 2013.

TABLE 7—ENTERPRISE PAST PERFORMANCE ON THE VERY LOW-INCOME HOME PURCHASE GOAL, 2006–13

Year	Type of home purchase (HP) mortgages	Benchmark	Enterprise		Market share (HMDA)
			Fannie Mae	Freddie Mac	
2013	Very Low-Income HP Mortgages		48,810	23,705	
	Total HP Mortgages		814,066	429,086	
	Very Low-Inc. % of HP Mortgages	7%	6.0%	5.5%	NA
2012	Very Low-Income HP Mortgages		46,519	20,469	
	Total HP Mortgages		633,627	288,007	
	Very Low-Inc. % of HP Mortgages	7%	7.3%	7.1%	7.7%
2011	Very Low-Income HP Mortgages		35,443	17,303	
	Total HP Mortgages		467,066	260,796	
	Very Low-Inc. % of HP Mortgages	8%	7.6%	6.6%	8.0%
2010	Very Low-Income HP Mortgages		34,673	24,276	
	Total HP Mortgages		479,200	307,555	
	Very Low-Inc. % of HP Mortgages	8%	7.2%	7.9%	8.1%
2009	Very Low-Income HP Mortgages		42,571	29,870	
	Total HP Mortgages		582,673	415,897	
	Very Low-Inc. % of HP Mortgages	NA	7.3%	7.2%	8.8%
2008	Very Low-Income HP Mortgages		54,263	40,009	
	Total HP Mortgages		977,852	655,156	
	Very Low-Inc. % of HP Mortgages	NA	5.5%	6.1%	6.5%
2007	Very Low-Income HP Mortgages		93,543	60,549	
	Total HP Mortgages		1,471,242	1,008,064	
	Very Low-Inc. % of HP Mortgages	NA	6.4%	6.0%	6.2%
2006	Very Low-Income HP Mortgages		100,148	47,008	
	Total HP Mortgages		1,295,986	895,049	
	Very Low-Inc. % of HP Mortgages	NA	7.7%	5.3%	5.9%

Source: Performance as reported by the Enterprises for 2013; official performance as determined by FHFA for 2012–12; performance if the goal had been in effect, as calculated by FHFA, for 2006–09. ''Very Low-income'' refersd to borrowers with incomes no greater than 50 percent of Area Median Income (AMI).

Note: An Enterprise passes a goal if (1) its performance matches or exceeds the pre-set benchmark level, or (2) if its performance falls short of the benchmark level but equals or exceeds the corresponding share of conventional conforming mortgages originated in the primary mortgage market, as determined by FHFA's analysis of Home Mortgage Disclosure Act (HMDA) data for the year, shown in the last column.

Low-income areas home purchase goal and subgoal. Three categories of mortgages, listed below, qualify for the low-income areas housing goal. The current rule also has a low-income areas home purchase subgoal, which includes only categories (1) and (2) below:

1. Home purchase mortgages for families in low-income census tracts, defined as tracts with median family income no greater than 80 percent of area median income;

2. Home purchase mortgages for families with incomes no greater than 100 percent of area median income who reside in minority census tracts, defined as tracts with minority population of at least 30 percent and a median family income less than 100 percent of area median income; and

3. Home purchase mortgages for families with incomes no greater than 100 percent of area median income who reside in Federally-declared disaster areas (regardless of the minority share of the population in the tract or the ratio of tract median family income to area median income).

The Enterprise performance for this subgoal is addressed below, followed by the performance for the overall goal.

Low-income areas home purchase subgoal. As shown in Table 8, the benchmark level for this subgoal (categories (1) and (2)) was established at 13 percent of all home purchases mortgages acquired in 2010 and 2011. Both Enterprises' performance fell short of the benchmark level in each year. However, as shown in Table 8, Fannie Mae's performance in 2010 (12.4 percent) exceeded the corresponding market share (12.1 percent), and its performance in 2011 (11.6 percent) exceeded the corresponding market share (11.4 percent). Freddie Mac's performance in both 2010 (10.4 percent) and 2011 (9.2 percent) fell short of both the 2010 and 2011 benchmark levels and the corresponding market shares.

Based on 2012 projections from FHFA's market estimation model, FHFA lowered the subgoal benchmark level from 13 percent for 2010–2011 to 11 percent for 2012–2014. Both Enterprises' official performance exceeded the subgoal benchmark level in 2012 (with Fannie Mae at 13.1 percent and Freddie Mac at 11.4 percent), and based on the performance numbers reported by the Enterprises, this was also the case for 2013 (with Fannie Mae at 14.0 percent and Freddie Mac at 12.3 percent).

Low-income areas home purchase goal. The low-income areas home purchase goal includes all three categories listed above: Families in low-income census tracts, moderate-income families in minority census tracts, and moderate-income families in designated disaster areas. Designated disaster areas include counties declared by the Federal Emergency Management Agency (FEMA) to be disaster areas during the previous three years. This is referred to as the ''disaster areas increment.'' It is established through an FHFA analysis of HMDA data for the most recent three years period available. Given the lag in release of the HMDA data, the disaster areas increment for 2010 was based on disaster areas declared between 2007 and 2009, but the increment was calculated using HMDA data for 2006–2008, because 2009 HMDA was not available until later in 2010. The disaster areas increment used in setting the benchmark level of the goal for 2011 was based on disaster areas declared between 2008 and 2010, but the increment was calculated using HMDA data for 2007–2009. Thus, the disaster areas increment, and the resulting low-income areas goal, can vary from one year to the next.

In practice, the disaster areas increment was the same for both 2010 and 2011, at 11 percent; thus, the overall low-income areas goal was 24 percent for both years. As indicated in Table 8, Fannie Mae's performance (24.1 percent) exceeded this level for 2010, but Freddie Mac's performance (23.1 percent) did not. For 2011, both Enterprises' performance fell short of

the benchmark level, but Fannie Mae's performance (22.4 percent) exceeded the market share (22.0 percent), while Freddie Mac's performance (19.2 percent) fell short of the market share.

The disaster areas increment was 9 percent for 2012 and 10 percent for 2013, thus, the overall low-income areas goal was 20 percent for 2012 and 21 percent for 2013. Both Enterprises' official performance exceeded the benchmark level for 2012, with Fannie Mae at 22.3 percent and Freddie Mac at 20.6 percent. Fannie Mae reported that its performance numbers exceeded the benchmark level for 2013, at 21.6 percent. Freddie Mac's reported performance fell short of the benchmark level for 2013, at 20.0 percent.

TABLE 8—ENTERPRISE PAST PERFORMANCE ON THE LOW-INCOME AREAS HOME PURCHASE GOAL AND SUBGOAL, 2010–13

Year	Type of home purchase (HP) mortgages	Benchmark	Enterprise		Market share (HMDA)
			Fannie Mae	Freddie Mac	
2013	Low-income Tract HP Mortgages		86,430	40,444	
	High-Minority Tract HP Mortgages		27,425	12,177	
	Subgoal Qualifying Mortgages		113,855	52,621	
	Total HP Mortgages		814,066	429,086	
	Subgoal Qualifying % of Mortgages	11%	14.0%	12.3%	NA
	Disaster Area HP Mortgages		62,314	33,123	
	Goal-Qualifying Mortgages		176,169	85,744	
	Goal Qualifying % of Mortgages	21%	21.6%	20.0%	NA
2012	Low-Income Tract HP Mortgages		60,927	24,588	
	High-Minority Tract HP Mortgages		22,275	8,164	
	Subgoal Qualifying Mortgages		83,202	32,752	
	Total HP Mortgages		633,627	288,007	
	Subgoal Qualifying % of Mortgages	11%	13.1%	11.4%	13.6%
	Disaster Area HP Mortgages		58,085	26,486	
	Goal-Qualifying Mortgages		141,287	59,238	
	Goal Qualifying % of Mortgages	20%	22.3%	20.6%	23.2%
2011	Low-Income Tract HP Mortgages		40,736	18,270	
	High-Minority Tract HP Mortgages		13,549	5,632	
	Subgoal Qualifying Mortgages		54,285	23,902	
	Total HP Mortgages		467,070	260,796	
	Subgoal Qualifying % of Mortgages	13%	11.6%	9.2%	11.4%
	Disaster Area HP Mortgages		50,209	26,232	
	Goal-Qualifying Mortgages		104,494	50,134	
	Goal Qualifying % of Mortgages	24%	22.4%	19.2%	22.0%
2010	Low-Income Tract HP Mortgages		44,467	23,928	
	High-Minority Tract HP Mortgages		14,814	8,161	
	Subgoal Qualifying Mortgages		59,281	32,089	
	Total HP Mortgages		479,201	307,556	
	Subgoal Qualifying % of Mortgages	13%	12.4%	10.4%	12.1%
	Disaster Area HP Mortgages		56,076	38,898	
	Goal-Qualifying Mortgages		115,357	70,987	
	Goal Qualifying % of Mortgages	24%	24.1%	23.1%	24.0%

Source: Performance as reported by the Enterprises for 2013; official performance as determined by FHFA for 2010–12. See definitions of "Low-income Tract" and "High-Minority Tract" in text. Tracts which meet both criteria are included as "low-income units." The goal and subgoal were set for 2010–11 based on low-income and high-minority tracts from the 2000 census, and for 2012–14 based on such tracts from the 2010 census. Disaster areas are defined at the county level.

Note: An Enterprise passes a goal if (1) its performance matches or exceeds the pre-set benchmark level, or (2) if its performance falls short of the benchmark level but equals or exceeds the corresponding share of conventional conforming mortgages originated in the primary mortgage market, as determined by FHFA's analysis of Home Mortgage Disclosure Act (HMDA) data for the year, shown in the last column.

Low-income refinancing goal. The refinancing housing goal is targeted to low-income families—families with incomes no greater than 80 percent of AMI—and applies to mortgages that are given to pay off or prepay an existing loan secured by the same property. Qualifying permanent modifications of loans for low-income families under the Administration's Home Affordable Modification Program (HAMP) are also counted toward the refinance housing goal. HAMP modifications are the only type of modifications eligible for counting for purposes of the housing goals. The impact of such modifications on goal performance is shown in Table 9.

The low-income refinancing goal was set at 21 percent for 2010 and 2011. As indicated, Freddie Mac's performance exceeded this level for both years, while Fannie Mae barely fell short in 2010 (at 20.9 percent), but exceeded the level in 2011 (23.1 percent).

FHFA lowered the low-income refinancing goal slightly, to 20 percent, for 2012–2014. Both Enterprises' performance surpassed this level, even without taking into account HAMP loan modifications, for 2012. Both Enterprises reported that this was also true for 2013. When including HAMP modifications, reported performance exceeded the goal for both years by wide margins, as shown in Table 9: 24.3 percent for Fannie Mae and 24.1 percent for Freddie Mac in 2013.

The data in Table 9 indicate that HAMP loan modifications have increased the reported performance of the Enterprises on the low-income refinancing goal. This was especially true for 2011, when Fannie Mae's performance was 21.3 percent without HAMP modifications, but 23.1 percent with HAMP modifications. The impact was even larger for Freddie Mac, whose performance was 21.2 percent without HAMP modifications, but 23.4 percent with HAMP modifications in 2011.

In every year from 2010 through 2013, low-income families received at least 67 percent of HAMP modifications at each Enterprise.

However, HAMP modifications have had a smaller impact on low-income refinancing goal performance in recent years as volume has fallen, as shown in Table 9—for Fannie Mae, from a high of 64,124 modifications in 2011 to 16,478 modifications in 2013, and for Freddie Mac, from 52,910 modifications in 2011 to 21,599 modifications in 2013.

TABLE 9—ENTERPRISE PAST PERFORMANCE ON THE LOW-INCOME REFINANCES GOAL, 2010–13

Year	Type of refinance mortgages	Benchmark	Enterprise		Market share (HMDA)
			Fannie Mae	Freddie Mac	
2013	Low-Income Refinance Mortgages		519,753	306,205	
	Total Refinance Mortgages		2,170,063	1,309,435	
	Low-Inc. % of Refinance Mortgages	NA	24.0%	23.4%	NA
	Low-Income Loan Modifications		11,858	14,757	
	Total Loan Modifications		16,478	21,599	
	Low-Inc. % of Loan Modifications	NA	72.0%	68.3%	NA
	Low-Income Refi + Mod Total		531,611	320,962	
	Refi + Mod Total		2,186,541	1,331,034	
	Low-Inc. % Refinance Total	20%	24.3%	24.1%	NA
2012	Low-Income Refinance Mortgages		582,505	323,822	
	Total Refinance Mortgages		2,742,560	1,508,186	
	Low-Inc. % of Refinance Mortgages	NA	21.2%	21.5%	22.3%
	Low-Income Loan Modifications		22,806	21,753	
	Total Loan Modifications	NA	31,288	31,390	
	Low-Inc. % of Loan Modifications		72.9%	69.3%	NA
	Low-Income Refi + Mod Total		605,311	345,575	
	Refi + Mod Total		2,773,848	1,539,576	
	Low-Inc. % Refinance Total	20%	21.8%	22.4%	NA
2011	Low-Income Refinance Mortgages		384,598	231,948	
	Total Refinance Mortgages		1,802,131	1,092,894	
	Low-Inc. % of Refinance Mortgages	NA	21.3%	21.2%	21.5%
	Low-Income Loan Modifications		45,656	35,625	
	Total Loan Modifications		64,124	52,910	
	Low-Inc. % of Loan Modifications	NA	71.2%	67.3%	NA
	Low-Income Refi + Mod Total		430,254	267,573	
	Refi + Mod Total		1,866,255	1,145,804	
	Low-Inc. % Refinance Total	21%	23.1%	23.4%	NA
2010	Low-Income Refinance Mortgages		373,105	286,741	
	Total Refinance Mortgages		1,934,270	1,378,578	
	Low-Inc. % of Refinance Mortgages	NA	19.3%	20.8%	20.2%
	Low-Income Loan Modifications		44,343	25,244	
	Total Loan Modifications		63,428	37,411	
	Low-Inc. % of Loan Modifications	NA	69.9%	67.5%	NA
	Low-Income Refi + Mod Total		417,448	311,985	
	Refi + Mod Total		1,997,698	1,415,989	
	Low-Inc. % Refinance Total	21%	20.9%	22.0%	NA

Source: Performance as reported by the Enterprises for 2013; official performance as determined by FHFA for 2012–12. ''Low-income'' refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Note: An Enterprise passes a goal if (1) its performance matches or exceeds the pre-set benchmark level, or (2) if its performance falls short of the benchmark level but equals or exceeds the corresponding share of conventional conforming mortgages originated in the primary mortgage market, as determined by FHFA's analysis of Home Mortgage Disclosure Act (HMDA) data for the year, is shown in the last column.

B. Projections From the Market Estimation Models

The projections from FHFA's market estimation models for the two single-family owner-occupied home purchase housing goals, one home purchase subgoal, and the refinancing mortgage housing goal, are provided in Table 10. For 2015 through 2017, FHFA's model projects that the low-income borrower shares of the home purchase mortgage market will be a point estimate of 20.9 percent, 20.2 percent and 19.8 percent, respectively. The ranges for 2015 are between 14.2 percent and 27.6 percent; the ranges for 2016 are between 12.3 percent and 28.1 percent; and the ranges for 2017 are between 10.8 percent and 28.8 percent.

FHFA's model projects that the very low-income borrower share of the home purchase mortgage market will be a point estimate of 5.8 percent for 2015, 5.7 percent for 2016 and 5.6 percent for 2017. The ranges for 2015 are between 3.8 percent and 7.8 percent; the ranges for 2016 are between 3.3 percent and 8.1 percent; and the ranges for 2017 are between 2.8 percent and 8.4 percent.

FHFA's model projects that the share of subgoal-qualifying mortgages in low-income areas in the home purchase mortgage market, excluding designated disaster areas, will be a point estimate of 14.7 percent for 2015, 14.7 percent for 2016 and 14.2 percent for 2017. The ranges for 2015 are between 10.6 percent and 18.8 percent; the ranges for 2016 are between 9.6 percent and 19.8 percent; and the ranges for 2017 are between 8.3 percent and 20.1 percent.

FHFA's model projects that the share of refinancing mortgages made to low-income borrowers will be a point estimate of 31.0 percent in 2015, 33.5 percent in 2016 and 34.2 percent in 2017. The ranges for 2015 are between 24.2 percent and 37.8 percent; the ranges for 2016 are between 25.4 percent and 41.6 percent; and the ranges for 2017 are between 25.1 percent and 43.3 percent.

Table 10: Actual HMDA Market Performance and Projected Market Performance

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Low-Income Home Purchase Goal	25.3%	29.6%	27.2%	26.5%	26.6%	23.4%	21.4%	20.9%	20.2%	19.8%
						+/- 3.0	+/- 5.2	+/- 6.7	+/- 7.9	+/- 9.0
Very Low-Income Home Purchase Goal	6.5%	8.8%	8.1%	8.0%	7.7%	6.3%	5.9%	5.8%	5.7%	5.6%
						+/- 0.5	+/- 1.4	+/- 2.0	+/- 2.4	+/- 2.8
Low-Income Areas Home Purchase Goal	14.1%	13.0%	12.1%	11.4%	13.6%	13.4%	14.3%	14.7%	14.7%	14.2%
						+/- 1.6	+/- 2.9	+/- 4.1	+/- 5.1	+/- 5.9
Low-Income Refinancing Goal	23.4%	20.8%	20.2%	21.5%	22.3%	22.4%	27.6%	31.0%	33.5%	34.2%
						+/- 3.3	+/- 5.3	+/- 6.8	+/- 8.1	+/- 9.1

Note: Shaded area indicates historical values.

Dated: August 29, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

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Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 30, 168, and 170

OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 30, 168, and 170

[Docket ID OCC–2014–001]

RIN 1557–AD78

OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rules and guidelines.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting guidelines, issued as an appendix to its safety and soundness standards regulations, establishing minimum standards for the design and implementation of a risk governance framework (Framework) for large insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks (banks) with average total consolidated assets of $50 billion or more and minimum standards for a board of directors in overseeing the Framework's design and implementation (final Guidelines). The standards contained in the final Guidelines will be enforceable by the terms of a Federal statute that authorizes the OCC to prescribe operational and managerial standards for national banks and Federal savings associations. In addition, as part of our ongoing efforts to integrate the regulations of the OCC and those of the Office of Thrift Supervision (OTS), the OCC is adopting final rules and guidelines that make its safety and soundness standards regulations and guidelines applicable to both national banks and Federal savings associations and that remove the comparable Federal savings association regulations and guidelines. The OCC is also adopting other technical changes to the safety and soundness standards regulations and guidelines.

DATES: The final rule is effective November 10, 2014. Compliance dates for the final Guidelines vary as specified.

FOR FURTHER INFORMATION CONTACT: Molly Scherf, Deputy Comptroller, Large Bank Supervision, (202) 649–6210, or Stuart Feldstein, Director, Andra Shuster, Senior Counsel, or Henry Barkhausen, Attorney, Legislative & Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, or Martin Chavez, Attorney, Securities and Corporate Practices Division, (202) 649–5510, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The recent financial crisis demonstrated the destabilizing effect that large, interconnected financial companies can have on the national economy, capital markets, and the overall financial stability of the banking system. The financial crisis and the accompanying legislative response underscore the importance of strong bank supervision and regulation of the financial system. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [1] to address, in part, weaknesses in the framework for the supervision and regulation of large U.S. financial companies.[2] These legislative developments highlight the view that large, complex institutions can have a significant impact on capital markets and the economy and, therefore, need to be supervised and regulated more rigorously.

As a result of the financial crisis, the OCC developed a set of ''heightened expectations'' to enhance our supervision and strengthen the governance and risk management practices of large national banks.[3] These heightened expectations reflected the OCC's supervisory experience during the financial crisis and addressed weaknesses the OCC observed in large institutions' governance and risk management practices during this time. Through its work with the Financial Stability Board and Basel Committee on Banking Supervision, the OCC found that many supervisors are establishing, or are considering establishing, similar expectations for the financial institutions they regulate.[4]

In January 2014, the OCC invited public comment on proposed rules and guidelines addressing the following two topics: (i) Guidelines establishing minimum standards for the design and implementation of a Framework for large insured national banks, insured Federal savings associations, and insured Federal branches and minimum standards for boards of directors overseeing the Framework of these institutions (proposed Guidelines); and (ii) the integration of 12 CFR parts 30 and 170 (proposed integration rules and integration guidelines).[5]

After carefully considering the comments we received on the proposed Guidelines, the OCC is adopting these final Guidelines as a new Appendix D to part 30 of our regulations. As described more fully below, the final Guidelines supersede the OCC's previous heightened expectations program with respect to covered banks.[6] The OCC, as the primary financial regulatory agency for national banks and Federal savings associations, believes that the final Guidelines further the goal of the Dodd-Frank Act to strengthen the financial system by focusing management and boards of directors on strengthening risk management practices and governance, thereby minimizing the probability and impact of future crises. In addition, the final Guidelines will provide greater certainty to covered banks about the OCC's risk management expectations and improve examiners' ability to assess compliance with the standards contained in Appendix D. The OCC is also adopting the proposed integration rules and integration guidelines substantially as proposed, with minor technical changes.

We have set forth below a summary of the comments we received, and a detailed description of the proposed Guidelines, significant comments, and the standards contained in the final Guidelines.

Notice of Proposed Rulemaking: Summary of General Comments

The OCC received 25 comment letters on the proposed Guidelines from financial institutions and trade associations, among others, and received no comment letters on the proposed integration rules and integration guidelines. The comments addressed all major sections of the proposed Guidelines. To improve understanding of the issues raised by

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See, e.g.,* 12 U.S.C. 5365 (requiring enhanced prudential standards for certain bank holding companies and nonbank financial companies).

[3] Further background information on the heightened expectations program is included in the notice of proposed rulemaking entitled *OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations.* 79 FR 4282, 4283 (Jan. 27, 2014).

[4] *See* Financial Stability Board, *Thematic Review on Risk Governance* Peer Review Report (Feb. 12, 2013); *Principles for An Effective Risk Appetite Framework* (Nov. 18, 2013). *See also* Basel Committee on Banking Supervision, *Principles for effective risk data aggregation and risk reporting* (Jan. 2013).

[5] 79 FR 4282 (Jan. 27, 2014).

[6] The OCC has adopted a definition of the term ''covered bank'' to clarify the scope of the final Guidelines. This definition is discussed in the definitions section of this preamble.

commenters, the OCC met with a number of these commenters to discuss issues relating to the proposed Guidelines, and summaries of these meetings are available on a public Web site.[7]

Many commenters expressed support for the broader goals of the proposed Guidelines. At the same time, other commenters raised concerns with various provisions in the proposed Guidelines. For example, commenters argued that the proposed Guidelines were too prescriptive and requested the OCC to revise the final Guidelines to be more principles-based and to provide additional flexibility in applying the Guidelines to different types of banks.

Some commenters also interpreted the proposed Guidelines as prohibiting banks from utilizing their parent company's risk governance framework and resources. These commenters noted that this could result in conflicting standards, increased risk, and a duplication of systems and resources and urged the OCC to allow the bank to leverage existing holding company risk management processes.

Commenters also generally opposed categorizing certain organizational units as front line units. These commenters noted that organizational units such as legal, human resources, finance, and information technology do not create the types of risk that should be subject to these Guidelines and thus the OCC should not classify them as front line units. Finally, some commenters argued that the proposed Guidelines inappropriately assigned managerial responsibilities to the board of directors that would distract the board from its strategic and oversight role.

As discussed more fully below, the OCC has revised the final Guidelines in response to the issues and information provided by commenters, and has made technical changes to the final rule and guidelines integrating 12 CFR parts 30 and 170. These modifications to the final Guidelines and explanations that address comments are described in the section-by-section description of the final Guidelines.

Enforcement of the Guidelines

The OCC is adopting the final Guidelines pursuant to section 39 of the Federal Deposit Insurance Act (FDIA).[8] Section 39 authorizes the OCC to prescribe safety and soundness standards in the form of a regulation or guidelines. For national banks, these standards currently include three sets of guidelines issued as appendices to part 30 of our regulations. Appendix A contains operational and managerial standards that relate to internal controls, information systems, internal audit systems, loan documentation, credit underwriting, interest rate exposure, asset growth, asset quality, earnings, and compensation, fees and benefits. Appendix B contains standards on information security and Appendix C contains standards that address residential mortgage lending practices. The safety and soundness standards for Federal savings associations are found in Appendices A and B to 12 CFR part 170. Part 30, part 170, and Appendices A and B were issued on an interagency basis and are comparable.[9]

Section 39 prescribes different consequences depending on whether the agency issues regulations or guidelines. Pursuant to section 39, if a national bank or Federal savings association [10] fails to meet a standard prescribed by regulation, the OCC must require it to submit a plan specifying the steps it will take to comply with the standard. If a national bank or Federal savings association fails to meet a standard prescribed by guideline, the OCC has the discretion to require the submission of such a plan.[11] The issuance of these heightened standards as guidelines rather than as a regulation provides the OCC with supervisory flexibility to pursue the course of action that is most appropriate given the specific circumstances of a covered bank's failure to meet one or more standards, and the covered bank's self-corrective and remedial responses.

The OCC has procedural rules contained in part 30 that implement the enforcement remedies prescribed by section 39. Under these provisions, the OCC may initiate the enforcement process when it determines, by examination or otherwise, that a national bank or Federal savings association has failed to meet the standards set forth in the final Guidelines.[12] Upon making that determination, the OCC may request, through letter or Report of Examination, that the national bank or Federal savings association submit a compliance plan to the OCC detailing the steps the institution will take to correct the deficiencies and the time within which it will take those steps. This request is termed a Notice of Deficiency. Upon receiving a Notice of Deficiency from the OCC, the national bank or Federal savings association must submit a compliance plan to the OCC for approval within 30 days.

If a national bank or Federal savings association fails to submit an acceptable compliance plan, or fails materially to comply with a compliance plan approved by the OCC, the OCC may issue a Notice of Intent to Issue an Order pursuant to section 39 (Notice of Intent). The bank or savings association then has 14 days to respond to the Notice of Intent. After considering the bank's or savings association's response, the OCC may issue the order, decide not to issue the order, or seek additional information from the bank or savings association before making a final decision. Alternatively, the OCC may issue an order without providing the bank or savings association with a Notice of Intent. In this case, the bank or savings association may appeal after-the-fact to the OCC, and the OCC has 60 days to consider the appeal and render a final decision. Upon the issuance of an order, a bank or savings association will be deemed to be in noncompliance with part 30. Orders are formal, public documents, and they may be enforced in district court or through the assessment of civil money penalties under 12 U.S.C. 1818.

Description of the OCC's Guidelines Establishing Heightened Standards

The final Guidelines consist of three sections. Section I provides an introduction to the Guidelines, explains the scope of the Guidelines, and defines key terms used throughout the Guidelines. Section II sets forth the minimum standards for the design and implementation of a covered bank's Framework. Section III provides the minimum standards for the board of directors' oversight of the Framework.

[7] *See http://www.regulations.gov/index.jsp#!docketDetail;D=OCC-2014-0001.*

[8] 12 U.S.C. 1831p-1. Section 39 was enacted as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, section 132(a), 105 Stat. 2236, 2267–70 (Dec. 19, 1991).

[9] As discussed further below, the OCC is also adopting final rules and guidelines that make part 30 and its appendices applicable to Federal savings associations, and that remove part 170.

[10] Section 39 of the FDIA applies to ''insured depository institutions,'' which would include insured Federal branches of foreign banks. While we do not specifically refer to these entities in this discussion, it should be read to include them.

[11] *See* 12 U.S.C. 1831p–1(e)(1)(A)(i) and (ii). In either case, however, the statute authorizes the issuance of an order and the subsequent enforcement of that order in court, independent of any other enforcement action that may be available in a particular case.

[12] For national banks and Federal savings associations, the procedures governing the determination and notification of failure to satisfy a standard prescribed pursuant to section 39, the filing and review of compliance plans, and the issuance, if necessary, of orders are set forth in our regulations at 12 CFR 30.3, 30.4, and 30.5.

Section I: Introduction

Under the proposed Guidelines, the OCC would expect a bank to establish and implement a Framework for managing and controlling the bank's risk taking. The proposed Guidelines established the minimum standards for the design and implementation of the Framework and the minimum standards for the board of directors in overseeing the Framework's design and implementation.

The proposed Guidelines permitted a bank to use its parent company's risk governance framework if the bank has a risk profile that is substantially the same as its parent company's risk profile, the parent company's risk governance framework complies with the proposed Guidelines, and the bank demonstrates through a documented assessment that its risk profile and its parent company's risk profile are substantially the same. The proposed Guidelines provided that the bank should conduct this assessment at least annually or more often in conjunction with the review and update of the Framework performed by independent risk management as set forth in paragraph II.A. of the proposed Guidelines.

Under the proposed Guidelines, a parent company's and bank's risk profiles would be considered substantially the same if, as of the most recent quarter-end Federal Financial Institutions Examination Council Consolidated Reports of Condition and Income (Call Report), the following conditions are met: (i) The bank's average total consolidated assets represent 95 percent or more of the parent company's average total consolidated assets; (ii) the bank's total assets under management represent 95 percent or more of the parent company's total assets under management; and (iii) the bank's total off-balance sheet exposures represent 95 percent or more of the parent company's total off-balance sheet exposures. As provided in the proposed Guidelines, a bank that did not satisfy this test could submit to the OCC for consideration an analysis that demonstrates that the risk profile of the parent company and the bank are substantially the same based on other factors.

The proposed Guidelines provided that the bank would need to develop its own Framework if the parent company's and bank's risk profiles are not substantially the same. The bank's Framework should ensure that the bank's risk profile is easily distinguished and separate from its parent company's for risk management and supervisory reporting purposes and that the safety and soundness of the bank is not jeopardized by decisions made by the parent company's board of directors or management.

Several commenters argued that it was inefficient and counterproductive to require a bank to create a second risk framework in addition to the parent company's framework. According to the commenters, a separate bank-specific risk framework would be isolated from the overall enterprise risk framework and undermine the goals of sound risk management. Other commenters indicated that banks should be allowed to use their parent company's risk governance framework because the Dodd-Frank Act requires bank holding companies to serve as a source of strength for their insured depository institution subsidiaries.

Some commenters also interpreted the proposed Guidelines to prohibit the bank from using any components of the parent company's risk governance framework unless the risk profiles of the bank and its parent holding company are substantially the same. Commenters argued that the OCC should change the threshold for the substantially the same determination from 95 percent to 85 percent. They noted that in certain other regulatory contexts special treatment is granted when the total assets of an insured depository institution comprise 85 percent or more of the assets of its parent company.[13] One commenter argued that the current Call Report and holding company reporting forms do not contain parallel line items for assets under management and off-balance sheet exposures, making it problematic to establish that a bank is above the 95 percent threshold under those measures. Several commenters also suggested that the OCC should allow multiple subsidiary banks of a parent company to aggregate their asset sizes in order to meet the 95 percent threshold. The commenters noted that some banking organizations conduct banking activities through multiple charters and that a prohibition on aggregation would result in unnecessary and duplicative risk management programs.

The OCC is making a few modifications to the introductory section. The final Guidelines continue to establish minimum standards for the design and implementation of a covered bank's Framework and minimum standards for the covered bank's board of directors in providing oversight of the Framework's design and implementation. The OCC notes that these standards are not intended to be exclusive, and that they are in addition to any other applicable requirements in law or regulation. For example, the OCC expects covered banks to continue to comply with the operational and management standards articulated in Appendix A to part 30, including those related to internal controls, internal audit systems, risk management, and management information systems.

Paragraph 3. of the final Guidelines clarifies that a covered bank may use its parent company's risk governance framework in its entirety, without modification, if the framework meets these minimum standards and the risk profiles of the parent company and the covered bank are substantially the same as demonstrated through a documented assessment. The covered bank should conduct this assessment at least annually in conjunction with the review and update of the Framework performed by independent risk management pursuant to paragraph II.A.

Paragraph 4. of the final Guidelines continues to set forth the substantially the same test, but simplifies the test by removing the provisions relating to assets under management and off-balance sheet exposures. Under the final Guidelines, a parent company's and covered bank's risk profiles are substantially the same if, as reported on the covered bank's Call Report for the four most recent consecutive quarters, the covered bank's average total consolidated assets represent 95 percent or more of the parent company's average total consolidated assets.[14] The final Guidelines also provide that a covered bank that does not satisfy this test may submit a written analysis to the OCC for consideration and approval that demonstrates that the risk profile of the parent company and the covered bank are substantially the same based upon other factors.

The OCC has determined not to lower the 95 percent threshold, as suggested by some commenters. The 95 percent threshold in the final Guidelines functions as a safe harbor, above which a covered bank will not need to create its own Framework. If a covered bank and its parent company have substantially the same risk profile, the covered bank can use any and all components of the parent company's risk governance framework as its own, provided the parent company's framework complies with the final

[13] *See, e.g.,* 12 CFR 243.4(a)(3)(i)(B).

[14] The final Guidelines clarify that average total consolidated assets for a parent company means the average of the parent company's total consolidated assets, as reported on the parent company's Form FR Y–9C to the Board of Governors of the Federal Reserve System (Board), or equivalent regulatory report, for the four most recent consecutive quarters.

Guidelines. A covered bank that does not meet the 95 percent threshold can use components of its parent company's framework, provided those components meet the criteria outlined in the Guidelines.

The OCC believes a high threshold is necessary to ensure that a covered bank's Framework appropriately considers the sanctity of each national bank or Federal savings association charter within a parent company's legal entity structure. During the financial crisis, the OCC and some boards of directors were unable to accurately assess certain national banks' risk profiles because their respective parent company's risk management practices were assessing, managing, and reporting risks by line of business, rather than legal entity. In addition, decisions by some parent companies' boards of directors and management teams leading up to the crisis created unacceptable risk levels in their national bank subsidiaries. As a result, these parent companies were unable to provide financial or other support to their bank subsidiaries despite the fact that a parent company is expected to serve as a source of strength for its bank subsidiaries.

The covered bank's Framework should ensure that the covered bank's risk profile is easily distinguished and separate from its parent company for risk management and supervisory reporting purposes and that the safety and soundness of the covered bank is not jeopardized by decisions made by the parent company's board of directors and management. This includes ensuring that assets and businesses are not transferred into the covered bank from nonbank entities without proper due diligence and ensuring that complex booking structures established by the parent company protect the safety and soundness of the covered bank.

Although the final Guidelines continue to provide that a covered bank should establish its own Framework when the parent company's and covered bank's risk profiles are not substantially the same, the Guidelines also clarify that even in these cases a covered bank may, in consultation with the OCC, incorporate or rely on components of its parent company's risk governance framework when developing its own Framework to the extent those components are consistent with the objectives of these Guidelines. It is important to note that neither the proposed Guidelines nor the final Guidelines prohibit a covered bank from using those components of its parent company's risk governance framework that are appropriate for the covered bank. Indeed, the OCC encourages covered banks to leverage their parent company's risk governance framework to the extent appropriate, including using employees of the parent company. For example, it may be appropriate for the same individual to serve as Chief Risk Executive or Chief Audit Executive of a covered bank and its parent company.

We note that the extent to which a covered bank may use its parent company's framework will vary depending on the circumstances. For example, it may be appropriate for a covered bank to use the parent company's framework without modification where there is significant similarity between the covered bank's and parent company's risk profiles, or where the parent company's framework provides for focused governance and risk management of the covered bank. Conversely, a covered bank may incorporate fewer components of the parent company's framework where the risk profiles of the covered bank and parent are less similar, or the parent company's risk governance framework is less focused on the covered bank. In these situations, it may be necessary to modify components of the parent company's risk governance framework that the covered bank incorporates or relies on to ensure the bank's risk profile is easily distinguished from that of its parent and that decisions made by the parent do not jeopardize the safety and soundness of the covered bank. It is expected that the covered bank will consult with OCC examiners to determine which components of a parent company's risk governance framework may be used to ensure that the covered bank's Framework complies with the Guidelines.

The OCC recognizes that covered banks operate within their overall parent company's risk governance framework, and that covered banks may realize efficiencies when their parent company's risk governance framework is consistent with these Guidelines. However, modifications may be necessary when the parent company's risk management objectives are different than the covered bank's risk management objectives. For example, a parent company's board of directors and management will need to understand and manage aggregate risks that cross legal entities, while a covered bank's board and management will need to understand and manage only the covered bank's individual risk profile. The OCC believes these distinct goals and processes are complementary. The covered bank should work closely with its parent company to promote efficiencies and synergies between the two risk governance frameworks.

Scope and Compliance Date

The proposed Guidelines applied to a bank with average total consolidated assets equal to or greater than $50 billion as of the effective date of the Guidelines (calculated by averaging the bank's total consolidated assets, as reported on the bank's Call Reports, for the four most recent consecutive quarters). For those banks with average total consolidated assets less than $50 billion as of the effective date of the Guidelines, but that subsequently have average total consolidated assets of $50 billion or greater, the proposed Guidelines applied to such banks on the as-of date of the most recent Call Report used in the calculation of the average.

Several commenters objected to the $50 billion threshold. Some commenters suggested that the OCC increase the threshold to one more consistent with the complexity of the bank and the heightened risk the bank posed. One commenter suggested using the $250 billion threshold in the Basel III advanced approaches.[15] Another commenter favored eliminating the $50 billion threshold and instead adopting a principles-based approach that applies the Guidelines to banks whose operations are highly complex or present a heightened risk.

Some commenters requested that the OCC provide banks not previously subject to the OCC's heightened expectations program with a year or longer to comply with the final Guidelines. Other commenters argued that the OCC should permit an institution that becomes newly subject to the Guidelines a minimum of two years to achieve full compliance. Several commenters argued that the OCC should allow banks previously subject to the OCC's heightened expectations program a minimum of one year from the date of the final Guidelines because of the new and more detailed requirements contained in the Guidelines.

The OCC believes that the final Guidelines should apply to any bank with average total consolidated assets equal to or greater than $50 billion,[16]

[15] *See* 12 CFR 3.100(b)(1)(i).

[16] The approach for calculating average total consolidated assets under the final Guidelines is the same as that in the proposed Guidelines. Specifically, the final Guidelines provide that average total consolidated assets for a covered bank means the average of the covered bank's total consolidated assets, as reported on the covered bank's Call Reports for the four most recent consecutive quarters.

but recognizes that covered banks with assets equal to or greater than $50 billion may differ in the degree of risk they present and, therefore, as described below, we are making several changes to this section to address the compliance date for covered banks based on size and experience with the heightened expectations program. In addition, we note that the $50 billion asset criteria is a well understood threshold that the OCC and other Federal banking regulatory agencies have used to demarcate larger, more complex banking organizations from smaller, less complex banking organizations.[17] Accordingly, the final Guidelines retain the $50 billion threshold.

The OCC is also clarifying that the final Guidelines will apply to any bank with average total consolidated assets less than $50 billion in the limited circumstances where that institution's parent company controls at least one covered bank.[18] This would include both sister banks of the covered bank as well as covered bank subsidiaries and sister bank subsidiaries that are banks (*e.g.,* insured credit card banks or insured trust banks). The meaning of the terms ''bank,'' ''covered bank,'' and ''control'' is discussed in the Definitions section below.

As noted above, the final Guidelines contain a schedule that phases-in the date for a covered bank to comply with the final Guidelines. A covered bank with average total consolidated assets equal to or greater than $750 billion should comply with the final Guidelines by the effective date, *i.e.,* 60 days after these Guidelines are published in the **Federal Register**. A covered bank with average total consolidated assets equal to or greater than $100 billion but less than $750 billion as of the effective date should comply with the final Guidelines within six months from the effective date.

A covered bank with average total consolidated assets equal to or greater than $50 billion but less than $100 billion as of the effective date should comply with these Guidelines within 18 months from the effective date. A covered bank with average total consolidated assets less than $50 billion that is a covered bank because that bank's parent company controls at least one other covered bank as of the effective date should comply with these Guidelines on the same date that such other covered bank should comply. Finally, a covered bank with less than $50 billion in average total consolidated assets on the effective date of the final Guidelines that subsequently becomes subject to the Guidelines because its average total consolidated assets are equal to or greater than $50 billion should comply with the Guidelines within 18 months from the as-of date of the most recent Call Report used in the calculation of the average.[19] The OCC notes that larger institutions have been subject to the OCC's heightened expectations program since 2010 and should need less time to comply with the final Guidelines. Other covered banks have been subject to certain aspects of the heightened expectations program and therefore may require additional time to comply with all aspects of the final Guidelines.

Reservation of Authority

In order to maintain supervisory flexibility, the proposed Guidelines reserved the OCC's authority to apply the Guidelines to a bank whose average total consolidated assets are less than $50 billion if the OCC determines that such bank's operations are highly complex or otherwise present a heightened risk as to require compliance with the Guidelines. The proposed Guidelines provided that the OCC would consider the complexity of products and services, risk profile, and scope of operations to determine whether a bank's operations are highly complex or present a heightened risk.

Conversely, the proposed Guidelines also reserved the OCC's authority to delay the application of the Guidelines to any bank, or modify the Guidelines as applicable to certain banks. Additionally, the proposed Guidelines provided that the OCC may determine that a bank is no longer required to comply with the Guidelines. The OCC would generally make this determination if a bank's operations are no longer highly complex or no longer present a heightened risk that would require continued compliance with the Guidelines. Finally, the proposal provided that the OCC would apply notice and response procedures, when appropriate, consistent with those set out in 12 CFR 3.404 when exercising any of these reservations of authority.

Some commenters expressed concern about the OCC's use of reservation of authority to apply the Guidelines to banks below the $50 billion threshold, particularly community banks. Other commenters asserted that the proposed Guidelines should apply to a bank below the $50 billion threshold only when the bank's risk profile is elevated and the bank has met a list of objective factors.

After reviewing the comments, the OCC is finalizing the reservation of authority paragraph substantially as proposed with minor technical changes. The final Guidelines provide that the OCC reserves the authority to apply the Guidelines, in whole or in part, to a bank below the $50 billion threshold if the OCC determines that the bank's operations are highly complex or otherwise present a heightened risk. The OCC expects to utilize this authority only if a bank's operations are highly complex relative to its risk-management capabilities, and notes that ''[t]his is a high threshold that only will be crossed in extraordinary circumstances.''[20] The OCC does not intend to exercise this reservation of authority to apply the final Guidelines to community banks.[21]

Consistent with the proposal, the final Guidelines reserve the OCC's authority to extend the time for compliance with the Guidelines, modify the Guidelines, or to determine that compliance with the Guidelines is no longer appropriate for a particular covered bank. The OCC would generally make this determination if a covered bank's operations are no longer highly complex or no longer present a heightened risk based on consideration of the factors articulated in the Guidelines. The final Guidelines continue to provide that the OCC will apply notice and response procedures, when appropriate, consistent with those set out in 12 CFR

[17] *See* 12 CFR 46.1 (stress testing); 12 CFR 252.30 (enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more).

[18] The OCC notes that many of the covered banks it regulates are part of a larger holding company structure that includes smaller OCC-supervised insured depository institutions. In some instances, the OCC has observed that a covered bank's parent company does not pay sufficient attention to the operations of these smaller entities. The OCC is expressly including these smaller entities in the definition of ''covered bank'' because the OCC believes that a covered bank's parent company should devote adequate attention to assessing and managing the risk associated with these entities' activities. The OCC notes that, as with covered banks with average total consolidated assets of $50 billion or more, these smaller banks may incorporate or rely on appropriate components of their parent company's risk governance framework.

[19] Once a covered bank becomes subject to the final Guidelines because its average total consolidated assets have reached or exceeded the $50 billion threshold, it is required to continue to comply with the Guidelines even if its average total consolidated assets subsequently drop below $50 billion, unless the OCC determines otherwise and exercises its reservation of authority as discussed below.

[20] The Honorable Thomas J. Curry, Comptroller of the Currency, Address at the American Bankers Association Risk Management Forum (Apr. 10, 2014).

[21] *See id.* (''Some community bankers may be reading that language as a loophole that we will use to impose onerous new requirements on community banks. I want to assure you that this is not the case and not our intent.'').

3.404 when exercising any of these reservations of authority.

Insured Federal Branches

As discussed above, the proposed Guidelines applied to an insured Federal branch of a foreign bank with average total consolidated assets of $50 billion or more. We noted in the preamble to the proposed Guidelines that, pursuant to the reservation of authority, the OCC may modify the Guidelines to tailor them for insured Federal branches due to their unique nature.

Some commenters requested that the OCC delay any decision regarding application of the Guidelines to an insured Federal branch pending a more definite determination of what such tailoring contemplates. In particular, these commenters requested that the OCC clarify the treatment of independent risk management and internal audit, and the role for the foreign bank's governing body under the Guidelines. Some commenters also asserted that the proposed Guidelines did not adequately address that an insured Federal branch does not have a board of directors. Some commenters also argued that the final Guidelines should provide each insured Federal branch considerable flexibility to apply them in a manner best suited to its circumstances.

After reviewing the comments, the OCC has determined that the final Guidelines will apply to insured Federal branches with $50 billion or more in average total consolidated assets. However, the OCC recognizes that insured Federal branches do not have a U.S. board of directors and that their risk governance frameworks will vary due to the variety of activities performed in the branch. As a result, the OCC intends to apply the final Guidelines in a flexible manner to insured Federal branches. For example, if an insured Federal branch were to become subject to these final Guidelines, the OCC would apply the Guidelines in a manner that takes into account the nature, scope, and risk of the branch's activities. This means that the OCC will consult with the insured Federal branch to adapt the final Guidelines in an appropriate manner to the branch's operations.

In addition, the final Guidelines omit footnote one from the proposal which provided that, in the case of an insured Federal branch, the board of directors means the managing official in charge of the branch. In the event an insured Federal branch becomes subject to the final Guidelines, OCC examiners will consult with the branch to determine the appropriate person or committee to undertake the responsibilities assigned to the board of directors under the final Guidelines. The OCC continues to expect that all Federal branches have risk governance frameworks in place that are commensurate with the level of risk taken in or outside the U.S. impacting U.S. operations.

Preservation of Existing Authority

As discussed above, the final Guidelines are enforceable pursuant to section 39 of the FDIA and part 30 of our rules. Section I of the Guidelines also provides that nothing in section 39 or the Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions or other violations of law.

Definitions

The proposed Guidelines defined several terms, including Chief Audit Executive, Chief Risk Executive, front line unit, independent risk management, internal audit, risk appetite, and risk profile. With the exception of the front line unit definition, the OCC is adopting these definitions substantially as proposed, with certain clarifying and technical changes. The final Guidelines also include definitions for the terms bank, control, and covered bank.

Bank. The proposed Guidelines defined the term ''bank'' in the scope section of the proposed Guidelines [22] to mean any insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank with average total consolidated assets equal to or greater than $50 billion as of the effective date of the Guidelines. The OCC is moving this definition to paragraph I.E. Definitions to consolidate all of the definitions in one location. Under the final Guidelines, the term ''bank'' means any insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank. As discussed below, the OCC is also introducing the term ''covered bank'' to more clearly indicate the types of institutions covered by these Guidelines.

Chief Audit Executive. The proposed Guidelines defined the term ''Chief Audit Executive'' (CAE) as an individual who leads internal audit and is one level below the Chief Executive Officer (CEO) in the bank's organizational structure. The OCC received no comments and is adopting this definition as proposed with one technical change.

Chief Risk Executive. The proposed Guidelines defined the term ''Chief Risk Executive'' (CRE) as an individual who leads an independent risk management unit and is one level below the CEO in the bank's organizational structure. The proposal noted that some banks designate one CRE, while others designate risk-specific CREs.[23] In the latter situation, the proposal provided that the bank should have a process for coordinating the activities of all independent risk management units so they can provide an aggregated view of risks to the CEO and the board of directors or the board's risk committee. The proposal solicited comment on the advantages and disadvantages of having a single CRE versus having multiple, risk-specific CREs.

Commenters disagreed on this issue. Some commenters noted that it is advantageous for a single CRE to provide oversight to all independent risk management units, and argued that a single CRE is necessary to ensure a cohesive and coordinated approach to risk management. Other commenters asserted that requiring a single CRE would be too prescriptive for the varied risk profiles and organizational designs among banks, and noted that such a requirement may not be appropriate to the size, scale, and complexity of each institution. In addition, these commenters noted that having two or three executives performing CRE functions and having access to the board of directors can provide additional perspective to the board.

After reviewing the comments received, the OCC is adopting the definition substantially as proposed with one clarifying change. The final Guidelines provide that Chief Risk Executive means an individual who leads an independent risk management unit and is one level below the CEO in a covered bank's organizational structure.[24] The final definition expressly states that a covered bank may have more than one CRE. Because the OCC did not receive compelling information regarding the appointment of a single CRE, we are providing covered banks flexibility in determining the appropriate number of CREs. The OCC continues to believe, however, that a covered bank with multiple, risk-specific CREs should have effective processes for coordinating the activities of all independent risk management units so that they can provide an aggregated view of all risks to the CEO

[22] *See* proposed Guidelines I.A.

[23] *See* 79 FR 4282, 4285 n.15 (Jan. 27, 2014).

[24] *See* final Guidelines paragraph I.E.3.

and the board of directors or the board's risk committee.

Control. As discussed below, the OCC is adopting a definition of the term ''covered bank'' to clarify the scope of the final Guidelines. The definition of the term ''covered bank'' turns, in part, on the definition of ''control.'' While the concept of control was discussed in the proposed Guidelines,[25] the proposal did not include a definition of this term.

The OCC is adopting a definition of the term ''control'' that is based on the definition provided in 12 CFR 3.2. Under the final Guidelines, a parent company controls a covered bank if it: (i) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the covered bank; or (ii) consolidates the covered bank for financial reporting purposes. The OCC believes that this definition will assist institutions in determining whether they are a ''covered bank,'' and therefore subject to the final Guidelines.

Covered Bank. In order to clarify the scope of the final Guidelines, the OCC is adopting a definition of the term covered bank. Under the final Guidelines, the term covered bank means any bank: (i) With average total consolidated assets equal to or greater than $50 billion; (ii) with average total consolidated assets less than $50 billion if that bank's parent company controls at least one covered bank; or (iii) with average total consolidated assets less than $50 billion, if the OCC determines that the bank's operations are highly complex or otherwise present a heightened risk as to warrant the application of the final Guidelines. The OCC believes that this definition accurately reflects the scope of the proposed Guidelines, and has made changes throughout the text of the Guidelines to incorporate this term.

Front line unit. The proposed Guidelines defined the term ''front line unit'' as any organizational unit within the bank that: (i) Engages in activities designed to generate revenue for the parent company or bank; (ii) provides services, such as administration, finance, treasury, legal, or human resources to the bank; or (iii) provides information technology, operations, servicing, processing, or other support to any organizational unit covered by the proposed Guidelines.[26]

Several commenters strongly opposed this definition claiming that it inappropriately includes organizational units that do not ''own'' or create risk, such as legal, compliance, finance, human resources, and information technology. These commenters suggested that these types of organizational units mainly perform risk mitigation or support functions and therefore should not be subject to the standards in the Guidelines. Other commenters expressed concern that the proposed definition would subordinate the views of these types of organizational units to independent risk management thus, for example, potentially subjecting legal decisions and advice to review by independent risk management and internal audit.

Some commenters also noted that organizational units may have many different functions, only some of which involve accountability for risk that warrants treatment under these Guidelines. One commenter suggested that, in such cases, the OCC classify part of the unit as a front line unit. One commenter suggested that the front line unit definition should include revenue-generating business units and personnel who provide functional support to these units, such as legal advisory services or technology development, when those personnel are compensated by and report into the business unit. Finally, several commenters urged the OCC to provide flexibility to determine how service and support functions should fit into the bank's risk governance framework.

After carefully considering the comments, the OCC is making several changes to this definition. Under the final Guidelines, a front line unit means, except as otherwise provided, any organizational unit or function thereof in a covered bank that is accountable for one of several enumerated risks[27] and that either: (i) Engages in activities designed to generate revenue or reduce expenses for the parent company or covered bank; (ii) provides operational support or servicing to any organizational unit or function within the covered bank in the delivery of products or services to customers; or (iii) provides technology services to any organizational unit or function covered by these Guidelines. Thus, to meet the definition of a front line unit, an organizational unit or function would need to be accountable for a risk and also meet one of three additional criteria that capture the types of risk-taking activities these Guidelines are intended to address. The final Guidelines also provide that a front line unit does not ordinarily include an organizational unit or function thereof within a covered bank that provides legal services to the covered bank.

The OCC believes that this revised definition provides greater flexibility to identify and classify organizational units or functions thereof that are responsible for risks covered by these Guidelines as front line units. Specifically, this definition makes it possible for part of an organizational unit to qualify as a front line unit without implicating the entire organizational unit. For example, in some institutions, the Chief Financial Officer's organizational unit may be responsible for setting goals and providing oversight to enterprise-wide expense reduction initiatives. These initiatives have the potential to create one or more risks, if actions taken to achieve cost saving goals inappropriately weaken risk management practices or internal controls. With regard to this responsibility, the finance organizational unit would be a front line unit, subject to the oversight and challenge of independent risk management. However, the finance organizational unit would not be a front line unit with regard to its responsibility to establish, assess, or report on line of business compliance with other enterprise-wide policies and procedures, such as those associated with preparing the covered bank's financial statements.

The final definition also clarifies that, if an organizational unit or function is accountable for a risk within a covered bank, it is considered a front line unit whether or not it created the risk. The purpose of this change is to make clear that a front line unit's responsibility for, or ownership of, a risk may arise by engaging in the activity that originally created the risk within the covered bank, or when the organizational unit is assigned accountability for a risk that was created by another organizational unit. For example, accountability for an individual loan or a portfolio of loans and its associated risks may transfer from one organizational unit or function to another within a covered bank. The organizational unit or function that assumes responsibility for the loan or loan portfolio becomes a front line unit

[25] *See* 79 FR 4285.

[26] *See* proposed Guidelines I.C.3. The proposal clarified that servicing includes activities done in support of front line lending units, such as collecting monthly payments, forwarding principal and interest payments to the current lender in the event a loan has been sold, maintaining escrow accounts, paying taxes and insurance premiums, and taking steps to collect overdue payments. The proposal also provided that processing refers to activities such as item processing (*e.g.,* sorting of checks), inputting loan, deposit, and other contractual information into information systems, and administering collateral tracking systems. *See* 79 FR 4286 n.17–18.

[27] These risks are credit risk, interest rate risk, liquidity risk, price risk, operational risk, compliance risk, strategic risk, or reputation risk, as described in the ''Large Bank Supervision'' booklet of the *Comptroller's Handbook* (Jan. 2010).

at the time accountability for the risk is transferred.

Conversely, there may be circumstances where an organizational unit may have some accountability for one or more risks, but may not meet other provisions of the definition and thus would not be a front line unit for purposes of these Guidelines. For example, one of the primary responsibilities of human resources is to design and implement compensation programs, which, if not designed and implemented properly, could motivate inappropriate risk-taking behavior. However, human resources does not meet any of the three additional criteria, and therefore, is not a front line unit for purposes of these Guidelines. The OCC believes excluding human resources from the definition of front line unit is appropriate, given that the compensation programs it designs and implements are designed with input from other organizational units and subject to the review and approval of the board of directors, or a committee thereof. The board of directors may, at its discretion, request input from independent risk management on the design and implementation of the compensation program or individual compensation plans, regardless of whether human resources is a front line unit. Furthermore, the other activities in which human resources engages are not directly related to the types of risks covered by these Guidelines.

The proposed Guidelines provided that an organizational unit that engages in activities designed to generate revenue for the parent company or the bank would be a front line unit. The final Guidelines modify this provision to provide that a front line unit could include an organizational unit or function that engages in activities designed to generate revenue or ''reduce expenses.'' The purpose of this change is to more effectively include within the front line unit definition certain functions within an organizational unit without including the entire unit.

Under the proposal, a front line unit included an organizational unit that ''provides information technology, operations, servicing, processing, or other support to any organizational unit covered by these Guidelines.'' The OCC notes that, in the revised definition, an organizational unit or function accountable for risk may be a front line unit if it ''provides operational or servicing support to any organizational unit or function within the covered bank in the delivery of products or services to customers.'' The OCC revised this definition because the proposed definition was too broad and could create issues similar to those raised by commenters with regard to including all aspects of organizational units such a finance, human resources, etc., in the front line unit definition. The revised definition is more focused on the organizational units and functions that the OCC intended to include in the definition of front line unit.

Finally, the OCC agreed with commenters that the definition of a front line unit should not ordinarily include an organizational unit or function thereof that provides legal services to the covered bank. The OCC notes, however, that there may be instances where the General Counsel is responsible for functions that extend beyond legal services. The OCC expects that examiners will determine whether these functions meet the definition of a front line unit, independent risk management, or internal audit and will discuss with covered banks whether any determinations made by the covered bank conflict with the final Guidelines.

Independent risk management. The proposed Guidelines defined the term independent risk management as any organizational unit within the bank that has responsibility for identifying, measuring, monitoring, or controlling aggregate risks. The proposal noted that these units maintain independence from front line units by following the reporting structure specified in the proposed Guidelines. Under the proposal's reporting structure, the board of directors or the board's risk committee reviews and approves the Framework and any material policies established under the Framework. In addition, the board of directors or the board's risk committee approves all decisions regarding the appointment or removal of the CRE and approves the annual compensation and salary adjustment of the CRE. The proposal clarified that the board of directors or the board's risk committee should receive communications from the CRE on the results of independent risk management's risk assessments and activities, and other matters that the CRE determines are necessary.[28] The proposal also provided that the board of directors or its risk committee should make appropriate inquiries of management or the CRE to determine whether there are scope or resource limitations that impede the ability of independent risk management to execute its responsibilities.[29]

The proposed definition specified that the CEO oversees the CRE's day-to-day activities. The proposal clarified that this includes resolving disagreements between front line units and independent risk management that cannot be resolved by the CRE and front line unit(s) executive(s), and overseeing budgeting and management accounting, human resources administration, internal communications and information flows, and the administration of independent risk management's internal policies and procedures.[30] Finally, the proposed definition provided that no front line unit executive oversees any independent risk management unit.

Some commenters noted that the proposed Guidelines suggest that cooperative or integrated relationships between independent risk management and front line units could undermine the independence of independent risk management. These commenters argued that independent risk management's effectiveness can be enhanced through active involvement with business units, and that the final Guidelines should recognize the benefits of, and not create impediments to, this engagement.

Commenters also addressed the relationship between a parent company's and bank's independent risk management functions. Some commenters noted that the proposal conflicts with other regulatory authorities insofar as those authorities expect risk officers at the bank to report into the parent company's risk management function, whereas the proposal provided that the CRE of the bank should report to a bank's CEO. Other commenters expressed the view that the proposed Guidelines appear to require a bank to have a separate chief risk officer and separate risk management organization from its parent company. These commenters argued that requiring risk management activities at the bank separately from the same activities at the parent company would be duplicative and increase compliance costs.

One commenter noted that the provision regarding the CEO's oversight of the CRE's day-to-day activities suggested too prescriptive a level of involvement. This commenter noted that while the CEO should be accountable for these activities, he or she should not be required to be personally involved in the day-to-day activities of other executives. This commenter requested the OCC to clarify that the CEO should not be expected to become significantly involved in the details of independent risk management.

[28] 79 FR 4287.

[29] *Id.*

[30] *Id.*

The OCC is adopting the definition substantially as proposed with certain modifications to address commenters' concerns. The final Guidelines provide that independent risk management means any organizational unit within a covered bank that that has responsibility for identifying, measuring, monitoring, or controlling aggregate risks.[31]

Consistent with the proposal, the final Guidelines articulate a reporting structure that enables independent risk management to maintain its independence from front line units.[32] Under this reporting structure, the board of directors or the board's risk committee reviews and approves the Framework. In addition, the final Guidelines clarify that a CRE should have unrestricted access to the board of directors and its committees with regard to risks and issues identified through independent risk management's activities. The board of directors or its risk committee approves all decisions regarding the appointment or removal of the CREs and approves the annual compensation and salary adjustment of the CREs. The final definition removes the provision for the CEO to oversee the CRE's (or CREs') day-to-day activities. The term day-to-day activities was intended to convey that the CEO would oversee the CRE's (or CREs') activities in a manner similar to the oversight the CEO provides to other direct reports. Given the potential for misinterpretation of the term day-to-day, and the fact that this expectation is implied in the CRE's (or CREs') reporting structure defined in the Guidelines, the OCC determined that this additional requirement is not necessary. The final Guidelines continue to provide that no front line unit executive oversees any independent risk management unit. Conversely, the CRE should not oversee any front line unit.

The OCC has also removed from the final definition the provision that the board of directors or the board's risk committee review and approve any material policies established under the Framework. As discussed below, the OCC did not intend to assign managerial responsibilities to the board of directors or its risk committee. The OCC believes that board or risk committee approval of material policies under the Framework would be burdensome, and that these policies should be approved by management instead. Nevertheless, the OCC continues to believe that the board of directors or the board's risk committee should receive communications from the CRE on the results of independent risk management's risk assessments and activities, and other matters that the CRE determines are necessary. In addition, the board of directors or its risk committee should make appropriate inquiries of management or the CRE to determine whether there are scope or resource limitations that impede the ability of independent risk management to execute its responsibilities.

The OCC did not intend the proposed Guidelines to limit interaction between independent risk management and front line units, nor did the OCC intend to imply that the relationship between front line units and independent risk management should be uncooperative or adversarial. Instead, the OCC expects independent risk management to coordinate and to actively engage with front line units. However, the OCC expects that independent risk management will apply its own judgment when assessing risks and the effectiveness of risk management practices within a front line unit. In addition, there may be situations where independent risk management and front line units disagree. As provided in the proposal, the OCC continues to believe that these disagreements should be resolved by the CEO when the CRE and front line unit(s) executive(s) are unable to resolve these issues.

The Guidelines, as proposed and finalized, do not limit or prevent an employee of a covered bank, such as a CRE, from also serving as an officer with the covered bank's parent company and satisfying reporting requirements applicable to the covered bank's parent company. Accordingly, if a CRE is also an employee of a covered bank's parent company, the final Guidelines do not prohibit the CRE from reporting to an executive within the parent company provided that the executive does not impede the CRE's independence within the covered bank's Framework. Similarly, as discussed above, the OCC notes that the final Guidelines clarify that a covered bank may use elements of a parent company's risk governance framework, but only to the extent that this is appropriate for the covered bank.

Internal audit. The proposed Guidelines defined the term internal audit as the organizational unit within the bank that is designated to fulfill the role and responsibilities outlined in 12 CFR part 30, Appendix A, II.B. Similar to the proposed definition of independent risk management, the proposal noted that internal audit maintains independence from front line units and independent risk management units by implementing the reporting structure specified in the proposed Guidelines. Under the proposal's reporting structure, the board's audit committee reviews and approves internal audit's overall charter, risk assessments, and audit plans. In addition, the proposal provided that the audit committee approves all decisions regarding the appointment or removal and annual compensation and salary adjustment of the CAE. The proposal clarified that the audit committee should receive communications from the CAE on the results of internal audit's activities or other matters that the CAE determines are necessary and make appropriate inquiries of management or the CAE to determine whether there are scope or resource limitations that impede the ability of internal audit to execute its responsibilities.[33]

The proposed definition also provided that the CEO oversees the CAE's day-to-day activities. The proposal clarified that the CEO's oversight responsibilities include, but are not limited to, budgeting and management accounting, human resources administration, internal communications and information flows, and the administration of the unit's internal policies and procedures.[34] The proposed definition also noted that in some banks, the audit committee may assume the CEO's responsibilities to oversee the CAE's day-to-day activities, and that this would be acceptable under the proposed Guidelines.[35] Finally, the proposed definition provided that no front line unit executive oversees internal audit.

Similar to comments on the proposed definition of independent risk management, comments on the proposed definition of internal audit focused on the organizational unit's reporting structure. Some commenters argued that the reporting line for the CAE was too narrow and requested that the final Guidelines provide more flexibility to permit the CAE to report to another senior executive (*e.g.,* general counsel) on day-to-day issues. These commenters noted that permitting more flexibility supports the goals of internal audit independence and unfettered access to the bank's board of directors. Other commenters noted that internal audit and the CAE are most effective and independent when they report functionally to the board of directors or the audit committee and administratively to a suitable executive, such as the CEO.

[31] Final Guidelines paragraph I.E.7.

[32] *Id.*

[33] 79 FR 4287.

[34] 79 FR 4288.

[35] *See* proposed Guidelines I.C.5 n.2.

Some commenters also expressed the view that the proposed Guidelines would require a banking organization to establish duplicative audit departments for its parent company and each of its banks. These commenters noted that a centralized audit function is more effective and efficient, ensures consistent audit coverage, and enables enterprise-wide functional reviews that help to identify systemic issues quickly. The OCC did not intend to suggest that a covered bank is prohibited from using its parent company's risk governance framework when their respective risk profiles are not substantially the same. As described more fully above, the final Guidelines generally provide that a covered bank may rely on components of its parent company's risk governance framework, including internal audit, to the extent those components are consistent with the objectives of the final Guidelines.

One commenter noted that the provision regarding the audit committee's or CEO's oversight of the CAE's day-to-day activities suggested a level of involvement that was too prescriptive and, in the case of the audit committee, too management-oriented. This commenter requested that the OCC modify this provision to recognize that neither the CEO nor audit committee should be expected to become significantly involved in the details of internal audit. Finally, some commenters argued that the audit committee should only review and approve material risk assessments.

After reviewing the comments received, the OCC is adopting the definition of internal audit substantially as proposed with certain modifications. As provided in the final Guidelines, the term internal audit means the organizational unit within a covered bank that is designated to fulfill the role and responsibilities outlined in 12 CFR part 30, Appendix A, II.B.

Consistent with the proposal, the final Guidelines articulate a reporting structure that enables internal audit to maintain its independence from front line units and independent risk management. Under the reporting structure included in the final Guidelines, the CAE has unrestricted access to the audit committee with regard to risks and issues identified through internal audit's activities. In addition, the audit committee reviews and approves internal audit's overall charter and audit plans. Further, the audit committee approves all decisions regarding the appointment or removal and annual compensation and salary adjustment of the CAE. The final definition clarifies that the audit committee or the CEO oversees the CAE's administrative activities. Finally, the final definition continues to provide that no front line unit executive oversees internal audit.

The OCC agrees with comments that neither the CEO nor the audit committee need to be involved in the details of the CAE's daily activities. The final definition preserves this dual reporting structure, and clarifies that the CEO or the audit committee oversees the CAE's administrative activities, rather than the CAE's day-to-day activities. This reflects the OCC's belief that either the CEO or the audit committee should have primary oversight responsibility over the CAE's administrative activities. These administrative activities include routine personnel matters such as leave and attendance reporting, expense account management, and other departmental matters such as furniture, equipment, and supplies. In addition, revisions made to the definition of front line unit provide internal audit more flexibility to consult with other organizational units, as necessary. For example, the final Guidelines do not prevent internal audit from consulting with a covered bank's legal unit on legal matters because the legal unit is generally not a front line unit.

The OCC recognizes that the proposed definition could have been interpreted to mean that the audit committee should review and approve all internal audit risk assessments, and agrees with commenters that this could impose operational burdens on the audit committee and detract from their oversight role. Therefore, the final definition removes this provision and clarifies that the audit committee reviews and approves the overall charter and audit plan. When presenting the audit plan to the audit committee for approval, internal audit may include the risk assessments that support the audit plan to assist the committee in carrying out its responsibilities. Finally, the OCC continues to expect that the audit committee should receive communications from the CAE on the results of internal audit's activities or other matters that the CAE determines are necessary and make appropriate inquiries of management or the CAE to determine whether there are scope or resource limitations that impede the ability of internal audit to execute its responsibilities.

Parent company. The term ''parent company'' was used throughout the proposed Guidelines. One commenter noted that this term can mean a variety of different entities within a multi-tiered holding company structure.

The OCC is adopting a definition of the term ''parent company'' to clarify the final Guidelines. The term parent company means the top-tier legal entity in a covered bank's ownership structure. Thus, the parent company of a covered bank that is an insured national bank or insured Federal savings association may be a domestic or foreign entity.

Risk appetite. The proposed Guidelines defined the term ''risk appetite'' as the aggregate level and types of risk the board of directors and management are willing to assume to achieve the bank's strategic objectives and business plan, consistent with applicable capital, liquidity, and other regulatory requirements. The OCC received no comments on this definition and is adopting it as proposed with minor technical changes.

Risk profile. The proposed Guidelines defined the term risk profile as a point-in-time assessment of the bank's risks, aggregated within and across each relevant risk category, using methodologies consistent with the risk appetite statement described in II.E. of the proposed Guidelines. The OCC received no comments on this definition and is adopting it as proposed with minor technical changes.

Section II: Standards for Risk Governance Framework

Risk Governance Framework

Section II of the proposed Guidelines set minimum standards for the design and implementation of a bank's Framework. Under paragraphs A. and B., the proposal required a bank to establish and adhere to a formal, written Framework approved by the board of directors or its risk committee that is reviewed and updated at least annually (and as often as needed) by independent risk management to address changes in the bank's risk profile caused by internal or external factors or the evolution of industry risk management practices. We received no comments on this section, however we are making clarifying changes. We have added a provision stating that the Framework should include delegations of authority from the board of directors to management committees and executive officers as well as risk limits established for material activities. The Framework should also include processes for management's reports to the board of directors covering policy, limit compliance, and exceptions. In addition, we have added that the review of the Framework should include changes resulting from emerging risks and the covered bank's strategic plans.

Scope of Risk Governance Framework

Under the proposed Guidelines, the Framework would cover certain specified risk categories that apply to the bank. These categories are credit risk, interest rate risk, liquidity risk, price risk, operational risk, compliance risk, strategic risk, and reputation risk.

One commenter requested clarification regarding the meaning of reputation and strategic risk and argued that the OCC should provide additional clarification or remove these two risk types. The final Guidelines continue to include all eight categories of risk, which are described in existing OCC guidance.[36] The OCC recognizes that industry practices for managing reputation and strategic risks are less developed than those associated with other risk categories. However, it is important for boards of directors and management teams to incorporate these risks into their decision-making processes. Therefore, for purposes of the final Guidelines, the OCC expects front line units, independent risk management, and internal audit to consider these risks when carrying out their responsibilities under the Guidelines.

Roles and Responsibilities

Paragraphs II.C.1. through 3. of the final Guidelines set forth the roles and responsibilities for front line units, independent risk management, and internal audit.[37] These units are fundamental to the design and implementation of the Framework. As we noted in the preamble to the proposed Guidelines, they are often referred to as the ''three lines of defense'' and, together, should establish an appropriate system to control risk taking. These units should keep the board of directors informed of the covered bank's risk profile and risk management practices to allow the board of directors to provide credible challenges to management's recommendations and decisions. In addition, the independent risk management and internal audit units must have unrestricted access to the board, or a committee thereof, with regard to their risk assessments, findings, and recommendations, independent from front line unit management and, when necessary, the CEO. This unrestricted access to the board of directors is critical to the integrity of the Framework.

In carrying out their responsibilities within the Framework, front line units, independent risk management, and internal audit may engage the services of external experts to assist them. This expertise can be useful in supplementing internal expertise and providing perspective on industry practices. However, no organizational unit in the covered bank may delegate its responsibilities under the Framework to an external party.

Many of the commenters expressed support for the lines of defense risk governance structure contained in the proposed Guidelines. Some commenters, however, argued that classifying all of a bank's activities into one of three lines of defense draws artificial bright lines that ignore the mix of functions performed. Other commenters noted that placing all units other than independent risk management and internal audit in the front line could force banks to significantly modify their organizational structures, reporting lines, and risk control practices and that this could impair banks' ability to effectively manage risks. A few commenters asked for additional guidance on the reporting structures for compliance and loan review programs.

As discussed earlier, the OCC has revised the definition of front line unit to provide covered banks more flexibility in identifying front line units. The OCC believes that these revisions respond to commenters' concerns and more closely align the final Guidelines with the traditional ''lines of defense'' approach. Below, we discuss the role and responsibilities of front line units, independent risk management, and internal audit.

Role and Responsibilities of Front Line Units

Front line units are the first of a bank's three lines of defense. The proposed Guidelines provided that front line units should take responsibility and be held accountable by the CEO and the board of directors for appropriately assessing and effectively managing all of the risks associated with their activities. The proposed Guidelines provided that front line units should assess, on an ongoing basis, the material risks associated with their activities. The front line unit should use these risk assessments as the basis for fulfilling the responsibilities that were described in paragraphs (b) and (c) of paragraph II.C.1. of the proposed Guidelines and for determining if they need to take action to strengthen risk management or reduce risk given changes in the unit's risk profile or other conditions.

Paragraph (b) provided that front line units should establish and adhere to a set of written policies that include front line unit risk limits, as discussed in paragraph II.F. of the proposed Guidelines. The proposed Guidelines provided that these policies should ensure that risks associated with the front line units' activities are effectively identified, measured, monitored, and controlled consistent with the bank's risk appetite statement, concentration risk limits, and the bank's policies established within the Framework pursuant to paragraphs II.C.2.(c) and II.G. through K. of the proposed Guidelines.

Paragraph (c) provided that front line units should also establish and adhere to procedures and processes necessary to ensure compliance with the aforementioned written policies. Paragraph (d) provided that front line units should adhere to all applicable policies, procedures, and processes established by independent risk management.

Finally, the proposed Guidelines provided that front line units should develop, attract, and retain talent and maintain appropriate staffing levels, and establish and adhere to talent management processes and compensation and performance management programs that comply with paragraphs II.L. and II.M., respectively, of the proposed Guidelines.

Some commenters expressed concern that the proposed Guidelines prevent front line units from relying on other organizational units to perform their assigned responsibilities. For example, one commenter argued that the proposed Guidelines could be interpreted as suggesting that front line units have exclusive responsibility for establishing risk limits, a responsibility assigned to independent risk management in many banks. This commenter recommended that the final Guidelines clarify that front line units do not have exclusive responsibility for establishing front line unit risk limits, and that the front line unit may perform this responsibility by or in conjunction with independent risk management. Another commenter suggested that the final Guidelines recognize that a front

[36] *See* ''Large Bank Supervision'' booklet of the *Comptroller's Handbook* (Jan. 2010) (describing these risks).

[37] These roles and responsibilities are in addition to any roles and responsibilities set forth in Appendices A, B, and C to Part 30. Many of the risk management practices established and maintained by a covered bank to meet these standards, including loan review and credit underwriting and administration practices, should be components of its Framework, within the construct of the three distinct units identified in the final Guidelines. In addition, existing OCC guidance sets forth standards for establishing risk management programs for certain risks, *e.g.,* compliance risk management. These risk-specific programs should also be considered components of the Framework, within the context of the three units described in paragraph II.C. of the final Guidelines.

line unit may use policies, procedures, and controls established by other organizational units, and that the front line units' responsibility should be contributing their expertise to the development of those policies, procedures and controls. Some commenters also requested the OCC to clarify how the responsibilities assigned to front line units would apply to legal services or other functions that, in some banks, do not report directly to a business leader.

After reviewing the comments, the OCC is adopting the role and responsibilities of front line units with minor clarifying changes. To allow covered banks some flexibility in designing their Framework, the final Guidelines provide that a front line unit may fulfill its responsibilities either alone or in conjunction with another organizational unit whose purpose is to assist a front line unit in fulfilling its responsibilities under the Framework. In such cases, the Framework should establish appropriate authority and accountability for each responsibility in the Framework, and the organizational unit assisting the front line unit cannot be independent risk management. As the OCC observed during the financial crisis, it can be challenging to instill a sense of ''risk ownership'' in a front line unit when multiple organizational units are responsible for the risks associated with the front line unit's activities. Banks whose business leaders viewed themselves as accountable for the risks created through their activities fared better in the crisis than banks where accountability for risks were shared among multiple organizational units. The OCC cautions covered banks that rely on such a structure to be diligent in reinforcing the front line unit's accountability for the risks it creates.

With respect to paragraph (c) of the final Guidelines, a front line unit's processes for establishing its policies should provide for independent risk management's review and approval of these policies to ensure they are consistent with other policies established within the Framework. Within this process, independent risk management would review and approve the front line unit's risk limits. The final Guidelines do not prescribe the process through which independent risk management reviews and approves policies and risk limits. In some covered banks, independent risk management may be involved from the beginning of the process through the final approval and, in other covered banks, the front line unit may develop risk limits internally and submit them to independent risk management for review, challenge, and approval.

The OCC notes that the standards articulated in paragraphs (b) and (c) of the final Guidelines should not be interpreted as an exclusive list of actions front line units should take to manage risk effectively. Front line units should use their ongoing risk assessments to determine if additional actions are necessary to strengthen risk management practices or reduce risk. For example, there may be instances where front line units should take action to manage risk effectively, even if the covered bank has not exceeded its risk limits.

As described above, the OCC has made revisions to the definition of front line unit that the OCC believes address commenters' concerns regarding the application of front line unit responsibilities to legal. Several commenters requested clarification on how compliance fits into the risk governance framework and expressed varying views on whether compliance should be considered a front line unit, independent risk management, internal audit, or a different organizational unit. With regard to compliance, the OCC's guidance is currently outlined in the ''Compliance Management System'' booklet of the *Comptroller's Handbook* and includes responsibilities for all three lines of defense.[38]

Per the *Comptroller's Handbook,* a compliance risk management system ''includes the compliance program and the compliance audit function. . . . The compliance program consists of the policies and procedures which guide employees' adherence to laws and regulations.''[39] Within the Framework, these policies and procedures would generally be the responsibility of the front line unit if they address risks associated with the front line unit's activities or independent risk management if they address bank-wide or aggregate risks. The *Comptroller's Handbook* further states, ''[t]he compliance audit function is independent testing of an institution's transactions to determine its level of compliance with consumer protection laws, as well as the effectiveness of, and adherence with, policies and procedures.''[40] Within the Framework, the independent testing may be performed by independent risk management, internal audit, or both.

As noted previously, a few commenters asked for additional guidance on the reporting structure for the loan review function.[41] Within the Framework, the loan review function may report to either the second or third line of defense. The loan review function should not report to the executive officer who establishes and oversees front line unit credit policies and individual loan underwriting decisions.

Role and Responsibilities of Independent Risk Management

Independent risk management is the second of a bank's three lines of defense. Paragraph II.C.2. of the proposed Guidelines provided that independent risk management should oversee the bank's risk-taking activities and assess risks and issues independent of the CEO and front line units. The proposed Guidelines provided that independent risk management should take primary responsibility and be held accountable by the CEO and board of directors for designing a Framework commensurate with the bank's size, complexity, and risk profile that meets the Guidelines. Paragraph (b) provided that independent risk management should identify and assess, on an ongoing basis, the bank's material aggregate risks and use such risk assessments as the basis for fulfilling its responsibilities under paragraphs (c) and (d) of paragraph II.C.2., and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the bank's risk profile or other conditions. Paragraph (c) provided that independent risk management should establish and adhere to enterprise policies that include concentration risk limits that ensure that aggregate risks within the bank are effectively identified, measured, monitored, and controlled, consistent with the bank's risk appetite statement and all policies and processes established under paragraphs II.G. through K. Paragraphs (d) and (e) provided that independent risk management should establish and adhere to procedures and processes necessary to ensure compliance with the aforementioned policies and to ensure that the front line units meet the standards discussed in paragraph II.C.1.

Paragraph (f) provided that independent risk management should identify and communicate to the CEO and the board of directors or its risk committee material risks and significant instances where independent risk management's assessment of risk differs

[38] ''Compliance Management System'' booklet of the *Comptroller's Handbook* (Aug. 1996).

[39] *Id.* at 1.

[40] *Id.*

[41] The expectation that banks establish a loan review program are set out in 12 CFR part 30, Appendix A.

from a front line unit as well as significant instances where a front line unit is not complying with the Framework. Paragraph (g) provided that independent risk management should identify and communicate to the board of directors or its risk committee material risks and significant instances where independent risk management's assessment of risk differs from the CEO, and significant instances where the CEO is not adhering to, or holding front line units accountable for adhering to, the Framework. In addition, the proposed Guidelines provided that independent risk management should develop, attract and retain talent, maintain appropriate staffing levels, and establish and adhere to talent management processes and compensation and performance management programs that comply with paragraphs II.L. and II.M., respectively, of the Guidelines.

Commenters proposed several revisions to this section of the proposed Guidelines. Some commenters requested that the OCC delete the provision discussing independent risk management's oversight of the bank's risk-taking activities and assessment of risks and issues independent of the CEO. These commenters expressed concern that this suggested that the CRE would not be subject to CEO oversight with respect to these activities.

Some commenters also noted that including organizational units, such as compliance, legal, and human resources, in the front line unit would require independent risk management to duplicate the control and support functions performed by these other units. These commenters noted that this would detract from independent risk management's responsibilities for overseeing the risk management program. Other commenters requested that the OCC clarify how independent risk management would interact with organizational units performing control functions. For example, some commenters were concerned that independent risk management's oversight function would extend to independently assessing the risks imposed by litigation. As described in the section discussing the front line unit definition, the OCC has made revisions to the definition of front line unit that the OCC believes addresses these concerns.

The OCC is finalizing the role and responsibilities of independent risk management substantially as proposed, with several clarifying changes. The OCC has revised the role and responsibilities of independent risk management to remove the provision that independent risk management should assess risks and issues independent of the CEO. The OCC did not intend to suggest that independent risk management should not be subject to CEO oversight with respect to the assessment of risks and issues. Notwithstanding the CEO's oversight of the CRE and independent risk management, the OCC emphasizes that paragraph (f) of the final Guidelines continues to provide that independent risk management should report to the board of directors or its risk committee material risks and significant instances where independent risk management's assessment of risk differs from the CEO, as well as significant instances where the CEO is not adhering to, or holding front line units accountable for adhering to, the Framework.

The OCC also emphasizes that the standards articulated in paragraphs (c)[42] and (d) of the final Guidelines should not be interpreted as an exclusive list of actions independent risk management should take to effectively manage risk. Independent risk management should use its risk assessments to determine if additional actions are necessary to strengthen risk management practices or reduce risk. For example, there may be instances where independent risk management should take action to effectively manage risk, even if the covered bank's risk appetite, applicable concentration risk limits, or a front line unit's risk limits have not been exceeded.

The OCC also has removed paragraph (e), and redesignated paragraph (f) as new paragraph (e). The OCC has revised new paragraph (e) to clarify that independent risk management should identify and communicate to the CEO and the board of directors, or the risk committee thereof, significant instances where a front line unit is not adhering to the Framework, including instances when front line units do not meet the standards set forth in paragraph II.C.1.

Role and Responsibilities of Internal Audit

Internal audit is the third of a bank's three lines of defense. The proposed Guidelines provided that internal audit should ensure that a bank's Framework complies with the Guidelines and is appropriate for the bank's size, complexity, and risk profile. Paragraph (a) provided that internal audit should maintain a complete and current inventory of all of the bank's material businesses, product lines, services, and functions and assess the risks associated with each,[43] which collectively provide a basis for the audit plan.

Paragraph (b) provided that internal audit should establish and adhere to an audit plan updated at least quarterly that takes into account the bank's risk profile as well as emerging risks and issues. The proposal provided that the audit plan should require internal audit to evaluate the adequacy of and compliance with policies, procedures, and processes established by front line units and independent risk management under the Framework. The proposal provided that changes to the audit plan should be communicated to the audit committee of the board of directors.

Paragraph (c) provided that internal audit should report in writing to the audit committee conclusions, issues, and recommendations resulting from the audit work carried out under the audit plan. These reports should identify the root cause of any issue and include a determination of whether the root cause creates an issue that has an impact on one organizational unit or multiple organizational units within the bank, as well as a determination of the effectiveness of front line units and independent risk management in identifying and resolving issues in a timely manner.

Paragraph (d) provided that internal audit should establish and adhere to processes for independently assessing the design and effectiveness of the Framework. The assessment should be performed at least annually and may be conducted by internal audit, an external party, or a combination of both. The assessment should include a conclusion on the bank's compliance with the Guidelines and the degree to which the bank's Framework is consistent with leading industry practices.

Paragraph (e) provided that internal audit should identify and communicate to the audit committee significant instances where front line units or independent risk management are not adhering to the Framework. Paragraph (f) provided that internal audit should establish a quality assurance department

[42] Paragraph (c) provides, in part, that independent risk management should establish and adhere to enterprise policies that include concentration risk limits. Consistent with the proposed Guidelines, a concentration of risk refers to an exposure with the potential to produce losses large enough to threaten a covered bank's financial condition or its ability to maintain its core operations. Risk concentration can arise in a covered bank's assets, liabilities, or off-balance sheet items. An example of a concentration of credit risk limit would be commercial real estate balances as a percentage of capital.

[43] The preamble discussion of this paragraph provided that ''[i]nternal audit should derive the[] [risk] ratings from its Bank-wide risk assessments, and should periodically adjust these ratings based on risk assessments conducted by front line units and changes in the Bank's strategy and the external environment.'' *See* 79 FR 4288.

that ensures internal audit's policies, procedures, and processes comply with applicable regulatory and industry guidance, are appropriate for the size, complexity, and risk profile of the bank, are updated to reflect changes to internal and external risk factors, and are consistently followed. Finally, the proposed Guidelines provided that internal audit should develop, attract, and retain talent and maintain appropriate staffing levels, and establish and adhere to talent management processes and compensation and performance management programs that comply with paragraphs II.L. and II.M., respectively, of the proposed Guidelines.

The OCC invited comment as to whether the final Guidelines should provide that independent risk management maintain a complete and current inventory of all of a bank's material businesses, product lines, services, and functions to ensure that internal audit has developed an accurate inventory. The OCC also requested comment on whether internal audit's assessment of the bank's Framework should include a conclusion regarding whether the Framework is consistent with leading industry practices. The OCC inquired as to whether such an assessment would be possible given the wide range of industry practices, and whether there were any concerns related to this provision.

Commenters generally stated that the role and responsibilities assigned to internal audit were too prescriptive. Some commenters requested that the final Guidelines provide that internal audit report to the audit committee only on *material* changes to the audit plan, *material* audit findings and conclusions, and root causes of *material* audit matters. Other commenters noted that internal audit may not need to assess the Framework's design annually since the design of the Framework is not likely to materially change on a frequent basis. These commenters also expressed concern that the proposed Guidelines could permit an external party to assess the Framework, and requested that the final Guidelines clarify that internal audit must oversee the external party. Some commenters also argued that it is not necessary for internal audit to establish a quality assurance department because this is already a function of internal audit.

Commenters also requested clarification regarding a discussion in the preamble to the proposed Guidelines providing, in part, that the audit plan should rate the risk presented by each front line unit, product line, service, and function, and that internal audit should derive these ratings from bank-wide risk assessments. Some commenters requested clarification regarding whether the bank-wide risk assessments are prepared by internal audit independently, or whether these assessments are prepared by internal audit in conjunction with front line units and/or independent risk management. Other commenters suggested that permitting internal audit to periodically adjust these ratings based on risk assessments conducted by front line units may compromise internal audit's independence and objectivity. Some commenters suggested that internal audit should conduct an independent assessment, and provide challenges where appropriate, to the risk assessments conducted by front line units.

Commenters disagreed whether both independent risk management and internal audit should maintain a complete and current inventory of all of a bank's material businesses, product lines, services, and functions. Some commenters argued that front line units should be responsible for this inventory, rather than internal audit. Other commenters asserted that independent risk management should maintain this inventory rather than internal audit. These commenters noted that internal audit should review and evaluate the inventory for accuracy and completeness if it is maintained by independent risk management. Other commenters expressed the view that banks should have flexibility in determining whether independent risk management or internal audit is responsible for maintaining the inventory. These commenters emphasized that banks should only be required to maintain one comprehensive inventory, and that front line units should play a significant role in the creation of the inventory.

The majority of commenters also opposed the proposed Guidelines to the extent they provided that internal audit's assessment of the bank's Framework should include a conclusion regarding whether the Framework is consistent with leading industry practices. Some commenters noted that this would be a subjective determination as there is no basis for determining what constitutes leading industry practices, and argued that this may lead covered banks to make greater use of third-party consultants. Some commenters also argued that this would detract from internal audit's core functions. Other commenters argued that there are a range of acceptable practices and that it is not possible to establish a single set of leading industry practices. The majority of commenters recommended removing this provision from the final Guidelines.

The OCC's final Guidelines contain revisions to address some of the concerns raised by commenters and to provide internal audit more flexibility in satisfying its role and responsibilities under the Framework. For example, the OCC agrees with commenter suggestions that internal audit should report conclusions and material issues and recommendations to the audit committee pursuant to paragraph (c), and that such reports should also identify the root cause of any material issues. The OCC believes that this modification avoids imposing undue operational burdens on the audit committee and enables the committee to fulfill its key oversight role.

The OCC believes that the design and implementation of the audit plan is an important element of internal audit's role and responsibilities under the Framework. The inventory of material processes, product lines, services, and functions and the risk assessments conducted by internal audit pursuant to paragraph (a) of the final Guidelines is commonly referred to as the ''internal audit universe'' and forms the basis of the audit plan. The OCC expects internal audit to conduct these risk assessments independent of other organizational units in the covered bank. As explained in the preamble to the proposed Guidelines, the audit plan should rate the risk presented by each front line unit, product line, service, and function. This includes activities that the covered bank may outsource to a third party.

Internal audit can leverage risk assessments conducted by front line units or independent risk management in deriving the risk assessments discussed in paragraph (a), but should apply independent judgment in doing so.[44] Internal audit may periodically adjust its risk assessments based on changes in the covered bank's strategy and the external environment. The audit plan should include ongoing monitoring to identify emerging risks and ensure that units, product lines, services, and functions that receive a low risk rating are reevaluated with reasonable frequency.

[44] The OCC does not believe that permitting internal audit to leverage risk assessments conducted by front line units or independent risk management compromises internal audit's independence or objectivity. Specifically, the OCC expects internal audit to report discrepancies in internal audit's risk ratings and a front line unit's or independent risk management's risk ratings to the audit committee of the board of directors.

The audit plan should require internal audit to evaluate the adequacy of and compliance with policies, procedures, and processes established by front line units and independent risk management under the Framework. The OCC notes that this provision is in addition to internal audit's traditional testing of internal controls and the accuracy of financial records, as required by other laws and regulations at an appropriate frequency based on risk. This testing should require the evaluation of reputation and strategic risk, along with evaluations of independent risk management and traditional risks. This testing should enable internal audit to assess the appropriateness of risk levels and trends across the covered bank.

Consistent with the proposal, the OCC continues to believe that all significant changes to the audit plan should be communicated to the audit committee. As discussed earlier, the OCC believes that the audit plan is a critical element of internal audit's role and responsibilities under the Framework and that significant changes to the audit plan are material. The final Guidelines also clarify that internal audit should periodically review and update the audit plan, rather than performing this task on a quarterly basis as provided in the proposed Guidelines.

Paragraph (c) provides, in part, that internal audit should report in writing, conclusions and material issues and recommendations resulting from audit work carried out under the audit plan. The OCC also notes that these reports should address potential and emerging concerns, the timeliness of corrective actions, and the status of outstanding issues. Finally, audit reports should include comments on the effectiveness of front line units and independent risk management in identifying and mitigating excessive risks and identifying and resolving issues in a timely manner. Audit reports should also reflect emerging risks and internal audit's assessment of the appropriateness of risk levels relative to both the quality of the internal controls and the risk appetite statement.

The OCC has also clarified the role and responsibilities of internal audit under the final Guidelines. Specifically, the final Guidelines provide that internal audit should assess emerging risks and that the quality assurance program should ensure that internal audit's policies, procedures, and processes are updated to reflect emerging risks and improvements in industry internal audit practices. The addition of emerging risks is intended to emphasize that internal audit should consider both pre-existing and prospective risks with respect to the relevant provisions. The OCC also believes that those individuals carrying out the quality assurance program should remain apprised of evolving industry internal audit practices, and that internal audit's policies, procedures, and processes should be updated to reflect these improved practices, as appropriate. The OCC has not removed the provision regarding the establishment of a quality assurance program, as one commenter suggested, because the OCC's supervisory experience indicates that not all covered banks' internal audit units include a quality assurance function.

The OCC has made important revisions to internal audit's role and responsibilities for assessing the design and ongoing effectiveness of the Framework. The final Guidelines continue to provide that this assessment should be conducted at least annually because there may be situations (*e.g.,* expansion of business, change in strategy, emerging risks) that cause the covered bank's risk profile to change, thereby justifying a reassessment of the design and ongoing effectiveness of the covered bank's Framework. The final Guidelines also continue to provide that internal audit, an external party, or both may perform this assessment. The OCC has not revised the final Guidelines to provide that internal audit must oversee this external party. The OCC notes that there may be situations where a covered bank wants to engage a third party to review the entire Framework, including internal audit's role in the Framework. It would not be appropriate for internal audit to oversee the external party in this situation. In addition, based on the overwhelming majority of comments, the OCC is modifying this paragraph to remove the provision that internal audit's assessment of the Framework should include a conclusion regarding whether the Framework is consistent with leading industry practices. However, the OCC notes that most covered banks that experienced difficulties during the financial crisis had risk management practices that were not commensurate with the scope of the covered bank's business activities. As a result, the OCC expects independent risk management, in conjunction with internal audit, the CEO, and the board of directors to assess whether the covered bank's risk management practices are developing in an appropriate manner and consider benchmarking these practices against peers, where possible.

The final Guidelines continue to provide that internal audit should maintain a complete and current inventory (''audit universe'') of all of the covered bank's material processes, product lines, services, and functions. The OCC agrees with commenter suggestions that a covered bank should only be required to maintain one inventory. The OCC believes that internal audit should maintain this inventory, because it is a key component in the creation of the audit plan. Front line units and independent risk management are expected to conduct risk assessments as part of their responsibilities within the Framework and internal audit may use these risk assessments when conducting its risk assessment against the inventory.

Stature

As we noted in the preamble to the proposal, a critical part of an effective Framework is for independent risk management and internal audit to have the organizational stature needed to effectively carry out their respective roles and responsibilities. One of the primary reasons for assigning CRE and CAE responsibilities to individuals who report directly to the CEO is to establish organizational stature for these units. However, evidence of stature extends beyond the reporting structure. Appropriate stature is evidenced by the attitudes and level of support provided by the board of directors, CEO, and others within the covered bank toward these units. The board of directors demonstrates support for these units by ensuring that they have the resources needed to carry out their responsibilities and by relying on the work of these units when carrying out their oversight responsibilities set forth in section III of the final Guidelines. The CEO and front line units demonstrate support by welcoming credible challenges from independent risk management and internal audit and including these units in policy development, new product and service deployment, changes in strategy and tactical plans, and organizational and structural changes.

Strategic Plan

Paragraph D. of section II of the proposed Guidelines provided that the CEO should develop a written strategic plan with input from front line units and independent risk management. The proposal also provided that the board of directors should evaluate and approve the strategic plan and monitor management's efforts to implement it at least annually. Under the proposed Guidelines the strategic plan would cover a three-year period and would contain a comprehensive assessment of risks that currently have an impact on the bank or that could have an impact

on the bank during this period, articulate an overall mission statement and strategic objectives for the bank, and include an explanation of how the bank will achieve those objectives.

The proposal also provided that the strategic plan should include an explanation of how the bank will update the Framework and account for changes in the bank's risk profile projected under the strategic plan. Finally, the proposed Guidelines required the bank to review, update and approve the strategic plan due to changes in the bank's risk profile or operating environment that were not contemplated when the plan was developed.

Some commenters suggested that the CEO should ''oversee'' rather than ''develop'' the strategic plan. Other commenters recommended that the OCC require ''material'' risks to be included in the comprehensive assessment of risks. One commenter suggested that the strategic plan incorporate a capital plan. Some commenters objected to the requirement that the plan include an explanation of how the bank will update the Framework to account for changes in the bank's risk profile. The commenters argued that annual review was sufficient. Another commenter argued that internal audit should not be included in the development of the strategic plan since its involvement could compromise the independence of internal audit.

The OCC is adopting this paragraph substantially as proposed with one minor revision. We have changed the language in the final Guidelines so that a CEO should be ''responsible for the development of,'' rather than ''develop,'' a written strategic plan. This change clarifies that a CEO is not individually expected to prepare the strategic plan. The final Guidelines do not include a materiality threshold for what risks covered banks must assess. While the OCC understands that certain *de minimis* risks may be excluded from the risk assessment, the strategic plan should comprehensively assess all risks that could reasonably be expected to have an impact on the covered bank.

The final Guidelines, like the proposed Guidelines, require a three-year plan. The OCC believes that a three-year plan is necessary for covered banks to predict changes that could affect the bank's financial position. If a covered bank experiences, or expects to experience, significant changes over a three-year time horizon, it must be able to predict and manage the risks associated with those changes. A strategic plan of less than three years would be insufficient to manage longer-term risks to the covered bank. The final Guidelines also do not include a requirement for a specific capital plan. While the OCC acknowledges the importance of capital planning, the final Guidelines are focused on risk management rather than on ensuring adequate capital ratios.

The board of directors should evaluate and approve the strategic plan and monitor management's efforts to implement the strategic plan at least annually. While the OCC expects that for some covered banks an annual review of the Framework may be sufficient, other covered banks that have undergone major changes (for example, mergers) are expected to update their Frameworks to account for changed circumstances. The final Guidelines, like the proposal, provide that the strategic plan should be developed with input from internal audit. The OCC believes that internal audit can contribute to a strategic plan while maintaining the appropriate level of independence.

Risk Appetite Statement

Paragraph E. of section II of the proposed Guidelines provided that the bank should have a comprehensive written statement that articulates a bank's risk appetite and serves as a basis for the Framework (Statement). The term risk appetite means the aggregate level and types of risk the board and management are willing to assume to achieve the bank's strategic objectives and business plan, consistent with applicable capital, liquidity, and other regulatory requirements.

The proposal noted that the Statement should include: (i) Qualitative components that describe a safe and sound ''risk culture'' [45] and how the bank would assess and accept risks, including those that are difficult to quantify; and (ii) quantitative limits that incorporate sound stress testing processes and, as appropriate, address the bank's earnings, capital and liquidity position. The proposed Guidelines also provided that the bank should set limits at levels that consider appropriate capital and liquidity buffers and prompt management and the board to reduce risk before the bank's risk profile jeopardizes the adequacy of its earnings, liquidity, and capital.[46]

One commenter objected to the language in the preamble to the proposed Guidelines providing that when a bank's risk profile is substantially the same as its parent company, the bank's board may tailor the parent company's risk appetite statement to make it applicable to the bank. According to the commenter, a bank that meets the ''substantially the same'' test should be able to use the same risk appetite statement as its parent company. Another commenter requested clarification on the extent to which a board of directors is required to approve risk limits in connection with a Statement. The commenter argued that bank directors are not in a position to approve all of the limits necessary to manage risk.

The OCC is adopting this paragraph as proposed with only technical changes. As with the proposed Guidelines, the final Guidelines do not include a specific regulatory definition of risk culture. However, setting an appropriate tone at the top is critical to establishing a sound risk culture, and the qualitative statements within the Statement should articulate the core values that the board and CEO expect employees throughout the covered bank to share when carrying out their respective roles and responsibilities within the covered bank. These values should serve as the basis for risk-taking decisions made throughout the covered bank and should be reinforced by the actions of the board, executive management, board committees, and individuals. As noted in the preamble to the proposed Guidelines, evidence of a sound risk culture includes, but is not limited to: (i) Open dialogue and transparent sharing of information between front line units, independent risk management, and internal audit; (ii) consideration of all relevant risks and the views of independent risk management and internal audit in risk-taking decisions; and (iii) compensation and performance management programs and decisions that reward compliance with the core values and quantitative limits established in the Statement, and hold accountable those who do not conduct themselves in a manner consistent with these articulated standards.

As described in paragraph II.E. of the final Guidelines, quantitative limits in a covered bank's Statement should

[45] While there is no regulatory definition of risk culture, for purposes of these Guidelines, risk culture can be considered the shared values, attitudes, competencies, and behaviors present throughout the covered bank that shape and influence governance practices and risk decisions.

[46] The level and types of risk covered bank management and the board of directors are willing to assume to achieve the bank's strategic objectives and business plan should be consistent with its capital and liquidity needs and requirements, as well as other laws and regulatory requirements applicable to the covered bank. The board is not responsible for setting specific risk limits, but the board is required to review and approve the Statement.

incorporate sound stress testing processes, as appropriate, and should address the covered bank's earnings, capital, and liquidity. The covered bank may set quantitative limits on a gross or net basis. Lagging indicators, such as delinquencies, problem asset levels, and losses generally will not capture the build-up of risk during healthy economic periods. As a result, these indicators are generally not useful in proactively managing risk. However, setting quantitative limits based on performance under various adverse scenarios would enable the board and management to take actions that reduce risk before delinquencies, problem assets, and losses reach excessive levels.

We expect examiners to apply judgment when determining which quantitative limits should be based on stress testing and to consider several factors, including, for example, the value in using such measures for the risk type, the covered bank's ability to produce such measures, the capabilities of similarly-situated institutions, and the degree to which the covered bank's board and management have invested in the resources needed to establish such capabilities. We note that the Federal banking agencies issued guidance on stress testing in May 2012.[47] The guidance describes various stress testing approaches and applications, and covered banks should consider the range of approaches and select the one(s) most suitable when establishing quantitative limits. Risk limits may be designed as thresholds, triggers, or hard limits, depending on how the board and management choose to manage risk. Thresholds or triggers that prompt discussion and action before a hard limit is reached or breached can be useful tools for reinforcing risk appetite and proactively responding to elevated risk indicators.

When a covered bank's risk profile is substantially the same as that of its parent company, the covered bank's board may tailor the parent company's risk appetite statement to make it applicable to the covered bank. However, to ensure the sanctity of the national bank or Federal savings association charter, the board of any covered bank must approve the bank-level Statement and document any necessary adjustments or material differences between the covered bank's and parent company's risk profiles.

Concentration and Front Line Unit Risk Limits

Paragraph F. of section II of the proposed Guidelines provided that the Framework should include concentration risk limits and, as applicable, front line unit risk limits for the relevant risks in each front line unit to ensure that these units do not create excessive risks. The proposal also provided that when aggregated across units, these risks do not exceed the limits established in the bank's risk appetite statement.

One commenter suggested that the word ''ensure'' should not be used in this paragraph as it implies a guaranteed outcome. The commenter suggested a slightly different formulation of the language in this paragraph. The OCC is adopting this paragraph as proposed with the addition of the commenter's suggestion. The final Guidelines, state that concentration and front line unit risk limits should limit excessive risk taking.

Risk Appetite Review, Monitoring, and Communication Processes

Paragraph G. of section II of the proposed Guidelines provided that the Framework should require: (i) Review and approval of the Statement by the board or the board's risk committee at least annually or more frequently, as necessary, based on the size and volatility of risks and any material changes in the bank's business model, strategy, risk profile, or market conditions; (ii) initial communication and ongoing reinforcement of the bank's Statement throughout the bank to ensure that all employees align their risk-taking decisions with the Statement; (iii) independent risk management to monitor the bank's risk profile in relation to its risk appetite and compliance with concentration risk limits and to report such monitoring to the board or the board's risk committee at least quarterly; (iv) front line units to monitor their respective risk limits and to report to independent risk management at least quarterly; and (v) when necessary due to the level and type of risk, independent risk management to monitor front line units' compliance with front line unit risk limits, ongoing communication with front line units regarding adherence to these risk limits, and to report any concerns to the CEO and the board or the board's risk committee, at least quarterly.

We received only minor comments on this paragraph and, accordingly, we are adopting paragraph G. of the final Guidelines substantially as proposed, with a few technical changes. With regard to the monitoring and reporting set forth in paragraph G., we note that the frequency of such monitoring and reporting should be performed more often, as necessary, based on the size and volatility of the risks and any material change in the covered bank's business model, strategy, risk profile, or market conditions.

Processes Governing Risk Limit Breaches

Paragraph H. of section II of the proposed Guidelines set out processes governing risk limit breaches. The proposal provided that the bank should establish and adhere to processes that require front line units and independent risk management, in conjunction with their respective responsibilities, to identify any breaches of the Statement, concentration risk limits, and front line unit risk limits, distinguish identified breaches based on the severity of their impact on the bank and establish protocols for when and how to inform the board, front line management, independent risk management, and the OCC of these breaches. The proposed Guidelines also provided that the bank should include in the protocols discussed above the requirement to provide a written description of how a breach will be, or has been, resolved and establish accountability for reporting and resolving breaches that include consequences for risk limit breaches that take into account the magnitude, frequency, and recurrence of breaches. Under the proposal, while both escalation and resolution processes are important elements of the Framework, it would be acceptable for banks to have different escalation and resolution processes for breaches of the Statement, concentration risk limits, and front line unit risk limits.

The OCC did not receive any comments on this paragraph, and is adopting it as proposed with one change. We have included internal audit in the list of groups that will be informed of a risk limit breach.

Concentration Risk Management

Paragraph I. of section II of the proposed Guidelines provided that the Framework should include policies and supporting processes that are appropriate for the bank's size, complexity, and risk profile that effectively identify, measure, monitor, and control the bank's concentration of risk. The OCC received no comments on this paragraph, and the final Guidelines are adopted as proposed with minor technical changes.

Concentrations of risk can arise in any risk category, with the most common being identified with borrowers, funds providers, and counterparties. In addition, the OCC's eight categories of risk discussed earlier are not mutually

[47] 77 FR 29458 (May 17, 2012).

exclusive; any product or service may expose a covered bank to multiple risks and risks may also be interdependent.[48] Furthermore, concentrations can exist on and off the balance sheet. Covered banks should continually enhance their concentration risk management processes to strengthen their ability to effectively identify, measure, monitor, and control concentrations that arise in all risk categories.[49]

Risk Data Aggregation and Reporting

Paragraph J. of section II of the proposed Guidelines addressed risk data aggregation and reporting. This paragraph provided that the Framework should include a set of policies, supported by appropriate procedures and processes, designed so that the bank's risk data aggregation and reporting capabilities are appropriate for its size, complexity, and risk profile and support supervisory reporting requirements. The proposal provided that these policies, procedures, and processes should collectively provide for the design, implementation, and maintenance of data architecture and information technology infrastructure that support the bank's risk aggregation and reporting needs in times of normalcy and stress; the capturing and aggregating of risk data and reporting of material risks, concentrations, and emerging risks in a timely manner to the board and the OCC and the distribution of risk reports to all relevant parties at a frequency that meets the needs for decision-making purposes.

The OCC is adopting the final Guidelines substantially as proposed with a few technical changes. The OCC expects covered banks to have risk aggregation and reporting capabilities that meet the board's and management's needs for proactively managing risk and ensuring the covered bank's risk profile remains consistent with its risk appetite.

Relationship of Risk Appetite Statement, Concentration Risk Limits, and Front Line Unit Risk Limits to Other Processes

Paragraph K. of section II of the proposed Guidelines addressed the relationship between the Statement, concentration risk limits, and front line unit risk limits to other bank processes. The OCC received no comments on this paragraph and the OCC is adopting this section as proposed with minor technical changes. The covered bank's front line units and independent risk management should incorporate at a minimum the Statement, concentration risk limits, and front line unit risk limits into their strategic and annual operating plans, capital stress testing and planning processes, liquidity stress testing and planning processes, product and service risk management processes (including those for approving new and modified products and services), decisions regarding acquisitions and divestitures, and compensation performance management programs.

Talent Management Processes

The proposed Guidelines provided that the bank should establish and adhere to processes for talent development, recruitment, and succession planning to ensure that management and employees who are responsible for or influence material risk decisions have the knowledge, skills, and abilities to effectively identify, measure, monitor, and control relevant risks. This paragraph also provided that a bank's talent management processes should ensure that the board of directors or a committee of the board: (i) Hires a CEO and approves the hiring of direct reports of the CEO with the skills and abilities to design and implement an effective Framework; (ii) establishes reliable succession plans for the CEO and his or her direct reports; and (iii) oversees the talent development, recruitment, and succession planning processes for individuals two levels down from the CEO. The proposal also provided that these processes should ensure that the board of directors or a committee of the board: (i) hires one or more CREs and a CAE that possess the skills and abilities to effectively implement the Framework; (ii) establishes reliable succession plans for the CRE and CAE; and (iii) oversees the talent development, recruitment, and succession planning processes for independent risk management and internal audit.

Some commenters asserted that these provisions would impose administrative burdens on a bank's board of directors and inappropriately place operational management responsibilities on the board. Commenters noted that the establishment of succession plans for direct reports of the CEO and the oversight of talent development, recruitment, and succession processes for independent risk management, internal audit, and individuals two levels down from the CEO would be burdensome and are more appropriately assigned to bank management. These commenters argued that the OCC should remove these provisions from the final Guidelines.

One commenter noted that it would be sufficient for the board of directors to oversee the talent development, recruitment, and succession planning for individuals one level down from the CEO. Another commenter argued that the OCC should expressly require succession planning for individuals two levels down from the CRE and CAE and require that succession plans identify one or more viable candidates for key positions. Another commenter construed this paragraph as imposing a general requirement that all banks hire dedicated CEOs, CREs, and CAEs, and argued that banks should be permitted to rely on ''dual-hatted'' employees. As previously discussed, the final Guidelines permit a covered bank to use components of its parent company's risk governance framework, including having employees serve in the same position at the covered bank and the parent company, to the extent this is appropriate for the covered bank. The OCC believes that this responds to this commenter's concerns.

In light of the comments received, the OCC has revised this paragraph to reduce the operational burdens on the board of directors while maintaining appropriate board oversight of the talent management program for employees with significant responsibilities under the Framework. The final Guidelines provide that a covered bank's board of directors or an appropriate committee of the board should appoint a CEO and appoint or approve the appointment of a CAE and one or more CREs with the skills and abilities to carry out their roles and responsibilities within the Framework. This provision clarifies that the board of directors need not be involved in the hiring process for these individuals. This gives the board, or a committee thereof, the option to rely on management to appoint the CAE and CRE(s).[50] Similarly, the final Guidelines provide that a covered bank's board of directors or an appropriate committee of the board should review and approve a written talent management program that provides for development, recruitment, and succession planning regarding the CEO, CAE, CRE(s), their direct reports, and other potential successors. The OCC

[48] *See* ''Large Bank Supervision'' booklet of the *Comptroller's Handbook* (Jan. 2010).

[49] *See* ''Concentrations of Credit'' booklet of the *Comptroller's Handbook* (Dec. 2011); Interagency Supervisory Guidance on Counterparty Credit Risk Management at *http://www.occ.gov/news-issuances/bulletins/2011/bulletin-2011-30.html.*

[50] The OCC notes that the definition of ''independent risk management'' provides that the board of directors or its risk committee should approve all decisions regarding the appointment or removal of a CRE, while the definition of ''internal audit'' provides that the audit committee should approve all decisions regarding the appointment or removal of the CAE. *See* final Guidelines paragraphs I.E.7. and 8.

believes that this revision reduces the talent management responsibilities of the board of directors, or a committee thereof, because they are no longer expected to oversee the talent development, recruitment, and succession planning processes for independent risk management, internal audit, and individuals two levels down from the CEO, as provided in the proposed Guidelines. Instead, the board of directors, or a committee thereof, should review and approve a written talent management program for key employees in a covered bank's Framework. The OCC notes that it is very important that covered banks detail the development, recruitment, and succession planning for these individuals because they occupy critical positions in a covered bank's Framework.

Finally, the final Guidelines provide that a covered bank's board of directors or an appropriate committee of the board should require management to assign individuals specific responsibilities within the talent management program, and hold those individuals accountable for the program's effectiveness. This provision clarifies that the OCC expects the board of directors, or a committee thereof, to provide oversight to a covered bank's talent management program, and that responsibility for developing and implementing this program rests with covered bank management.

Compensation and Performance Management Programs

The proposed Guidelines provided that a bank should establish and adhere to compensation and performance management programs that meet the requirements of any applicable statute or regulation. The proposal provided that these programs should be appropriate to ensure that the CEO, front line units, independent risk management, and internal audit implement and adhere to an effective Framework. The proposal also provided that programs should ensure that front line unit compensation plans and decisions appropriately consider the level and severity of issues and concerns identified by independent risk management and internal audit. The programs should be designed to attract and retain the talent needed to design, implement, and maintain an effective Framework. Finally, the proposed Guidelines provided that the programs should prohibit incentive-based payment arrangements, or any feature of any such arrangement, that encourages inappropriate risks by providing excessive compensation or that could lead to material financial loss.

Some commenters supported this paragraph of the proposed Guidelines. One commenter argued that employee compensation should be linked to the entire organization's strategic goals and should incorporate organization-wide performance metrics. Another commenter requested that the OCC provide more specific standards for compensation. A commenter also objected to the proposed Guidelines to the extent they provided that the programs should ensure front line unit compensation plans and decisions appropriately consider the level and severity of issues, and instead suggested that the Guidelines should emphasize the timely correction of issues.

Commenters also disagreed regarding the inclusion of the incentive compensation provision in the proposed Guidelines. Some commenters suggested that the proposed Guidelines should contain stronger language prohibiting incentive-based payment arrangements that encourage inappropriate risk. Other commenters argued that one could interpret this provision as creating standards beyond those established by existing interagency guidance as well as those set out in joint agency proposed rulemaking. These commenters recommended revising this provision to state that a bank's compensation and performance management programs should meet the requirements of applicable laws and regulations.

After reviewing the comments received, the OCC is adopting the compensation and performance management program paragraph substantially as proposed with clarifying and technical changes. The OCC has revised this paragraph to provide that the compensation and performance management programs should ensure front line unit compensation plans and decisions appropriately consider the level and severity of issues and concerns identified by independent risk management and internal audit, as well as the timeliness of corrective action to resolve such issues and concerns. The OCC declines to remove the term ''severity,'' as suggested by one commenter because we believe this is an important factor in determining the materiality of issues and concerns.

The OCC also has decided not to modify the remaining provisions of this paragraph, including the incentive compensation standard. As previously discussed, the final Guidelines establish minimum standards for the design and implementation of a covered bank's Framework and minimum standards for the covered bank's board of directors in providing oversight to the Framework's design and implementation. While compensation practices are an important part of a covered bank's Framework, the OCC notes that other authorities address this issue in more detail.[51] The OCC reminds covered banks that employee compensation arrangements should comply with all applicable rules and guidance. The OCC also notes that section 956 of the Dodd-Frank Act[52] requires the OCC, the Board, the FDIC, the National Credit Union Administration, the Securities and Exchange Commission, and the Federal Housing Finance Agency to jointly prescribe incentive-based regulations or guidelines applicable to covered institutions.[53] The OCC notes that the incentive compensation standard included in the final Guidelines was adapted from the standard set out in section 956 of the Dodd-Frank Act, and that a covered bank's compensation and performance management programs should comply with the final regulations or guidelines implementing section 956 when they are issued.

Section III: Standards for Board of Directors

Section III of the final Guidelines sets forth the minimum standards for a covered bank's board of directors in providing oversight to the Framework's design and implementation.

Some commenters expressed concern regarding the standards contained in section III of the proposed Guidelines. For example, some commenters argued that the proposed Guidelines would distract the board of directors from its strategic and oversight role. Other commenters asserted that the proposed Guidelines would place an undue burden on the board of directors by assigning managerial responsibilities to the board that are more properly the role

[51] *See* 12 U.S.C. 1831p–1(c); 12 CFR part 30, Appendix A (requiring institutions to maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or that could lead to material financial loss to an institution, and prohibiting excessive compensation as an unsafe and unsound practice). As provided in the Guidelines, covered banks subject to the final Guidelines should ensure that practices established within their Frameworks also meet the standards set forth in appendices A, B, and C to part 30. *See* final Guidelines II.C. note 2. We also note that the OCC, Board, the Federal Deposit Insurance Corporation (FDIC), and the OTS issued interagency guidance that addresses incentive-based compensation. *See Guidance on Sound Incentive Compensation Policies,* 75 FR 36395 (June 25, 2010).

[52] 12 U.S.C. 5641.

[53] *See* 76 FR 21170 (Apr. 14, 2011).

of bank management. Some commenters also argued that the oversight mandated by the proposed Guidelines would increase a board of directors' exposure to liability and discourage qualified individuals from agreeing to serve on the board.

The OCC has revised the standards to recognize the board of directors' key strategic and oversight role with respect to the design and implementation of the Framework. The OCC believes that these revisions respond to commenters' concerns and avoid imposing an undue operational burden on the board of directors. Set forth below is a discussion of the minimum standards for a covered bank's board of directors in providing oversight to the Framework's design and implementation under the final Guidelines.

Require an Effective Risk Governance Framework

Paragraph A. of section III of the proposed Guidelines provided that each member of the bank's board of directors has a duty to oversee the bank's compliance with safe and sound banking practices. The proposed Guidelines also provided that the board of directors should ensure that the bank establishes and implements an effective Framework that complies with the Guidelines. Finally, the proposed Guidelines provided that the board of directors or its risk committee should approve any changes to the Framework.

Many commenters strongly opposed the use of the word ''ensure'' in the proposed Guidelines. Some commenters noted that the term ''ensure'' could be read as a guarantee of results and understood to imply that the board of directors is required to be involved in the day-to-day activities of the bank. These commenters asserted that it may make it more difficult for banks to attract qualified candidates for a bank's board of directors and may imply that the board could be held liable for management actions even when director oversight has been reasonable. Other commenters suggested that the final Guidelines should provide that a board of directors fulfills its oversight function by reviewing, evaluating, and approving a Framework that is designed, recommended, and implemented by management and by receiving reports on material compliance matters.

Many commenters recommended that the OCC remove the word ''ensure'' from the final Guidelines, and provided a number of alternatives to address their concerns. Commenters suggested that the OCC replace ''ensure'' with: ''Require,'' ''oversee,'' ''actively oversee,'' and ''oversee and confirm.'' Commenters generally argued that these alternatives more accurately reflect the board of directors' oversight function.

After reviewing the comments, the OCC is revising this paragraph of the final Guidelines to remove the terms ''duty'' and ''ensure.'' The OCC did not intend to impose managerial responsibilities on the board of directors, or suggest that the board must guarantee results under the Framework. Accordingly, consistent with commenter suggestions, the final Guidelines provide that the board of directors should require management to establish and implement an effective Framework that meets the minimum standards described in the Guidelines. The OCC believes that this revision aligns the board of directors' responsibilities under this paragraph with their traditional strategic and oversight role.

The OCC has also modified this paragraph to reduce the operational burdens placed on the board of directors while maintaining their involvement in overseeing the Framework's design and implementation. The final Guidelines clarify that the board of directors or its risk committee should approve significant changes to the Framework and monitor compliance with the Framework. This revision clarifies that the board or risk committee should only approve significant changes to the Framework, rather than all changes, as provided in the proposed Guidelines. This change also clarifies that the board of directors or the risk committee should monitor compliance with the Framework. The board of directors or the risk committee monitors compliance with the Framework by overseeing management's implementation of the Framework and holding management accountable for fulfilling their responsibilities under the Framework.

Provide Active Oversight of Management

Paragraph B. of section III of the proposed Guidelines provided that the board of directors should actively oversee the bank's risk-taking activities and hold management accountable for adhering to the Framework. The proposed Guidelines also provided that the board of directors should question, challenge, and, when necessary, oppose management's proposed actions that could cause the bank's risk profile to exceed its risk appetite or threaten the bank's safety and soundness.

Commenters expressed concern that these provisions would promote confrontation between the board of directors and bank management at board meetings. Some commenters argued that this would deter open and candid dialogue between the board of directors and bank management, and that emphasizing board opposition will detract from determining how active the board is in overseeing management actions.

Some commenters also argued that the board of directors' oversight of management should not be characterized as ''active'' because it implies that board members are implementing and assuming management functions.

The final Guidelines continue to provide that a covered bank's board of directors should *actively oversee* the covered bank's risk-taking activities and hold management accountable for adhering to the Framework. The OCC believes that it is important for the board of directors to understand a covered bank's risk-taking activities and to be engaged in providing oversight to these activities. The final Guidelines clarify that the board of directors provides active oversight by relying on risk assessments and reports prepared by independent risk management and internal audit. Therefore, the final Guidelines do not contemplate that the board of directors will assume managerial responsibilities in providing active oversight of management—instead, the board is permitted to rely on independent risk management and internal audit to meet its responsibilities under this paragraph. Some boards of directors periodically engage third-party experts to assist them in understanding risks and issues and to make recommendations to strengthen board and bank practices. While the Guidelines focus on independent risk management and internal audit, they do not prohibit boards of directors from engaging third-party experts to also assist them in carrying out their duties.

The final Guidelines continue to articulate the OCC's expectation that the board of directors should provide a credible challenge to management. The OCC believes that a board of directors will be able to provide this challenge if its members have a comprehensive understanding of the covered bank's risk-taking activities. During the financial crisis, the OCC observed that some members of the board of directors at certain institutions had an incomplete understanding of their institution's risk exposures. The OCC believes that this evidences both a failure to exercise adequate oversight of management and critically evaluate management's recommendations and decisions during the years preceding the financial crisis.

The OCC believes that the capacity to dedicate sufficient time and energy in

reviewing information and developing an understanding of the key issues related to a covered bank's risk-taking activities is a critical prerequisite to being an effective director. Informed directors are well-positioned to engage in substantive discussions with management wherein the board of directors provides approval to management, requests guidance to clarify areas of uncertainty, and prudently questions the propriety of strategic initiatives. Therefore, the final Guidelines continue to provide that the board of directors, in reliance on information it receives from independent risk management and internal audit, should question, challenge, and when necessary, oppose recommendations and decisions made by management that could cause the covered bank's risk profile to exceed its risk appetite or jeopardize the safety and soundness of the covered bank. In addition to resulting in a more informed board of directors, the OCC expects that this provision will enable the board to make a determination as to whether management is adhering to, and understands, the Framework. For example, recurring breaches of risk limits or actions that cause the covered bank's risk profile to materially exceed its risk appetite may demonstrate that management does not understand or is not adhering to the Framework. In these situations, the board of directors should take action to hold the appropriate party, or parties, accountable.

The OCC does not intend this standard to become a compliance exercise for the covered bank, or lead to scripted meetings between the board of directors and management. Instead, the OCC intends to assess compliance with this standard primarily by engaging OCC examiners in frequent conversations with directors. Likewise, the OCC does not expect the board of directors to evidence opposition to management during each board meeting. Instead, the OCC emphasizes that the board of directors should oppose management's recommendations and decisions only when necessary. The OCC believes that an environment in which examiners, board members, and management openly and honestly communicate benefits a covered bank, and expects these types of interactions to continue.

Exercise Independent Judgment

The proposed Guidelines provided that in carrying out his or her duty to provide active oversight of bank management, a director should exercise sound, independent judgment. We received no comments on this paragraph and adopt it in the final Guidelines substantially as proposed. In determining whether a board member is adequately objective and independent, the OCC will consider the degree to which the member's other responsibilities conflict with his or her ability to act in the covered bank's interest.

Include Independent Directors

Paragraph D. of section III of the proposed Guidelines provided that at least two members of a bank's board of directors should be independent, *i.e.,* they should not be members of the bank's or the parent company's management. In the preamble to the proposal, we noted that this would enable the bank's board to provide effective, independent oversight of bank management and, to the extent the bank's independent directors are also members of the parent company's board, the OCC would expect that such directors would consider the safety and soundness of the bank in decisions made by the parent company that impact the bank's risk profile. The proposal also provided that this standard would not supersede other applicable regulatory requirements concerning the composition of a Federal savings association's board [54] and that these associations must continue to comply with such requirements.

We received a number of comments on this paragraph. Some commenters opposed the requirement for two independent directors. These commenters believe that the bank should have the flexibility to decide the structure of their own board based on their individual business requirements as long as the board appropriately controls risk. One commenter suggested that the requirement for two independent directors not apply to banks with boards with seven or fewer total directors or if the bank can demonstrate that it would be an undue hardship to find two independent directors. A few commenters noted that it would be better to require a percentage of independent directors rather than requiring a specific number. Other commenters supported this requirement.

One commenter noted that our independence standard differed from the Board's standard in their Dodd-Frank Act section 165 rules and suggested that the OCC adopt the Board's standard of independence to be consistent.

The OCC is retaining the requirement for covered banks to have at least two independent board members. However, as suggested by one commenter, we have revised this provision to be consistent with the Board's independence standard in its Dodd-Frank Act section 165 rules.[55] The final Guidelines provide that at least two members of the board of each covered bank should not be an officer or employee of the parent company or covered bank and has not been an officer or employee of the parent company or covered bank during the previous three years; should not be a member of the immediate family, as defined in the Board's Regulation Y,[56] of a person who is, or has been within the last three years, an executive officer of the parent company or covered bank, as defined in the Board's Regulation O; [57] and should qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the OCC.

Provide Ongoing Training to Directors

Paragraph E. of section III of the proposed Guidelines provided that in order to ensure that each member of the board of directors has the knowledge, skills, and abilities needed to meet the standards set forth in the Guidelines, the board should establish and adhere to a formal, ongoing training program for directors. The proposed Guidelines provided that the training program apply only to independent directors and should include training on: (i) Complex products, services, lines of business, and risks that have a significant impact on the bank; (ii) laws, regulations, and supervisory requirements applicable to the bank; and (iii) other topics identified by the board of directors.

Some commenters requested that the OCC reconsider this paragraph, and suggested that it may discourage qualified individuals from serving as bank directors. Other commenters recommended that the board of directors should retain discretion in directing the frequency, scope, and selecting the provider of training to

[54] *See* 12 CFR 163.33.

[55] Several commenters also suggested that the OCC coordinate with the Board to ensure that these Guidelines are consistent with the Board's enhanced prudential standards relating to risk management that were issued under section 165 of the Dodd-Frank Act. *See* 12 U.S.C. 5365. The Board's enhanced prudential standards apply to a covered bank's holding company and commenters raised concerns that inconsistencies could create unnecessary burden. We note that OCC staff met with Board staff to discuss the relationship between these Guidelines and the Board's section 165 rules. The independence standard for directors in the final Guidelines is an example of the OCC's efforts to address potential inconsistencies.

[56] 12 CFR 225.41(b)(3).

[57] 12 CFR 215.2(e)(1).

board members. These commenters also suggested that the training program should only include training on material laws, regulations, and supervisory requirements, and that the final Guidelines should permit banks to choose training suited to their business model, risk profile, and the background of board members. Another commenter suggested that the OCC revise this paragraph to enable a bank's independent risk management and/or internal audit units to recommend training to the board of directors.

After considering the comments, the OCC has revised this paragraph in the final Guidelines to apply to all directors [58] but to provide more flexibility to the board of directors in structuring a formal, ongoing training program for directors. Specifically, the final Guidelines incorporate commenters' suggestions and provide that the training program should consider the directors' knowledge and experience and the covered bank's risk profile. This revision reflects the OCC's belief that the training program should be tailored to the director's needs, experience, and education. Similarly, the final Guidelines provide more flexibility to covered banks to focus the training program on material topics because the final Guidelines emphasize that the program should include training on ''appropriate'' areas. The OCC also notes that covered banks retain discretion in directing the frequency, scope, and selecting the provider of training under the final Guidelines.

The OCC continues to believe that the board of directors should be financially knowledgeable and committed to conducting diligent reviews of the covered bank's management team, financial status, and business plans. OCC examiners will evaluate each director's knowledge and experience, as demonstrated in their written biography and discussions with examiners.

Self-Assessments

Paragraph F. of section III of the proposed Guidelines provided that the bank's board of directors should conduct an annual self-assessment that includes an evaluation of the board's effectiveness in meeting the standards provided in section III of the Guidelines.

The OCC received no comments and is adopting this paragraph as proposed. The OCC notes that the self-assessment discussed in this paragraph can be part of a broader self-assessment process conducted by the board of directors, and should result in a constructive dialogue among board members that identifies opportunities for improvement and leads to specific changes that are capable of being tracked, measured, and evaluated. For example, these may include broad changes that range from changing the board of directors' composition and structure, meeting frequency and agenda items, board report design or content, ongoing training program design or content, and other process and procedure topics.

Relationship Between the Guidelines and OCC's Heightened Expectations Program

As discussed above, the final Guidelines will supersede the current heightened expectations program. The informal guidance communicated in a Deputy Comptroller memo and ''one page'' documents will no longer be used to evaluate covered banks. Examiners will assess covered bank governance and risk management practices using these final Guidelines and other existing OCC policy guidance such as handbooks and bulletins to identify appropriate practices and weaknesses and communicate areas needing improvement to the board of directors and management of covered banks according to existing supervisory processes as described in the ''Bank Supervision Processes'' booklet of the *Comptroller's Handbook.*

Integration of Federal Savings Associations Into Part 30

As noted above, 12 CFR parts 30 and 170 establish safety and soundness rules and guidelines for national banks and Federal savings associations, respectively. The OCC proposed to make part 30 and its respective appendices applicable to both national banks and Federal savings associations. The OCC also proposed to remove part 170, as it would no longer be necessary, and to make other minor changes to part 30, including the deletion of references to rescinded OTS guidance. We received no comments on these amendments and therefore adopt them as proposed, with minor technical drafting corrections. These amendments are described below.

Safety and Soundness Rules. On July 10, 1995, the Federal banking agencies adopted a final rule establishing deadlines for submission and review of safety and soundness compliance plans.[59] The final rule provides that the agencies may require compliance plans to be filed by an insured depository institution for failure to meet the safety and soundness standards prescribed by guideline pursuant to section 39 of the FDIA. The safety and soundness rules for national banks and Federal savings associations are set forth at 12 CFR parts 30 and 170, respectively, and, with one exception discussed below, they are substantively the same.

Twelve CFR part 30 establishes the procedures a national bank must follow if the OCC determines that the bank has failed to satisfy a safety and soundness standard or if the OCC requests the bank to file a compliance plan. Section 30.4(d) provides that if a bank fails to submit an acceptable compliance plan within the time specified by the OCC or fails in any material respect to implement a compliance plan, then the OCC *shall* require the bank to take certain actions to correct the deficiency. However, if a bank has experienced ''extraordinary growth'' during the previous 18-month period, then the rule provides that the OCC *may* be required to take certain action to correct the deficiency. Section 30.4(d)(2) defines ''extraordinary growth'' as ''an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan.''

Twelve CFR part 170 sets forth nearly identical safety and soundness rules for Federal savings associations to those applicable in part 30. However, in contrast to part 30, part 170 does not define ''extraordinary growth.'' Instead, the OCC determines whether a savings association has undergone extraordinary growth on a case-by-case basis by considering various factors such as the association's management, asset quality, capital adequacy, interest rate risk profile, and operating controls and procedures.[60]

In order to streamline and consolidate the safety and soundness rules applicable to national banks and Federal savings associations, the OCC is applying part 30 to Federal savings associations. This change will not subject Federal savings associations to any new requirements but will subject them to the section 30.4(d)(2) definition of ''extraordinary growth.'' This definition incorporates an objective standard for determining ''extraordinary growth'' that is based on an increase in assets over a period of time and will provide greater clarity and guidance to Federal savings associations on when

[58] This provision applies to all directors because directors that are members of management may not have expertise in all matters for which the board of directors may be providing oversight.

[59] *See* 60 FR 35674.

[60] *See* Thrift Regulatory Bulletin 3b, ''Policy Statement on Growth for Savings Associations'' (Nov. 26, 1996).

the OCC would be required to take action to correct a deficiency.

Guidelines Establishing Standards for Safety and Soundness. In conjunction with the final rule establishing deadlines for compliance plans, the agencies jointly adopted Interagency Guidelines Establishing Standards for Safety and Soundness (Safety and Soundness Guidelines) as Appendix A to each of the agencies' respective safety and soundness rules. The Safety and Soundness Guidelines are set forth in Appendix A to parts 30 and 170 for national banks and savings associations, respectively. The texts of Appendix A for national banks and savings associations are substantively identical. Pursuant to section 39 of the FDIA, by adopting the safety and soundness standards as guidelines, the OCC may pursue the course of action that it determines to be most appropriate, taking into consideration the circumstances of a national bank's noncompliance with one or more standards, as well as the bank's self-corrective and remedial responses.

In order to streamline and consolidate all safety and soundness guidelines in one place, this final rule amends Appendix A to part 30 so that it also applies to Federal savings associations. This change will not result in any new requirements for Federal savings associations.

Guidelines Establishing Information Security Standards. Section 501 of the Gramm-Leach-Bliley Act requires the Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, and the Federal Trade Commission to establish appropriate standards relating to administrative, technical, and physical safeguards for customer records and information for the financial institutions subject to their respective jurisdictions. Section 505(b) requires the agencies to implement these standards in the same manner, to the extent practicable, as the standards prescribed pursuant to section 39(a) of the FDIA. Guidelines implementing the requirements of section 501, Interagency Guidelines Establishing Information Security Standards, are set forth in Appendix B to parts 30 and 170 for national banks and Federal savings associations, respectively.[61] The texts of Appendix B for national banks and savings associations are substantively identical.

In order to streamline and consolidate all safety and soundness guidelines in one place, the OCC is amending Appendix B to part 30 so that it also applies to Federal savings associations. This change will not result in any new requirements for Federal savings associations.

Guidelines Establishing Standards for Residential Mortgage Lending Practices. On February 7, 2005, the OCC adopted guidelines establishing standards for residential mortgage lending practices for national banks and their operating subsidiaries as Appendix C to part 30.[62] These guidelines address certain residential mortgage lending practices that are contrary to safe and sound banking practices, may be conducive to predatory, abusive, unfair or deceptive lending practices, and may warrant a heightened degree of care by lenders.

While there is no equivalent to Appendix C in part 170, Federal savings associations are subject to guidance on residential mortgage lending.[63] For many of the same reasons that the OCC decided to incorporate its residential mortgage lending guidance into a single set of guidelines adopted pursuant to section 39, the OCC is now applying Appendix C to Federal savings associations. As a result, Federal savings associations will be subject to the same guidance on residential mortgage lending as national banks, thereby harmonizing residential mortgage lending standards for both types of institutions. Moreover, the application of Appendix C to Federal savings associations clarifies the residential mortgage lending standards applicable to these institutions and enhances the overall safety and soundness of Federal savings associations, because the Appendix C guidelines are enforceable pursuant to the FDIA section 39 process as implemented by part 30. It should be noted, however, that although the guidelines in Appendix C incorporate and implement some of the principles set forth in current Federal savings association guidance on residential real estate lending, they do not replace such guidance.

Description of Technical Amendments to Part 30

We also are including in this final rule technical and conforming amendments to the part 30 regulations to add references to new Appendix D, which contains the Guidelines, where appropriate.

The Guidelines are enforceable, pursuant to section 39 of the FDIA and part 30, as we have described. That enforcement mechanism is not necessarily exclusive, however. Nothing in the Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions or other violations of law. Thus, for example, a bank's failure to comply with the standards set forth in these Guidelines may also be actionable under section 8 of the FDIA if the failure constitutes an unsafe or unsound practice.

In addition, we are replacing the cross-references to 12 CFR 40.3, the OCC's former privacy rule, with the appropriate cite to the Consumer Financial Protection Bureau's (CFPB) privacy rule, 12 CFR 1016.3, in the definitions of ''customer'' and ''customer information'' in Appendix B to part 30. The Dodd-Frank Act transferred to the CFPB Federal rulemaking authority to issue privacy rules applicable to national banks, as well as Federal savings associations. As a result, 12 CFR part 40 is no longer operative and national banks now must comply with these rules as reissued by the CFPB.[64]

Lastly, in 12 CFR 168.5, we have replaced the reference to part 170 with part 30 to reflect the fact that this final rule removes part 170 and applies part 30 and its appendices to Federal savings associations.

Regulatory Analysis

Paperwork Reduction Act

The OCC has determined that the final Guidelines involve information collection requirements pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

The OCC may not conduct or sponsor, and an organization is not required to respond to, these information collection requirements unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The OCC has submitted this collection to OMB pursuant to section 3507(d) of the PRA

[61] Appendix B to part 30 currently applies to national banks, Federal branches and agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

[62] *See* 70 FR 6329. Appendix C currently applies to national banks, Federal branches and agencies of foreign banks, and any operating subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

[63] *See* Examination Handbook Section 212, ''One-to Four-Family Residential Real Estate Lending'' (Feb. 10, 2011) (incorporating Regulatory Bulletin 37–18 (Mar. 31, 2007)) and OCC Bulletin 1999–38, ''Treatment of High LTV Residential Real Estate Loans'' (Oct. 13, 1999).

[64] The OCC removed 12 CFR part 40 from the Code of Federal Regulations earlier this year. 79 FR 15639 (Mar. 21, 2014).

and section 1320.11 of OMB's implementing regulations (5 CFR part 1320).

The OCC submitted this collection to OMB at the proposed rule stage as well. OMB filed comments instructing the OCC to examine public comment in response to the proposed rule and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation. The OCC received no comments regarding the collection.

Abstract

The information collection requirements are found in 12 CFR part 30, Appendix D, which establishes minimum standards for the design and implementation of a risk governance framework for insured national banks, insured Federal savings associations, and insured Federal branches of a foreign bank with average total consolidated assets equal to or greater than $50 billion. Insured national banks and insured Federal savings associations with average total consolidated assets of less than $50 billion will also be subject to the Guidelines if that institution's parent company controls at least one insured national bank or insured Federal savings association with average total consolidated assets equal to or greater than $50 billion. The OCC reserves the authority to apply these requirements to an insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank that has average total consolidated assets of less than $50 billion if the OCC determines that its operations are highly complex or otherwise present a heightened risk.

Standards for Risk Governance Framework

Covered banks should establish and adhere to a formal, written risk governance framework designed by independent risk management. It should include delegations of authority from the board of directors to management committees and executive officers as well as risk limits established for material activities. It should be approved by the board of directors or the board's risk committee and reviewed and updated at least annually by independent risk management.

Front Line Units

Front line units should take responsibility and be held accountable by the CEO and the board of directors for appropriately assessing and effectively managing all of the risks associated with their activities. In fulfilling this responsibility, each front line unit should, either alone or in conjunction with another organizational unit that has the purpose of assisting a front line unit: (i) Assess, on an ongoing basis, the material risks associated with its activities and use such risk assessments as the basis for fulfilling its responsibilities and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the unit's risk profile or other conditions; (ii) establish and adhere to a set of written policies that include front line unit risk limits. Such policies should ensure risks associated with the front line unit's activities are effectively identified, measured, monitored, and controlled, consistent with the covered bank's risk appetite statement, concentration risk limits, and all policies established within the risk governance framework; (iii) establish and adhere to procedures and processes, as necessary to maintain compliance with the policies described in (ii); (iv) adhere to all applicable policies, procedures, and processes established by independent risk management; (v) develop, attract, and retain talent and maintain staffing levels required to carry out the unit's role and responsibilities effectively; (vi) establish and adhere to talent management processes; and (vii) establish and adhere to compensation and performance management programs.

Independent Risk Management

Independent risk management should oversee the covered bank's risk-taking activities and assess risks and issues independent of the front line units by: (i) Designing a comprehensive written risk governance framework commensurate with the size, complexity, and risk profile of the covered bank; (ii) identifying and assessing, on an ongoing basis, the covered bank's material aggregate risks; (iii) establishing and adhering to enterprise policies that include concentration risk limits; (iv) establishing and adhering to procedures and processes, to ensure compliance with policies in (iii); (v) identifying and communicating to the CEO and board of directors or board's risk committee material risks and significant instances where independent risk management's assessment of risk differs from that of a front line unit, and significant instances where a front line unit is not adhering to the risk governance framework; (vi) identifying and communicating to the board of directors or the board's risk committee material risks and significant instances where independent risk management's assessment of risk differs from the CEO, and significant instances where the CEO is not adhering to, or holding front line units accountable for adhering to, the risk governance framework; and (vii) developing, attracting, and retaining talent and maintaining staffing levels required to carry out the unit's role and responsibilities effectively while establishing and adhering to talent management processes and compensation and performance management programs.

Internal Audit

Internal audit should ensure that the covered bank's risk management framework complies with the Guidelines and is appropriate for the size, complexity, and risk profile of the covered bank. It should maintain a complete and current inventory of all of the covered bank's material processes, product lines, services, and functions, and assess the risks, including emerging risks, associated with each, which collectively provide a basis for the audit plan. It should establish and adhere to an audit plan, which is periodically reviewed and updated, that takes into account the covered bank's risk profile, emerging risks, issues, and establishes the frequency with which activities should be audited. The audit plan should require internal audit to evaluate the adequacy of and compliance with policies, procedures, and processes established by front line units and independent risk management under the risk governance framework. Significant changes to the audit plan should be communicated to the board's audit committee. Internal audit should report in writing, conclusions and material issues and recommendations from audit work carried out under the audit plan to the board's audit committee. Reports should identify the root cause of any material issue and include: (i) A determination of whether the root cause creates an issue that has an impact on one organizational unit or multiple organizational units within the covered bank; and (ii) a determination of the effectiveness of front line units and independent risk management in identifying and resolving issues in a timely manner. Internal audit should establish and adhere to processes for independently assessing the design and ongoing effectiveness of the risk governance framework on at least an annual basis. The independent assessment should include a conclusion on the covered bank's compliance with the standards set forth in the Guidelines. Internal audit should

identify and communicate to the board of directors or board's audit committee significant instances where front line units or independent risk management are not adhering to the risk governance framework. Internal audit should establish a quality assurance program that ensures internal audit's policies, procedures, and processes comply with applicable regulatory and industry guidance, are appropriate for the size, complexity, and risk profile of the covered bank, are updated to reflect changes to internal and external risk factors, emerging risks, and improvements in industry internal audit practices, and are consistently followed. Internal audit should develop, attract, and retain talent and maintain staffing levels required to effectively carry out its role and responsibilities. Internal audit should establish and adhere to talent management processes. Internal audit should establish and adhere to compensation and performance management programs.

Strategic Plan

The CEO, with input from front line units, independent risk management, and internal audit, should be responsible for the development of a written strategic plan that should cover, at a minimum, a three-year period. The board of directors should evaluate and approve the plan and monitor management's efforts to implement the strategic plan at least annually. The plan should include a comprehensive assessment of risks of the covered bank, an overall mission statement and strategic objectives, an explanation of how the covered bank will update the risk governance framework to account for projected changes to its risk profile, and be reviewed, updated, and approved pursuant to changes in the covered bank's risk profile or operating environment that were not contemplated when the plan was developed.

Risk Appetite Statement

A covered bank should have a comprehensive written statement outlining its risk appetite that serves as the basis for the risk governance framework. It should contain qualitative components that define a safe and sound risk culture and how the covered bank will assess and accept risks and quantitative limits that include sound stress testing processes and address earnings, capital, and liquidity.

Risk Limit Breaches

A covered bank should establish and adhere to processes that require front line units and independent risk management to: (i) Identify breaches of the risk appetite statement, concentration risk limits, and front line unit risk limits; (ii) distinguish breaches based on the severity of their impact; (iii) establish protocols for disseminating information regarding a breach; (iv) provide a written description of the breach resolution; and (v) establish accountability for reporting and resolving breaches.

Concentration Risk Management

The risk management framework should include policies and supporting processes appropriate for the covered bank's size, complexity, and risk profile for effectively identifying, measuring, monitoring, and controlling the covered bank's concentrations of risk.

Risk Data Aggregation and Reporting

This risk governance framework should include a set of policies, supported by appropriate procedures and processes, designed to provide risk data aggregation and reporting capabilities appropriate for the covered bank's size, complexity, and risk profile and support supervisory reporting requirements. Collectively, these policies, procedures, and processes should provide for: (i) The design, implementation, and maintenance of a data architecture and information technology infrastructure that supports the covered bank's risk aggregation and reporting needs during normal times and during times of stress; (ii) the capturing and aggregating of risk data and reporting of material risks, concentrations, and emerging risks in a timely manner to the board of directors and the OCC; and (iii) the distribution of risk reports to all relevant parties at a frequency that meets their needs for decision-making purposes.

Talent Management and Compensation

A covered bank should establish and adhere to processes for talent development, recruitment, and succession planning. The board of directors or appropriate committee should review and approve a written talent management program. A covered bank should also establish and adhere to compensation and performance management programs that comply with any applicable statute or regulation.

Board of Directors Training and Evaluation

The board of directors of a covered bank should establish and adhere to a formal, ongoing training program for all directors. The board of directors should also conduct an annual self-assessment.

Title: OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations.

Burden Estimates:

Total Number of Respondents: 31.

Total Burden per Respondent: 3,776.

Total Burden for Collection: 117,056.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the OCC's functions; including whether the information has practical utility; (2) the accuracy of the OCC's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the collection of information should be sent to:

Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0321, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may request additional information on the collection from Johnny Vilela, OCC Clearance Officer, (202) 649–7265, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th

Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

Additionally, commenters should send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira.submission@omb.eop.gov.*

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires generally that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include banking organizations with total assets of less than or equal to $550 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As of December 31, 2013, the OCC supervised 1,231 small entities based on the SBA's definition of small entities for RFA purposes. As discussed in the **SUPPLEMENTARY INFORMATION** above, the final Guidelines will generally be applicable only to OCC-supervised institutions that have average total consolidated assets of $50 billion or greater; therefore no small entities will be affected by the final Guidelines. Although the application of part 30 to Federal savings associations will affect a substantial number of small Federal savings associations, we do not associate any cost to this change. As such, pursuant to section 605(b) of the RFA, the OCC certifies that these final rules and guidelines will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act Analysis

The OCC has analyzed the final rules and guidelines under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rules and guidelines include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The OCC has determined that the final rules and guidelines will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the final rules and guidelines are not subject to section 202 of the UMRA.

List of Subjects

12 CFR Part 30

Banks, Banking, Consumer protection, National banks, Privacy, Safety and soundness, Reporting and recordkeeping requirements.

12 CFR Part 168

Consumer protection, Privacy, Reporting and recordkeeping requirements, Savings associations, Security measures.

12 CFR Part 170

Accounting, Administrative practice and procedure, Bank deposit insurance, Reporting and recordkeeping requirements, Safety and soundness, Savings associations.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

1. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 1, 93a, 371, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831p-1, 1881–1884, 3102(b) and 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

§ 30.1 [Amended]

■ 2. Section 30.1 is amended by:
■ a. In paragraph (a):
■ i. Removing ''appendices A, B, and C'' and adding in its place ''appendices A, B, C, and D'';
■ ii. Removing the phrase ''and federal branches of foreign banks,'' and adding in its place the phrase '', Federal savings associations, and Federal branches of foreign banks''; and
■ b. In paragraph (b):
■ i. Removing the word ''federal'' wherever it appears and adding ''Federal'' in its place;
■ ii. Adding the phrase ''Federal savings association, and'' after the phrase ''national bank,'';
■ iii. Removing the phrase ''branch or'' and adding in its place the word ''branch and''; and
■ iv. Adding a comma after the word ''companies''.

■ 3. Section 30.2 is amended by:
■ a. Removing in the second and third sentence the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association''; and
■ b. Adding a final sentence to read as follows:

§ 30.2 Purpose.

* * * The OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches are set forth in appendix D to this part.

■ 4. Section 30.3 is amended by:
■ a. Revising the section heading;
■ b. Removing the phrase ''a bank'', wherever it appears, and adding in its place the phrase ''a national bank or Federal savings association'';
■ c. In paragraph (a), removing ''the Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in appendix B to this part, or the OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices set forth in appendix C to this part'' and adding in its place ''the Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in appendix B to this part, the OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices set forth in appendix C to this part, or the OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches set forth in appendix D to this part'';
■ d. In paragraph (b), adding the phrase ''to satisfy'' after the word ''failed''; and
■ e. In paragraph (b), removing the phrase ''the bank'' and adding in its place the phrase ''the bank or savings association''.

The revision reads as follows:

§ 30.3 Determination and notification of failure to meet safety and soundness standards and request for compliance plan.

* * * * *

§ 30.4 [Amended]

■ 5. Section 30.4 is amended by:
■ a. In paragraphs (a), (d), and (e), removing the phrases ''A bank'' and ''a bank'', wherever they appear, and adding in their place the phrases ''A national bank or Federal savings association'' and ''a national bank or Federal savings association'', respectively;
■ b. In paragraph (a), the first sentence of paragraph (d)(1), and in paragraph (e), adding after the phrase ''the bank'', the phrase ''or savings association'';
■ c. In paragraph (b), removing the word ''bank'', and adding in its place the

phrase ''national bank or Federal savings association;

■ d. In paragraph (c), removing the phrase ''bank of whether the plan has been approved or seek additional information from the bank'', and adding in its place the phrase ''national bank or Federal savings association of whether the plan has been approved or seek additional information from the bank or savings association''; and

■ e. In paragraph (d)(1), removing the phrase ''bank commenced operations or experienced a change in control within the previous 24-month period, or the bank'', and adding in its place the phrase ''national bank or Federal savings association commenced operations or experienced a change in control within the previous 24-month period, or the bank or savings association''.

§ 30.5 [Amended]

■ 6. Section 30.5 is amended by:

■ a. Removing the word '' bank'', wherever it appears, except in the first sentence of paragraph (a)(1), and adding in its place the phrase ''national bank or Federal savings association'';

■ b. In paragraph (a)(1), removing the phrase ''bank prior written notice of the OCC's intention to issue an order requiring the bank'', and adding in its place the phrase ''national bank or Federal savings association prior written notice of the OCC's intention to issue an order requiring the bank or savings association''; and

■ c. In the fourth sentence of paragraph (a)(2), removing the word ''matter'' and adding in its place the word ''manner''.

§ 30.6 [Amended]

■ 7. Section 30.6 is amended by:

■ a. Removing the word ''bank'', wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'';

■ b. Adding the phrase '', 12 U.S.C. 1818(i)(1)'' after the word ''Act'' in paragraph (a); and

■ c. Adding the phrase ''12 U.S.C. 1818(i)(2)(A),'' after the word ''Act,'' in paragraph (b).

■ 8. Appendix A to Part 30 is amended by:

■ a. Revising footnote 2; and

■ b. In Section I.B.2. removing the word ''federal'' and adding in its place the word ''Federal''.

The revision reads as follows:

Appendix A to Part 30—Interagency Guidelines Establishing Standards for Safety and Soundness

* * * * *

[2] For the Office of the Comptroller of the Currency, these regulations appear at 12 CFR Part 30; for the Board of Governors of the Federal Reserve System, these regulations appear at 12 CFR part 263; and for the Federal Deposit Insurance Corporation, these regulations appear at 12 CFR part 308, subpart R and 12 CFR part 391, subpart B.

* * * * *

■ 9. Appendix B to part 30 is amended by:

■ a. Removing the words ''bank'' and ''bank's'', wherever they appear, except in Sections I.A. and I.C.2.a., and adding in their place the phrases ''national bank or Federal savings association'' and ''national bank's or Federal savings association's'', respectively; and

■ b. In Section I.A., removing the phrase ''referred to as ''the bank,'' are national banks, federal branches and federal agencies of foreign banks,'' and adding in its place the phrase ''referred to as ''the national bank or Federal savings association,'' are national banks, Federal savings associations, Federal branches and Federal agencies of foreign banks,'';

■ c. In Section I.C.2.d., removing the phrase ''§ 40.3(h) of this chapter'' and adding in its place the phrase ''12 CFR 1016.3(i)'';

■ d. In Section I.C.2.e., removing the phrase ''§ 40.3(n) of this chapter'' and adding in its place the phrase ''12 CFR 1016.3(p)''; and

■ e. In Supplement A to Appendix B to part 30, by revising footnotes 1, 2, 9, 11, and 12.

The revisions read as follows:

Appendix B to Part 30—Interagency Guidelines Establishing Information Security Standards

* * * * *

Supplement A to Appendix B to Part 30—Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice

* * * * *

[1] This Guidance was jointly issued by the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). Pursuant to 12 U.S.C. 5412, the OTS is no longer a party to this Guidance.

[2] 12 CFR part 30, app. B (OCC); 12 CFR part 208, app. D–2 and part 225, app. F (Board); and 12 CFR part 364, app. B and 12 CFR 391.5 (FDIC). The ''Interagency Guidelines Establishing Information Security Standards'' were formerly known as ''The Interagency Guidelines Establishing Standards for Safeguarding Customer Information.''

* * * * *

[9] Under the Guidelines, an institution's *customer information systems* consist of all of the methods used to access, collect, store, use, transmit, protect, or dispose of customer information, including the systems maintained by its service providers. *See* Security Guidelines, I.C.2.d.

* * * * *

[11] *See* Federal Reserve SR Ltr. 13–19, Guidance on Managing Outsourcing Risk, Dec. 5, 2013; OCC Bulletin 2013–29, ''Third-Party Relationships—Risk Management Guidance,'' Oct. 30, 2013; and FDIC FIL 68–99, Risk Assessment Tools and Practices for Information System Security, July 7, 1999.

[12] An institution's obligation to file a SAR is set out in the Agencies' SAR regulations and Agency guidance. *See* 12 CFR 21.11 (national banks, Federal branches and agencies); 12 CFR 163.180 (Federal savings associations); 12 CFR 208.62 (State member banks); 12 CFR 211.5(k) (Edge and agreement corporations); 12 CFR 211.24(f) (uninsured State branches and agencies of foreign banks); 12 CFR 225.4(f) (bank holding companies and their nonbank subsidiaries); 12 CFR part 353 (State non-member banks); and 12 CFR 390.355 (state savings associations). National banks and Federal savings associations must file SARs in connection with computer intrusions and other computer crimes. *See* OCC Bulletin 2000–14, ''Infrastructure Threats—Intrusion Risks'' (May 15, 2000); *see also* Federal Reserve SR 01–11, Identity Theft and Pretext Calling, Apr. 26, 2001.

* * * * *

■ 10. Appendix C to part 30 is amended by:

■ a. In sections I.iv., II.B.1., II.B.2., III.A. introductory text, III.B. introductory text, III.B.6., III.C., III.E.4., and III.E.6., removing the word ''bank'' wherever it appears, and adding in its place the phrase ''national bank or Federal savings association'';

■ b. In section II.B. introductory text and III.D., removing the word ''bank's'' and adding in its place the phrase ''national bank's or Federal savings association's'';

■ c. In sections II.B.1. and III.B.6., removing the word ''bank's'' and adding in its place the phrase ''bank's or savings association's''; and

■ d. Revising the second sentence of section I.i., first two sentences of section I.iii., section I.vi., sections I.A., I.C., I.D.2.b., II.A., III.E. introductory text, III.E.5., and III.F.

The revisions read as follows:

Appendix C to Part 30—OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices

* * * * *

I. * * *

i. * * * The Guidelines are designed to protect against involvement by national banks, Federal savings associations, Federal branches and Federal agencies of foreign banks, and their respective operating subsidiaries (together, ''national banks and Federal savings associations''), either directly or through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending

practices that are injurious to their respective customers and that expose the national bank or Federal savings association to credit, legal, compliance, reputation, and other risks.

* * * * *

* * * * *

iii. In addition, national banks, Federal savings associations, and their respective operating subsidiaries must comply with the requirements and Guidelines affecting appraisals of residential mortgage loans and appraiser independence. 12 CFR part 34, subpart C, and the Interagency Appraisal and Evaluation Guidelines (OCC Bulletin 2010–42 (December 10, 2010). * * *

* * * * *

vi. Finally, OCC regulations and supervisory guidance on fiduciary activities and asset management address the need for national banks and Federal savings associations to perform due diligence and exercise appropriate control with regard to trustee activities. *See* 12 CFR 9.6 (a), in the case of national banks, and 12 CFR 150.200, in the case of Federal savings associations, and the Comptroller's Handbook on Asset Management. For example, national banks and Federal savings associations should exercise appropriate diligence to minimize potential reputation risks when they undertake to act as trustees in mortgage securitizations.

A. *Scope.* These Guidelines apply to the residential mortgage lending activities of national banks, Federal savings associations, Federal branches and Federal agencies of foreign banks, and operating subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

* * * * *

C. *Relationship to Other Legal Requirements.* Actions by a national bank or Federal savings association in connection with residential mortgage lending that are inconsistent with these Guidelines or Appendix A to this part 30 may also constitute unsafe or unsound practices for purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, unfair or deceptive practices for purposes of section 5 of the FTC Act, 15 U.S.C. 45, and the OCC's Lending Rules, 12 CFR 34.3 (Lending Rules) and Real Estate Lending Standards, 12 CFR part 34, subpart D, in the case of national banks, and 12 CFR 160.100 and 160.101, in the case of Federal savings associations, or violations of the ECOA and FHA.

D. * * *

2. * * *

b. *National bank or Federal savings association* means any national bank, Federal savings association, Federal branch or Federal agency of a foreign bank, and any operating subsidiary thereof that is subject to these Guidelines.

II. * * *

A. *General.* A national bank's or Federal savings association's residential mortgage lending activities should reflect standards and practices consistent with and appropriate to the size and complexity of the bank or savings association and the nature and scope of its lending activities.

* * * * *

III. * * *

E. *Purchased and Brokered Loans.* With respect to consumer residential mortgage loans that the national bank or Federal savings association purchases, or makes through a mortgage broker or other intermediary, the national bank or Federal savings association's residential mortgage lending activities should reflect standards and practices consistent with those applied by the bank or savings association in its direct lending activities and include appropriate measures to mitigate risks, such as the following:

* * * * *

5. Loan documentation procedures, management information systems, quality control reviews, and other methods through which the national bank or Federal savings association will verify compliance with agreements, bank or savings association policies, and applicable laws, and otherwise retain appropriate oversight of mortgage origination functions, including loan sourcing, underwriting, and loan closings.

* * * * *

F. *Monitoring and Corrective Action.* A national bank's or Federal savings association's consumer residential mortgage lending activities should include appropriate monitoring of compliance with applicable law and the bank's or savings association's lending standards and practices, periodic monitoring and evaluation of the nature, quantity and resolution of customer complaints, and appropriate evaluation of the effectiveness of the bank's or savings association's standards and practices in accomplishing the objectives set forth in these Guidelines. The bank's or savings association's activities also should include appropriate steps for taking corrective action in response to failures to comply with applicable law and the bank's or savings association's lending standards, and for making adjustments to the bank's or savings association's activities as may be appropriate to enhance their effectiveness or to reflect changes in business practices, market conditions, or the bank's or savings association's lines of business, residential mortgage loan programs, or customer base.

■ 11. A new Appendix D is added to part 30 to read as follows:

Appendix D to Part 30—OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

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I. Introduction

1. The OCC expects a covered bank, as that term is defined in paragraph I.E. to establish and implement a risk governance framework to manage and control the covered bank's risk-taking activities.

2. This appendix establishes minimum standards for the design and implementation of a covered bank's risk governance framework and minimum standards for the covered bank's board of directors in providing oversight to the framework's design and implementation (Guidelines). These standards are in addition to any other applicable requirements in law or regulation.

3. A covered bank may use its parent company's risk governance framework in its entirety, without modification, if the framework meets these minimum standards, the risk profiles of the parent company and the covered bank are substantially the same as set forth in paragraph I.4. of these Guidelines, and the covered bank has demonstrated through a documented assessment that its risk profile and its parent company's risk profile are substantially the same. The assessment should be conducted at least annually, in conjunction with the review and update of the risk governance framework performed by independent risk management, as set forth in paragraph II.A. of these Guidelines.

4. A parent company's and covered bank's risk profiles are substantially the same if, as reported on the covered bank's Federal Financial Institutions Examination Council Consolidated Reports of Condition and Income (Call Reports) for the four most recent consecutive quarters, the covered bank's average total consolidated assets, as

calculated according to paragraph I.A. of these Guidelines, represent 95 percent or more of the parent company's average total consolidated assets.[1] A covered bank that does not satisfy this test may submit a written analysis to the OCC for consideration and approval that demonstrates that the risk profile of the parent company and the covered bank are substantially the same based upon other factors not specified in this paragraph.

5. Subject to paragraph I.6. of these Guidelines, a covered bank should establish its own risk governance framework when the parent company's and covered bank's risk profiles are not substantially the same. The covered bank's framework should ensure that the covered bank's risk profile is easily distinguished and separate from that of its parent for risk management and supervisory reporting purposes and that the safety and soundness of the covered bank is not jeopardized by decisions made by the parent company's board of directors and management.

6. When the parent company's and covered bank's risk profiles are not substantially the same, a covered bank may, in consultation with the OCC, incorporate or rely on components of its parent company's risk governance framework when developing its own risk governance framework to the extent those components are consistent with the objectives of these Guidelines.

A. Scope

These Guidelines apply to any bank, as that term is defined in paragraph I.E. of these Guidelines, with average total consolidated assets equal to or greater than $50 billion. In addition, these Guidelines apply to any bank with average total consolidated assets less than $50 billion if that institution's parent company controls at least one covered bank. For a covered bank, average total consolidated assets means the average of the covered bank's total consolidated assets, as reported on the covered bank's Call Reports, for the four most recent consecutive quarters.

B. Compliance Date

1. *Initial compliance.* The date on which a covered bank should comply with the Guidelines is set forth below:

(a) A covered bank with average total consolidated assets, as calculated according to paragraph I.A. of these Guidelines, equal to or greater than $750 billion as of November 10, 2014 should comply with these Guidelines on November 10, 2014;

(b) A covered bank with average total consolidated assets, as calculated according to paragraph I.A. of these Guidelines, equal to or greater than $100 billion but less than $750 billion as of November 10, 2014 should comply with these Guidelines within six months from November 10, 2014;

(c) A covered bank with average total consolidated assets, as calculated according to paragraph I.A. of these Guidelines, equal to or greater than $50 billion but less than $100 billion as of November 10, 2014 should comply with these Guidelines within 18 months from November 10, 2014;

(d) A covered bank with average total consolidated assets, as calculated according to paragraph I.A. of these Guidelines, less than $50 billion that is a covered bank because that bank's parent company controls at least one other covered bank as of November 10, 2014 should comply with these Guidelines on the date that such other covered bank should comply; and

(e) A covered bank that does not come within the scope of these Guidelines on November 10, 2014, but subsequently becomes subject to the Guidelines because average total consolidated assets, as calculated according to paragraph I.A. of these Guidelines, are equal to or greater than $50 billion after November 10, 2014, should comply with these Guidelines within 18 months from the as-of date of the most recent Call Report used in the calculation of the average.

C. Reservation of Authority

1. The OCC reserves the authority to apply these Guidelines, in whole or in part, to a bank that has average total consolidated assets less than $50 billion, if the OCC determines such bank's operations are highly complex or otherwise present a heightened risk as to warrant the application of these Guidelines;

2. The OCC reserves the authority, for each covered bank, to extend the time for compliance with these Guidelines or modify these Guidelines; or

3. The OCC reserves the authority to determine that compliance with these Guidelines should no longer be required for a covered bank. The OCC would generally make the determination under this paragraph I.C.3. if a covered bank's operations are no longer highly complex or no longer present a heightened risk. In determining whether a covered bank's operations are highly complex or present a heightened risk, the OCC will consider the following factors: Complexity of products and services, risk profile, and scope of operations.

4. When exercising the authority in this paragraph I.C., the OCC will apply notice and response procedures, when appropriate, in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.404.

D. Preservation of Existing Authority

Neither section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1) nor these Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions or other violations of law. The OCC may take action under section 39 and these Guidelines independently of, in conjunction with, or in addition to any other enforcement action available to the OCC.

E. Definitions

1. *Bank* means any insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank.

2. *Chief Audit Executive* means an individual who leads internal audit and is one level below the Chief Executive Officer in a covered bank's organizational structure.

3. *Chief Risk Executive* means an individual who leads an independent risk management unit and is one level below the Chief Executive Officer in a covered bank's organizational structure. A covered bank may have more than one Chief Risk Executive.

4. *Control.* A parent company *controls* a covered bank if it:

(a) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the covered bank; or

(b) Consolidates the covered bank for financial reporting purposes.

5. *Covered bank* means any bank:

(a) With average total consolidated assets, as calculated according to paragraph I.A. of these Guidelines, equal to or greater than $50 billion;

(b) With average total consolidated assets less than $50 billion if that bank's parent company controls at least one covered bank; or

(c) With average total consolidated assets less than $50 billion, if the OCC determines such bank's operations are highly complex or otherwise present a heightened risk as to warrant the application of these Guidelines pursuant to paragraph I.C. of these Guidelines.

6. *Front Line Unit.* (a) Except as provided in paragraph (b) of this definition, *front line unit* means any organizational unit or function thereof in a covered bank that is accountable for a risk in paragraph II.B. of these Guidelines that:

(i) Engages in activities designed to generate revenue or reduce expenses for the parent company or covered bank;

(ii) Provides operational support or servicing to any organizational unit or function within the covered bank for the delivery of products or services to customers; or

(iii) Provides technology services to any organizational unit or function covered by these Guidelines.

(b) *Front line unit* does not ordinarily include an organizational unit or function thereof within a covered bank that provides legal services to the covered bank.

7. *Independent risk management* means any organizational unit within a covered bank that has responsibility for identifying, measuring, monitoring, or controlling aggregate risks. Such units maintain independence from front line units through the following reporting structure:

(a) The board of directors or the board's risk committee reviews and approves the risk governance framework;

(b) Each Chief Risk Executive has unrestricted access to the board of directors and its committees to address risks and issues identified through independent risk management's activities;

(c) The board of directors or its risk committee approves all decisions regarding the appointment or removal of the Chief Risk Executive(s) and approves the annual compensation and salary adjustment of the Chief Risk Executive(s); and

(d) No front line unit executive oversees any independent risk management unit.

8. *Internal audit* means the organizational unit within a covered bank that is designated

[1] For a parent company, average total consolidated assets means the average of the parent company's total consolidated assets, as reported on the parent company's Form FR Y–9C to the Board of Governors of the Federal Reserve System, or equivalent regulatory report, for the four most recent consecutive quarters.

to fulfill the role and responsibilities outlined in 12 CFR part 30, Appendix A, II.B. Internal audit maintains independence from front line units and independent risk management through the following reporting structure:

(a) The Chief Audit Executive has unrestricted access to the board's audit committee to address risks and issues identified through internal audit's activities;

(b) The audit committee reviews and approves internal audit's overall charter and audit plans;

(c) The audit committee approves all decisions regarding the appointment or removal and annual compensation and salary adjustment of the Chief Audit Executive;

(d) The audit committee or the Chief Executive Officer oversees the Chief Audit Executive's administrative activities; and

(e) No front line unit executive oversees internal audit.

9. *Parent company* means the top-tier legal entity in a covered bank's ownership structure.

10. *Risk appetite* means the aggregate level and types of risk the board of directors and management are willing to assume to achieve a covered bank's strategic objectives and business plan, consistent with applicable capital, liquidity, and other regulatory requirements.

11. *Risk profile* means a point-in-time assessment of a covered bank's risks, aggregated within and across each relevant risk category, using methodologies consistent with the risk appetite statement described in paragraph II.E. of these Guidelines.

II. Standards for Risk Governance Framework

A. *Risk governance framework.* A covered bank should establish and adhere to a formal, written risk governance framework that is designed by independent risk management and approved by the board of directors or the board's risk committee. The risk governance framework should include delegations of authority from the board of directors to management committees and executive officers as well as the risk limits established for material activities. Independent risk management should review and update the risk governance framework at least annually, and as often as needed to address improvements in industry risk management practices and changes in the covered bank's risk profile caused by emerging risks, its strategic plans, or other internal and external factors.

B. *Scope of risk governance framework.* The risk governance framework should cover the following risk categories that apply to the covered bank: Credit risk, interest rate risk, liquidity risk, price risk, operational risk, compliance risk, strategic risk, and reputation risk.

C. *Roles and responsibilities.* The risk governance framework should include well-defined risk management roles and responsibilities for front line units, independent risk management, and internal audit.[2] The roles and responsibilities for each of these organizational units should be:

1. *Role and responsibilities of front line units.* Front line units should take responsibility and be held accountable by the Chief Executive Officer and the board of directors for appropriately assessing and effectively managing all of the risks associated with their activities. In fulfilling this responsibility, each front line unit should, either alone or in conjunction with another organizational unit that has the purpose of assisting a front line unit:

(a) Assess, on an ongoing basis, the material risks associated with its activities and use such risk assessments as the basis for fulfilling its responsibilities under paragraphs II.C.1.(b) and (c) of these Guidelines and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the unit's risk profile or other conditions;

(b) Establish and adhere to a set of written policies that include front line unit risk limits as discussed in paragraph II.F. of these Guidelines. Such policies should ensure risks associated with the front line unit's activities are effectively identified, measured, monitored, and controlled, consistent with the covered bank's risk appetite statement, concentration risk limits, and all policies established within the risk governance framework under paragraphs II.C.2.(c) and II.G. through K. of these Guidelines;

(c) Establish and adhere to procedures and processes, as necessary, to maintain compliance with the policies described in paragraph II.C.1.(b) of these Guidelines;

(d) Adhere to all applicable policies, procedures, and processes established by independent risk management;

(e) Develop, attract, and retain talent and maintain staffing levels required to carry out the unit's role and responsibilities effectively, as set forth in paragraphs II.C.1.(a) through (d) of these Guidelines;

(f) Establish and adhere to talent management processes that comply with paragraph II.L. of these Guidelines; and

(g) Establish and adhere to compensation and performance management programs that comply with paragraph II.M. of these Guidelines.

2. *Role and responsibilities of independent risk management.* Independent risk management should oversee the covered bank's risk-taking activities and assess risks and issues independent of front line units. In fulfilling these responsibilities, independent risk management should:

(a) Take primary responsibility and be held accountable by the Chief Executive Officer and the board of directors for designing a comprehensive written risk governance framework that meets these Guidelines and is commensurate with the size, complexity, and risk profile of the covered bank;

(b) Identify and assess, on an ongoing basis, the covered bank's material aggregate risks and use such risk assessments as the basis for fulfilling its responsibilities under paragraphs II.C.2.(c) and (d) of these Guidelines and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the covered bank's risk profile or other conditions;

(c) Establish and adhere to enterprise policies that include concentration risk limits. Such policies should state how aggregate risks within the covered bank are effectively identified, measured, monitored, and controlled, consistent with the covered bank's risk appetite statement and all policies and processes established within the risk governance framework under paragraphs II.G. through K. of these Guidelines;

(d) Establish and adhere to procedures and processes, as necessary, to ensure compliance with the policies described in paragraph II.C.2.(c) of these Guidelines;

(e) Identify and communicate to the Chief Executive Officer and the board of directors or the board's risk committee:

(i) Material risks and significant instances where independent risk management's assessment of risk differs from that of a front line unit; and

(ii) Significant instances where a front line unit is not adhering to the risk governance framework, including instances when front line units do not meet the standards set forth in paragraph II.C.1. of these Guidelines;

(f) Identify and communicate to the board of directors or the board's risk committee:

(i) Material risks and significant instances where independent risk management's assessment of risk differs from the Chief Executive Officer; and

(ii) Significant instances where the Chief Executive Officer is not adhering to, or holding front line units accountable for adhering to, the risk governance framework;

(g) Develop, attract, and retain talent and maintain staffing levels required to carry out its role and responsibilities effectively, as set forth in paragraphs II.C.2.(a) through (f) of these Guidelines;

(h) Establish and adhere to talent management processes that comply with paragraph II.L. of these Guidelines; and

(i) Establish and adhere to compensation and performance management programs that comply with paragraph II.M. of these Guidelines.

3. *Role and responsibilities of internal audit.* In addition to meeting the standards set forth in appendix A of part 30, internal audit should ensure that the covered bank's risk governance framework complies with these Guidelines and is appropriate for the size, complexity, and risk profile of the covered bank. In carrying out its responsibilities, internal audit should:

(a) Maintain a complete and current inventory of all of the covered bank's material processes, product lines, services, and functions, and assess the risks, including emerging risks, associated with each, which collectively provide a basis for the audit plan

[2] These roles and responsibilities are in addition to any roles and responsibilities set forth in Appendices A, B, and C to Part 30. Many of the risk management practices established and maintained by a covered bank to meet these standards, including loan review and credit underwriting and administration practices, should be components of its risk governance framework, within the construct of the three distinct units identified herein. In addition, existing OCC guidance sets forth standards for establishing risk management programs for certain risks, *e.g.,* compliance risk management. These risk-specific programs should also be considered components of the risk governance framework, within the context of the three units described in paragraph II.C. of these Guidelines.

described in paragraph II.C.3.(b) of these Guidelines;

(b) Establish and adhere to an audit plan that is periodically reviewed and updated that takes into account the covered bank's risk profile, emerging risks, and issues, and establishes the frequency with which activities should be audited. The audit plan should require internal audit to evaluate the adequacy of and compliance with policies, procedures, and processes established by front line units and independent risk management under the risk governance framework. Significant changes to the audit plan should be communicated to the board's audit committee;

(c) Report in writing, conclusions and material issues and recommendations from audit work carried out under the audit plan described in paragraph II.C.3.(b) of these Guidelines to the board's audit committee. Internal audit's reports to the audit committee should also identify the root cause of any material issues and include:

(i) A determination of whether the root cause creates an issue that has an impact on one organizational unit or multiple organizational units within the covered bank; and

(ii) A determination of the effectiveness of front line units and independent risk management in identifying and resolving issues in a timely manner;

(d) Establish and adhere to processes for independently assessing the design and ongoing effectiveness of the risk governance framework on at least an annual basis. The independent assessment should include a conclusion on the covered bank's compliance with the standards set forth in these Guidelines; [3]

(e) Identify and communicate to the board's audit committee significant instances where front line units or independent risk management are not adhering to the risk governance framework;

(f) Establish a quality assurance program that ensures internal audit's policies, procedures, and processes comply with applicable regulatory and industry guidance, are appropriate for the size, complexity, and risk profile of the covered bank, are updated to reflect changes to internal and external risk factors, emerging risks, and improvements in industry internal audit practices, and are consistently followed;

(g) Develop, attract, and retain talent and maintain staffing levels required to effectively carry out its role and responsibilities, as set forth in paragraphs II.C.3.(a) through (f) of these Guidelines;

(h) Establish and adhere to talent management processes that comply with paragraph II.L. of these Guidelines; and

(i) Establish and adhere to compensation and performance management programs that comply with paragraph II.M. of these Guidelines.

D. *Strategic plan.* The Chief Executive Officer should be responsible for the development of a written strategic plan with input from front line units, independent risk management, and internal audit. The board of directors should evaluate and approve the strategic plan and monitor management's efforts to implement the strategic plan at least annually. The strategic plan should cover, at a minimum, a three-year period and:

1. Contain a comprehensive assessment of risks that currently have an impact on the covered bank or that could have an impact on the covered bank during the period covered by the strategic plan;

2. Articulate an overall mission statement and strategic objectives for the covered bank, and include an explanation of how the covered bank will achieve those objectives;

3. Include an explanation of how the covered bank will update, as necessary, the risk governance framework to account for changes in the covered bank's risk profile projected under the strategic plan; and

4. Be reviewed, updated, and approved, as necessary, due to changes in the covered bank's risk profile or operating environment that were not contemplated when the strategic plan was developed.

E. *Risk appetite statement.* A covered bank should have a comprehensive written statement that articulates the covered bank's risk appetite and serves as the basis for the risk governance framework. The risk appetite statement should include both qualitative components and quantitative limits. The qualitative components should describe a safe and sound risk culture and how the covered bank will assess and accept risks, including those that are difficult to quantify. Quantitative limits should incorporate sound stress testing processes, as appropriate, and address the covered bank's earnings, capital, and liquidity. The covered bank should set limits at levels that take into account appropriate capital and liquidity buffers and prompt management and the board of directors to reduce risk before the covered bank's risk profile jeopardizes the adequacy of its earnings, liquidity, and capital.[4]

F. *Concentration and front line unit risk limits.* The risk governance framework should include concentration risk limits and, as applicable, front line unit risk limits, for the relevant risks. Concentration and front line unit risk limits should limit excessive risk taking and, when aggregated across such units, provide that these risks do not exceed the limits established in the covered bank's risk appetite statement.

G. *Risk appetite review, monitoring, and communication processes.* The risk governance framework should require: [5]

1. Review and approval of the risk appetite statement by the board of directors or the board's risk committee at least annually or more frequently, as necessary, based on the size and volatility of risks and any material changes in the covered bank's business model, strategy, risk profile, or market conditions;

2. Initial communication and ongoing reinforcement of the covered bank's risk appetite statement throughout the covered bank in a manner that causes all employees to align their risk-taking decisions with applicable aspects of the risk appetite statement;

3. Monitoring by independent risk management of the covered bank's risk profile relative to its risk appetite and compliance with concentration risk limits and reporting on such monitoring to the board of directors or the board's risk committee at least quarterly;

4. Monitoring by front line units of compliance with their respective risk limits and reporting to independent risk management at least quarterly; and

5. When necessary due to the level and type of risk, monitoring by independent risk management of front line units' compliance with front line unit risk limits, ongoing communication with front line units regarding adherence to these limits, and reporting of any concerns to the Chief Executive Officer and the board of directors or the board's risk committee, as set forth in paragraphs II.C.2.(e) and (f) of these Guidelines, all at least quarterly.

H. *Processes governing risk limit breaches.* A covered bank should establish and adhere to processes that require front line units and independent risk management, in conjunction with their respective responsibilities, to:

1. Identify breaches of the risk appetite statement, concentration risk limits, and front line unit risk limits;

2. Distinguish breaches based on the severity of their impact on the covered bank;

3. Establish protocols for when and how to inform the board of directors, front line unit management, independent risk management, internal audit, and the OCC of a risk limit breach that takes into account the severity of the breach and its impact on the covered bank;

4. Include in the protocols established in paragraph II.H.3. of these Guidelines the requirement to provide a written description of how a breach will be, or has been, resolved; and

5. Establish accountability for reporting and resolving breaches that include consequences for risk limit breaches that take into account the magnitude, frequency, and recurrence of breaches.

I. *Concentration risk management.* The risk governance framework should include policies and supporting processes appropriate for the covered bank's size, complexity, and risk profile for effectively identifying, measuring, monitoring, and controlling the covered bank's concentrations of risk.

J. *Risk data aggregation and reporting.* The risk governance framework should include a set of policies, supported by appropriate procedures and processes, designed to provide risk data aggregation and reporting

[3] The annual independent assessment of the risk governance framework may be conducted by internal audit, an external party, or internal audit in conjunction with an external party.

[4] Where possible, covered banks should establish aggregate risk appetite limits that can be disaggregated and applied at the front line unit level. However, where this is not possible, covered banks should establish limits that reasonably reflect the aggregate level of risk that the board of directors and executive management are willing to accept.

[5] With regard to paragraphs 3., 4., and 5. in this paragraph II.G., the frequency of monitoring and reporting should be performed more often, as necessary, based on the size and volatility of risks and any material change in the covered bank's business model, strategy, risk profile, or market conditions.

capabilities appropriate for the size, complexity, and risk profile of the covered bank, and to support supervisory reporting requirements. Collectively, these policies, procedures, and processes should provide for:

1. The design, implementation, and maintenance of a data architecture and information technology infrastructure that support the covered bank's risk aggregation and reporting needs during normal times and during times of stress;

2. The capturing and aggregating of risk data and reporting of material risks, concentrations, and emerging risks in a timely manner to the board of directors and the OCC; and

3. The distribution of risk reports to all relevant parties at a frequency that meets their needs for decision-making purposes.

K. *Relationship of risk appetite statement, concentration risk limits, and front line unit risk limits to other processes.* A covered bank's front line units and independent risk management should incorporate at a minimum the risk appetite statement, concentration risk limits, and front line unit risk limits into the following:

1. Strategic and annual operating plans;

2. Capital stress testing and planning processes;

3. Liquidity stress testing and planning processes;

4. Product and service risk management processes, including those for approving new and modified products and services;

5. Decisions regarding acquisitions and divestitures; and

6. Compensation and performance management programs.

L. *Talent management processes.* A covered bank should establish and adhere to processes for talent development, recruitment, and succession planning to ensure that management and employees who are responsible for or influence material risk decisions have the knowledge, skills, and abilities to effectively identify, measure, monitor, and control relevant risks. The board of directors or an appropriate committee of the board should:

1. Appoint a Chief Executive Officer and appoint or approve the appointment of a Chief Audit Executive and one or more Chief Risk Executives with the skills and abilities to carry out their roles and responsibilities within the risk governance framework;

2. Review and approve a written talent management program that provides for development, recruitment, and succession planning regarding the individuals described in paragraph II.L.1. of these Guidelines, their direct reports, and other potential successors; and

3. Require management to assign individuals specific responsibilities within the talent management program, and hold those individuals accountable for the program's effectiveness.

M. *Compensation and performance management programs.* A covered bank should establish and adhere to compensation and performance management programs that comply with any applicable statute or regulation and are appropriate to:

1. Ensure the Chief Executive Officer, front line units, independent risk management, and internal audit implement and adhere to an effective risk governance framework;

2. Ensure front line unit compensation plans and decisions appropriately consider the level and severity of issues and concerns identified by independent risk management and internal audit, as well as the timeliness of corrective action to resolve such issues and concerns;

3. Attract and retain the talent needed to design, implement, and maintain an effective risk governance framework; and

4. Prohibit any incentive-based payment arrangement, or any feature of any such arrangement, that encourages inappropriate risks by providing excessive compensation or that could lead to material financial loss.

III. Standards for Board of Directors

A. *Require an effective risk governance framework.* Each member of a covered bank's board of directors should oversee the covered bank's compliance with safe and sound banking practices. The board of directors should also require management to establish and implement an effective risk governance framework that meets the minimum standards described in these Guidelines. The board of directors or the board's risk committee should approve any significant changes to the risk governance framework and monitor compliance with such framework.

B. *Provide active oversight of management.* A covered bank's board of directors should actively oversee the covered bank's risk-taking activities and hold management accountable for adhering to the risk governance framework. In providing active oversight, the board of directors may rely on risk assessments and reports prepared by independent risk management and internal audit to support the board's ability to question, challenge, and when necessary, oppose recommendations and decisions made by management that could cause the covered bank's risk profile to exceed its risk appetite or jeopardize the safety and soundness of the covered bank.

C. *Exercise independent judgment.* When providing active oversight under paragraph III.B. of these Guidelines, each member of the board of directors should exercise sound, independent judgment.

D. *Include independent directors.* To promote effective, independent oversight of the covered bank's management, at least two members of the board of directors: [6]

1. Should not be an officer or employee of the parent company or covered bank and has not been an officer or employee of the parent company or covered bank during the previous three years;

2. Should not be a member of the immediate family, as defined in § 225.41(b)(3) of the Board of Governors of the Federal Reserve System's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the parent company or covered bank, as defined in § 215.2(e)(1) of Regulation O (12 CFR 215.2(e)(1)); and

3. Should qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the OCC.

E. *Provide ongoing training to all directors.* The board of directors should establish and adhere to a formal, ongoing training program for all directors. This program should consider the directors' knowledge and experience and the covered bank's risk profile. The program should include, as appropriate, training on:

1. Complex products, services, lines of business, and risks that have a significant impact on the covered bank;

2. Laws, regulations, and supervisory requirements applicable to the covered bank; and

3. Other topics identified by the board of directors.

F. *Self-assessments.* A covered bank's board of directors should conduct an annual self-assessment that includes an evaluation of its effectiveness in meeting the standards in section III of these Guidelines.

PART 168—SECURITY PROCEDURES

■ 12. The authority citation for part 168 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884, 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

§ 168.5 [Amended]

■ 13. Section 168.5 is amended by removing the phrase ''part 170'' wherever it appears and adding in its place the phrase ''part 30''.

PART 170 [REMOVED]

■ 14. Remove Part 170.

Dated: September 2, 2014.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2014–21224 Filed 9–10–14; 8:45 am]

BILLING CODE 4810–33–P

[6] This provision does not supersede other regulatory requirements regarding the composition of the Board that apply to Federal savings associations. These institutions must continue to comply with such other requirements.

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Part VII

Postal Regulatory Commission

39 CFR Parts 3001 and 3035

Markets Tests of Experimental Products; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001 and 3035

[Docket No. RM2013–5; Order No. 2173]

Markets Tests of Experimental Products

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of final rules addressing Postal Service filings concerning market tests of experimental products. The rules address the contents of market test filings, review of filings, and related matters. Relative to the proposed rules, some of the changes are substantive and others are minor and non-substantive.

DATES: *Effective* October 14, 2014.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: Regulatory History: 78 FR 51678, August 21, 2013.

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I. Introduction

In this Order, the Commission adopts final rules that establish procedures for the Postal Service to conduct market tests of experimental products in accordance with 39 U.S.C. 3641.

II. Background

On August 9, 2013, the Commission issued a notice of proposed rulemaking to establish rules governing market tests of experimental products.[1] The Postal Accountability and Enhancement Act (PAEA)[2] authorizes the Postal Service to conduct market tests of experimental products. See 39 U.S.C. 3641(a)(1). Such tests are not covered by several other PAEA provisions (such as those in section 3622 concerning rate regulations, those in section 3633 concerning competitive products, and those in section 3642 concerning product list changes) as well as regulations promulgated under those provisions. *Id.* 3641(a)(2). The statute requires that the Postal Service may not test an experimental product unless the product is significantly different from those offered within the past two years, will not cause market disruption, and is appropriately categorized (as either market dominant or competitive). 39 U.S.C. 3641(b).

Under the statute and final rules, the Postal Service must file notice with the Commission and publish the notice in the **Federal Register** at least 30 days before initiating a market test. *Id.* 3641(c)(1). The notice must describe the nature and scope of the market test and explain why the Postal Service believes that the market test is covered by section 3641. *Id.* 3641(c)(1)(A) and (B). The duration of a market test of an experimental product may not exceed 24 months unless the Commission grants an extension. *Id.* 3641(d). The Commission may extend the market test duration up to an additional 12 months if an extension is necessary to determine the feasibility or desirability of an experimental product. *Id.* 3641(d)(2). The Postal Service must file a request for extension at least 60 days before the market test ends. *Id.*

In general, the Postal Service may conduct a market test only if total revenues anticipated or received by the Postal Service are not more than $10,000,000 per annum, subject to adjustments for inflation ($10 Million Adjusted Limitation). *Id.* 3641(e)(1). The Commission may exempt a market test from the $10 Million Adjusted Limitation as long as revenues from the experimental product are not more than $50,000,000 per annum, subject to adjustments for inflation ($50 Million Adjusted Limitation). *Id.* 3641(e)(2). The exemption request shall be approved if the Commission determines that the experimental product meets certain conditions related to public benefit, expected demand, contribution to the Postal Service's financial stability, and market disruption. *Id.*

The PAEA authorizes the Commission to cancel a market test or take other appropriate action on an experimental product if it determines that the market test fails to meet any requirement of section 3641. *Id.* 3641(f). The Commission by regulation must adjust all dollar amounts listed in section 3641 by the change in the Consumer Price Index (CPI) for the applicable year. *Id.* 3641(g). Lastly, the Commission must define the term small business concern consistent with the requirements of section 3 of the Small Business Act. *Id.* 3641(h).

The Postal Service and the Public Representative submitted initial[3] and reply comments[4] suggesting changes to the rules proposed in Order No. 1803. After consideration of the comments submitted, the Commission adopts the rules as originally proposed, with several modifications.

III. Changes to the Proposed Rules

The following rules have been substantively modified from Order No. 1803, and also include some minor, non-substantive changes:

- 3035.3 (Contents of notice)
- 3035.6 (Changes in market test)
- 3035.10 (Duration)
- 3035.11 (Extension of market test)
- 3035.15 (Dollar amount limitation)
- 3035.16 (Exemption from dollar amount limitation)
- 3035.17 (Prevention of market disruption)
- 3035.18 (Filing for permanent product status)
- 3035.20 (Data collection and reporting requirements)

The following rules are being enacted with minor, non-substantive changes:

- 3001.5 (Definition of small business concern)
- 3035.1 (Applicability)
- 3035.4 (Review)
- 3035.5 (Commission action)
- 3035.12 (Cancellation of market test)

IV. Comments on Commission Analysis

This section discusses the changes that the Commission adopts, or declines to adopt, in this Order after considering the comments received. Section A contains a discussion of the proposed rules that are substantively modified from those originally proposed.[5] Section B addresses minor clarifications and corrections to the proposed rules that are stylistic and non-substantive. Section C discusses other issues raised in the comments.

A. Rules With Substantive Changes

1. Section 3035.3—Contents of Notice[6]

a. Section 3035.3(a)(1)(i)

Paragraph (a)(1)(i) of rule 3035.3 requires that the Postal Service's notice

[1] Notice and Order of Proposed Rulemaking Establishing Rules for Market Tests of Experimental Products, August 9, 2013 (Order No. 1803).

[2] Postal Accountability and Enhancement Act, Pub. L. 109–435, 120 Stat. 3198 (2006).

[3] Public Representative's Comments Concerning Notice and Order of Proposed Rulemaking, September 19, 2013 (PR Comments); Initial Comments of the United States Postal Service, September 20, 2013 (Postal Service Comments).

[4] Reply Comments of the United States Postal Service, October 10, 2013 (Postal Service Reply Comments); Public Representative's Reply Comments Concerning Notice and Order of Proposed Rulemaking, October 17, 2013 (PR Reply Comments). The Public Representative submitted an accompanying Motion of Public Representative for Late Acceptance of Reply Comments. The motion is granted.

[5] Section A also contains a discussion of rule 3035.12. Although rule 3035.12 is adopted with minor, non-substantive changes, the Commission received extensive comments on this rule, which are more appropriately discussed in this section.

[6] The Commission renumbered rule 3035.3 to conform to official publication requirements. See

initiating a market test describe how the experimental product is significantly different from all products offered within the 2 fiscal years preceding the start of the market test. The Public Representative argues that the rule, as written, is problematic because it excludes any products offered during the same fiscal year as the market test. PR Comments at 7. She notes that for a market test beginning in FY 2014, only FY 2012 and FY 2013 products would be considered. *Id.* She contends that this gap could result in a market test offering a product substantially similar to a current product offering. *Id.* As an alternative, she suggests examining the previous eight fiscal quarters rather than the past two fiscal years. *Id.*

The Postal Service does not comment on the Public Representative's suggestion.

The Commission notes that an experimental product must be significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test. 39 U.S.C. 3641(b)(1). The statute defines the term year as a fiscal year. *Id.* sec. 102(10). If Congress had intended to use quarters instead of years, it would have stated as much in section 3641.[7] Moreover, the scenario the Public Representative posits—offering two substantially similar products within the same fiscal year—is unlikely. For these reasons, the Commission does not adopt the Public Representative's suggestion.

b. Section 3035.3(a)(1)(ii)

Rule 3035.3(a)(1)(ii) requires the Postal Service to establish that the introduction or continued offering of an experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns. The Public Representative suggests two changes to this subsection. First, she proposes striking the words (or continued offering) from the rule. PR Comments, Appendix A at 1. She does not provide a rationale for this change.

Second, she argues that additional analysis is necessary to assess whether the market test creates an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer. PR Comments at 7. She suggests adding language to section 3035.3(a)(1)(ii) that would require the Postal Service to: (1) Analyze whether the market test creates an unfair or inappropriate competitive advantage for any mailer and the Postal Service; (2) identify any small business concerns that will likely be affected by the market test; and (3) analyze the impact of the market test on any small business concern identified. *Id.,* Appendix A at 1–2.

The Postal Service objects to striking the wording concerning continued offerings from the rule. Postal Service Reply Comments at 3. It argues that these words assist in implementing rule 3035.11, which addresses Commission review of Postal Service requests to extend market tests beyond their original expiration date. *Id.*

The Postal Service also opposes adding language concerning the Postal Service's competitive advantage as suggested by the Public Representative. First, it contends that the suggested language would impose an additional threshold requirement that the Postal Service's notice also analyze whether the market test itself creates an unfair advantage regarding small business concerns. *Id.* at 4. It asserts that this language is either redundant or unsupported by the statute. *Id.*

Second, the Postal Service argues that the suggested language appears to be based upon a misreading of the intent of 39 U.S.C. 3641(b)(2). *Id.* at 5. It contends that the intent of section 3641(b)(2) is to require consideration of the potential impact of an experimental product on small businesses generally rather than individually. *Id.* It submits that the suggested language is contrary to the longstanding approach to postal product pricing, which requires consideration of the effect of proposed postal rate increases upon business mail users generally. *Id.* It points out that the suggested language also would require the Postal Service to possess information on small business concerns that it does not have nor could readily acquire. *Id.* at 6.

The Commission notes that market tests are of limited duration and are exempt from provisions otherwise applicable to Postal Service products. 39 U.S.C. 3641(a)(2). The phrase concerning continued offerings is in section 3641(b)(2) and is relevant to both extensions and possible cancellation of market tests. See 39 U.S.C. 3641(d)(2) and rule 3035.11; 39 U.S.C. 3641(f) and rule 3035.12, respectively. Furthermore, the phrase bears on modifications to ongoing market tests. See rule 3035.6. Accordingly, the Commission declines to adopt the Public Representative's suggestion to strike a phrase (or continued offering) from the rule.

The Commission also does not adopt the Public Representative's additional language concerning an unfair or otherwise inappropriate competitive advantage. 39 U.S.C. 3641(b)(2) requires the Postal Service to establish that a product will not create an unfair or inappropriate competitive advantage. Using the term market test instead of the term product would impose a requirement that is not in the statute. In addition, the suggested language would require the Postal Service to analyze the potential impact of the market test on individual small business concerns. Although small business concerns are a particular focus, the analysis of market disruption in section 3641(b)(2) relates to competition generally rather than specific small business concerns. See *United States* v. *Microsoft Corp.,* 253 F.3d at 58 (D.C. Cir. 2001) (stating that anticompetitive effects must harm the competitive process and thereby harm consumers; harm to one or more competitors will not suffice).

As discussed in more detail below, the Commission adopts the definition of the term small business concern as proposed with style revisions to conform to official publication requirements. See Section IV.B, below. The Commission includes that definition in 39 CFR 3001.5(v). See Section IV.C.1, below. To promote clarity, the Commission provides a cross-reference to rule 3001.5(v) in rule 3035.3(a)(1)(ii) regarding the contents of the notice.

c. Section 3035.3(a)(1)(iii)

Rule 3035.3(a)(1)(iii) requires the Postal Service to identify the experimental product as either market dominant or competitive for purposes of the market test. The Public Representative recommends adding language that would require the Postal Service to explain the reasoning for the categorization in accordance with the criteria set forth in 39 U.S.C. 3642(b). PR Comments, Appendix A at 2. The Postal Service does not comment on this suggestion.

The Commission finds that the Public Representative's suggestion has merit. However, the statute requires the Postal Service to identify the experimental product as market dominant or competitive consistent with the criteria under subsection 3642(b)(1) rather than section 3642(b) in its entirety. 39 U.S.C. 3641(b)(3). Consistent with the statute, the Commission adopts a revised version of the Public Representative's

Section IV.B, below. This Order references subsections in rule 3035.3 as renumbered.

[7] The legislative history also supports the use of the term year rather than quarter. S. Rep. 108–318, at 17 (2004) (Senate Report) (stating that the test used to determine whether market test provisions are applicable is a finding that the proposed product is different from those offered in the prior two years).

suggested language, which replaces the statutory citation of section 3642(b) with section 3642(b)(1). This revision is consistent with past practice as well. In prior market tests, the Postal Service explained its reasons for categorizing experimental products as market dominant or competitive for purposes of the market test.[8]

d. Section 3035.3(a)(2)

Certified statement. Rule 3035.3(a)(2)(ii) requires the Postal Service to demonstrate why the market test is not inconsistent with the requirements of 39 U.S.C 3641. The Public Representative states that the rule requires the Postal Service to prove a negative, and Order No. 1803 does not provide additional guidance on how the Postal Service can make the necessary demonstration. PR Comments at 8. She suggests amending the rule to require a certified statement, similar to the certified statement required by 39 CFR 3015.3(c)(2). *Id.* The Postal Service does not comment on this suggestion.

The Commission finds that a certified statement for market tests is unnecessary. The certified statement for competitive products required in 39 CFR 3015.3(c)(2) concerns three quantifiable statutory cost or rate prerequisites. More specifically, the Postal Service must certify that each competitive product covers its attributable costs, is not cross-subsidized by market dominant products, and collectively covers an appropriate share of the Postal Service's institutional costs. The certification is important because part 3015 provides a limited time for Commission review of notices of change in rates for competitive products. By contrast, section 3641 contains no analogous requirements. Furthermore, as noted above, market tests are not subject to the same regulatory oversight applicable to Postal Service products. For these reasons, the Commission does not amend rule 3035.3(a)(2)(ii) to add a certified statement requirement.

Mail Classification Schedule (MCS). The proposed rules required the Postal Service to provide proposed MCS language. The Postal Service opposes this requirement and urges the Commission to reconsider this rule. Postal Service Comments at 4. It argues that requiring the Postal Service to provide MCS language in the market test notice is too restrictive and inconsistent with the framework Congress established for conducting market tests. *Id.* It contends that this requirement appears contrary to 39 U.S.C. 3641(a)(2), which exempts experimental products from the requirements of sections 3622, 3633, and 3642, as well as regulations promulgated under those sections. *Id.* at 3. The Postal Service is concerned that this requirement may obstruct innovation by forcing the Postal Service to innovate in an inflexible manner, without a reasonable opportunity to mold or shape a product during the course of a test. *Id.* at 3–4.

The Public Representative supports the Postal Service's view concerning the required MCS language. PR Reply Comments at 2. She suggests revising the rule to replace the MCS requirement with a description of the experimental product. *Id.*

The Commission has considered the comments and concludes that a requirement to provide MCS language at the outset of a market test is unnecessary. It will suffice for the Postal Service to describe the market test and experimental product in its notice proposing a market test. The Commission previously stated that in general, the proposed rules do not require the Postal Service to provide more information than it currently does for market tests. Order No. 1803 at 5. In prior market test proceedings, the Postal Service has included descriptions of the experimental product in its notice.[9] Those descriptions were sufficient for the Commission to determine compliance with the conditions in 39 U.S.C. 3641(b). In addition, a description of the market test is consistent with section 3641(c)(1)(B), which requires the Postal Service to describe the nature and scope of the market test.

The Commission will continue its current practice of listing market tests in the MCS by providing the name of the experimental product, identifying the docket number and Commission order authorizing its offering, and specifying the current expiration date.[10] To promote clarity, the Commission reorders the subsections under rule 3035.3(a)(2) so that the description of the market test and experimental product appears first on the list. The other items will be renumbered accordingly.

Data collection plan. Rule 3035.3(a)(2)(vi) requires the Postal Service to include a plan for monitoring the performance of the market test, including a description of the specific data items to be collected. The Public Representative suggests replacing a phrase (monitoring the performance of) with data collection plan. PR Comments, Appendix A at 2. She recommends adding a provision that would require the Postal Service to describe the process by which the data will be collected. *Id.* She proposes minor editorial changes as well. *Id.*

The Postal Service objects to the Public Representative's suggestion that the Postal Service describe its data collection process. Postal Service Reply Comments at 6. It requests a measure of flexibility in this area and notes that the data collection methodology could be in flux when the market test notice is filed. *Id.* It argues that the focus of the Commission's review should be on the nature of the data to be collected and reported rather than data collection techniques and administration. *Id.* at 7.

The Commission modifies rule 3035.3(a)(2)(vi) to adopt the Public Representative's suggested language and add minor editorial language regarding the data collection and reporting requirements in rule 3035.20. The Commission declines, however, to adopt the suggestion that the Postal Service describe its data collection process. The rationale for having a data collection plan is that the data form the basis of a Postal Service request to add an experimental product to the market dominant or competitive product list. In addition, if a market test is unsuccessful, the data collected will inform the Postal Service of shortcomings and potential solutions. Identifying the data collection process is unnecessary for purposes of the data collection plan. Moreover, the data collection methodology could be in flux when the Postal Service files the market test notice, but subsequently resolves it at a later date. See Postal Service Reply Comments at 6–7.

2. Section 3035.6—Changes in Market Test

Rule 3035.6 addresses filing requirements and Commission action regarding changes in market tests. The Public Representative argues that the rule limits the ability of the Commission to assess continued compliance with 39 U.S.C. 3641. PR Comments at 8. She contends that an after-the-fact review of

[8] See, *e.g.,* Docket No. MT2013–2, Notice of the United States Postal Service of Market Test of Experimental Product—International Merchandise Return Service—Non-Published Rates (IMRS–NPR) and Notice of Filing IMRS–NPR Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, July 1, 2013, at 5–6 (IMRS–NPR Notice).

[9] See, *e.g.,* Docket No. MT2013–1, Notice of the United States Postal Service of Market Test of Experimental Product—Metro Post—and Notice of Filing Material Under Seal, October 12, 2012, at 2–3; Docket No. MT2012–1, Notice of the United States Postal Service of Market Test of Experimental Product–First-Class Tracer, November 7, 2011, at 2–4.

[10] See, *e.g.,* Mail Classification Schedule sections 2130, 2800.

changes to a market test, along with giving the Postal Service discretion to determine the materiality of changes, could result in changes that would affect compliance with the statute occurring without the Commission's knowledge. *Id.* She suggests revisions that would enable the Commission to determine the materiality of changes before they are adopted. *Id.* She recognizes that an after-the-fact review of a change may be necessary in certain circumstances and suggests an emergency provision addressing that concern. *Id.* The suggested revisions clarify that notices of changes to a market test should be filed in the proceeding's docket. *Id.* at 8–9. The Public Representative also proposes language detailing the Commission's actions upon receiving a notice of a change to a market test. *Id.* at 9.

The Postal Service objects to the Public Representative's suggested revisions to rule 3035.6. Postal Service Reply Comments at 7. It argues that the suggested revisions, if implemented, would require the Postal Service to report and the Commission to adjudicate every change in a market test, regardless of materiality. *Id.* It asserts that the suggested revisions would clog Commission dockets with reports and adjudications about market test changes that have little to no relation to the merits of the experimental product. *Id.* It contends that these proceedings would be further complicated by disputes over whether a change was ordinary or an emergency. *Id.* at 7–8. It states that a more reasonable approach to reporting market test changes is reflected in the rule as currently written. *Id.* at 8.

The Commission declines to adopt the Public Representative's suggested revisions. The intent of 39 U.S.C. 3641 is to increase flexibility and to facilitate a more entrepreneurial approach to product development. Senate Report at 16. The suggested revisions, which would require the Postal Service to report any change to a market test, regardless of materiality, introduce rigidity in an area where the Postal Service is afforded flexibility.

The comments raise questions about determining the materiality of changes to a market test. See PR Comments at 8–9; Postal Service Reply Comments at 7–8. To clarify this issue, the Commission amends rule 3035.6 to define material changes as changes to a market test or services offered under a market test that may affect compliance with 39 U.S.C. 3641. To ensure that the Commission has sufficient time to review material changes before they are implemented, the Commission amends rule 3035.6 to require that a notice describing any material change must be filed with the Commission at least 10 days before the Postal Service implements such change. Material changes include, *inter alia,* revisions to prices, geographic scope, termination date, and eligibility for service, *i.e.,* eligibility to participate in the market test.

The need to amend the proposed rule can be observed from the following example from a current market test conducted by the Postal Service. As part of the Metro Post market test, the Postal Service entered into relationships with up to 10 qualifying online e-commerce companies to offer same-day local delivery.[11] To participate in the market test, each company was required to have at least 10 physical locations nationally and at least one location within San Francisco. *Id.* A change in the criteria for eligible participants would qualify as a material change because it could, for example, affect the Commission's analysis of an experimental product's impact on small business concerns. See 39 U.S.C. 3641(b)(2).

The Commission incorporates language into rule 3035.6 to explicitly include eligibility for service as a material change. The final rule also clarifies that material changes include changes to either the market test or services offered under the market test.

In a recent notice expanding the Metro Post market test to a new market, the Postal Service included a statement that all other aspects of the market test remain unchanged and in compliance with section 3641 and the Commission's order authorizing the market test.[12] The Commission finds that such a statement would be helpful to include in a notice of change to a market test or services offered under a market test filed under rule 3035.6.

3. Section 3035.10—Duration

Rule 3035.10 limits a market test's duration to 24 months unless the Postal Service requests an extension under 39 CFR 3035.11. The Public Representative argues that the rule raises a question as to what condition(s) must be met in order for a market test to be extended. PR Comments at 9. She contends that the rule, as currently written, could automatically extend a market test upon the Postal Service's filing of an extension request and suggests alternative language. *Id.* The Postal Service does not comment on this suggestion.

The Commission finds that the suggested modification is an improvement to the rule because it clarifies that market test extensions are conditioned upon Commission approval. It revises the rule accordingly.

4. Section 3035.11—Extension of Market Test

Rule 3035.11 describes the procedures for extending a market test. The Public Representative suggests expanding subsection (b)(1) to require that a request for extension explain what information or data the Postal Service currently lacks to assess the feasibility or desirability of an experimental product and how the extension will provide the missing information. *Id.* She argues that the request for extension should include any changes to the data collection plan, which will facilitate the collection of any necessary data or information. *Id.* She recommends that the Postal Service include supporting documentation for the calculation of total revenue received from the market test. *Id.* Other proposed changes include replacing the term fiscal year with fiscal quarter in subsections (b)(3) and (b)(4) and, in subsection (b)(4), striking a qualifier (available) from available supporting documentation and rewording a phrase (prior to the conclusion of the extension period of). *Id.,* Appendix A at 5. In addition, the Public Representative recommends amending rule 3035.11(b)(3) to require the Postal Service to provide supporting documentation for the calculations of total revenue received by the Postal Service from the market test. *Id.* at 9.

The Commission notes that the Postal Service opposes most of the Public Representative's suggested changes to rule 3035.11. The Postal Service argues that expanding subsection (b)(1) seems redundant to the requirement that the Postal Service explain why an extension is necessary to determine the feasibility or desirability of the experimental product. Postal Service Reply Comments at 8. It contends that the suggested language appears to demand proof that an extension will provide needed data and that changes to the data collection plan will facilitate collection of needed data. *Id.* It submits that the suggested language unreasonably expects the Postal Service to do more than assert what is expected to occur. *Id.*

The Postal Service objects to replacing the term fiscal year with fiscal quarter in subsections (b)(3) and (b)(4) because this change would require the Postal Service to report revenue quarterly

[11] Docket No. MT2013–1, Order No. 1539, Order Approving Metro Post Market Test, November 14, 2012, at 2.

[12] Docket No. MT2013–1, Notice of the United States Postal Service of Expansion of Metro Post Market Test, December 4, 2013, at 2.

instead of annually. *Id.* at 8–9. It argues that the Postal Service should not be burdened with more frequent reporting without any indication that annual revenue data do not satisfy the Commission's needs. *Id.* at 9. It opposes striking a qualifier (available) from available supporting documentation in subsection (b)(4) because this change could require that a revenue estimate be provided as a table or spreadsheet when a narrative would be more suitable. *Id.*

The Commission finds it unnecessary to expand subsection (b)(1) to include a detailed list of information the Postal Service must provide in a request for extension. The Postal Service may request an extension of a market test for up to an additional 12 months if the request is filed at least 60 days before the market test is scheduled to terminate. 39 U.S.C. 3641(d)(2). The Commission may grant a request for extension if an extension is necessary to determine the feasibility or desirability of an experimental product. *Id.* Extensions of market tests were intended to provide the Postal Service additional flexibility if a more limited duration test will not provide sufficient information to evaluate the market demand and the financial potential of a product. Senate Report at 16.

The Commission notes that the Postal Service previously filed requests for extensions in Docket Nos. MT2009–1, MT2011–1, MT2011–2, and MT2013–2.[13] In support of those requests, the Postal Service detailed its reasons for seeking an extension.[14] Those requests provided sufficient information for the Commission to evaluate the merits of the extension. As long as it meets the requirements of rule 3035.11(b), the Postal Service may structure the request for extension in any way it deems appropriate.

The Public Representative's proposal to replace the term fiscal year with fiscal quarter in subsections (b)(3) and (b)(4) appears to relate to her previous suggestion of examining fiscal quarters rather than fiscal years. See Section IV.A.1.a. As explained above, the Commission declines to adopt this change. In addition, annual reporting of total and anticipated revenue received from the market test is consistent with the applicable dollar amount limitations in 39 U.S.C. 3641(e).

The Commission adopts the Public Representative's suggestion to require the Postal Service to provide supporting documentation for the calculations of total revenue received by the Postal Service from the market test. This change will aid the Commission in verifying the Postal Service's calculations. In addition, rule 3035.11(b)(4) will retain a qualifier (available) to describe the type of supporting documentation required. The Commission agrees that expert projections of additional revenue expected from a market test extension can be judgmental and qualitative in nature. See Postal Service Reply Comments at 9. The Postal Service can reasonably be expected to provide available supporting documentation for additional revenue estimates. It will provide more accurate revenue calculations in its data collection reports as required by rule 3035.20.

Final rule 3035.11(b)(4) will also replace a phrase (addressing the duration of a market test before it concludes) with language explaining that the Postal Service must estimate the additional revenue it anticipates receiving for each fiscal year remaining on the market test, including the requested extension period.

5. Section 3035.12—Cancellation of Market Test

Rule 3035.12 outlines the procedures for canceling a market test. The Public Representative suggests amending rule 3035.12(a) to require notices of cancellation to be filed in the proceeding's docket. PR Comments, Appendix A at 6. She asserts that rule 3035.12(b) raises questions concerning how and under what circumstances the Commission will use its cancellation authority under 39 U.S.C. 3641(f). PR Comments at 10. She argues that the rule does not explain what criteria the Commission will use to assess whether to allow public comment or whether public comment will precede or follow the Postal Service's demonstration of compliance. *Id.* She contends that the Commission should consider several issues, including: (1) Who may initiate the cancellation procedures, (2) the parameters and form for the Postal Service's demonstration of compliance with section 3641, and (3) when comments will be considered. *Id.* She provides suggested language addressing these issues. *Id.,* Appendix A at 6.

The Postal Service opposes the Public Representative's suggested revisions, arguing that they add nothing to the more concise version proposed by the Commission. Postal Service Reply Comments at 9–10. It maintains that rule 3035.12 does not need to codify every conceivable step in the Commission's reasonable exercise of its cancellation authority. *Id.* at 10. The Postal Service favors adopting the rule as originally proposed to avoid a set of redundant rules. *Id.*

The Commission declines to adopt the Public Representative's suggestion to require notices of cancellation to be filed in the particular market test's docket. The Commission's rules and many of its orders direct the Postal Service and participants to file documents such as notices, comments, and replies with the Commission. It is unnecessary to state that such documents must be filed in the relevant docket, just as it is unnecessary to state how they are to be filed.[15]

The Commission adopts rule 3035.12(b) as proposed, with minor non-substantive changes. 39 U.S.C. 3641(f) was established as an ultimate safeguard for consumers and competitors of the Postal Service. Senate Report at 17. The rule provides a reasonable and flexible framework to implement that section. The Public Representative's suggested amendments to rule 3035.12(b) are largely procedural in nature and can be accommodated in Commission orders as past practice demonstrates. Moreover, pursuant to the Commission's rules of practice, any person may ask the Commission to investigate whether to cancel a market test. See 39 CFR 3001.21. For these reasons, the Commission declines to adopt the Public Representative's suggested revisions to rule 3035.12(b).

6. Section 3035.15—Dollar Amount Limitation

Rule 3035.15 sets forth the requirements for the $10 Million Adjusted Limitation. The Public Representative suggests two changes to the rule. First, she recommends clarifying that the CPI used for calculations under part 3035 is the Consumer Price Index All Urban (CPI–U) index. PR Comments at 11. She

[13] Docket No. MT2009–1, Motion of the United States Postal Service for Temporary Extension of Collaborative Logistics Market Test, April 26, 2011 (Collaborative Logistics Motion); Docket No. MT2011–1, Motion of the United States Postal Service for Temporary Extension of Alternate Postage for Greeting Cards Market Test, November 21, 2012 (Greeting Cards Motion); Docket No. MT2011–2, Motion of the United States Postal Service for Temporary Extension of Gift Cards Market Test, June 18, 2013 (Gift Cards Motion); Docket No. MT2013–2, IMRS–NPR Notice at 6.

[14] See Collaborative Logistics Motion at 1 (delay in filing a request to make experimental product permanent due to ongoing reorganization at Postal Service Headquarters); Greeting Cards Motion at 2 (need for additional research time and for market test participant to complete an internal review); Gift Cards Motion at 1 (need for additional time to implement and evaluate new sales efforts); IMRS–NPR Notice at 6–7 (need to satisfy existing contractual obligations under the market test).

[15] For example, when it terminated the Collaborative Logistics market test, the Postal Service appropriately filed a termination notice in Docket No. MT2009–1. See Docket No. MT2009–1, Notice of the United States Postal Service of Termination of Market Test, August 19, 2011.

suggests defining the term CPI–U index for those who may be less familiar with economic terminology or Commission practice. *Id.* Second, she proposes adding language under subsection (c) that states when the Commission will publish the $10 Million Adjusted Limitation. *Id.,* Appendix A at 7.

The Public Representative also notes that neither 39 U.S.C. 3641(g) nor rule 3035.15 considers how the $10 Million Adjusted Limitation would be adjusted during a deflationary period. *Id.* at 11. She recommends revising the rule if the Commission intends to adjust the $10 Million Adjusted Limitation solely for inflation. *Id.* The Postal Service does not comment on the Public Representative's suggested revisions to rule 3035.15.

The Commission revises rule 3035.15 to adopt some of the Public Representative's recommendations. First, the Commission finds that switching subsections (a) and (b) would improve the rule by setting forth the description of CPI–U index at the beginning. New subsection (a) specifies that the CPI used for calculations under part 3035 is the CPI–U index, as specified in 39 CFR 3010.21(a) and 3010.22(a). To ensure consistency with regulations in part 3010 that also refer to the CPI–U index, the Commission declines to define the term CPI–U index in rule 3035.15. If the Commission modifies the definition of the CPI–U index in part 3010, those changes would also apply to rule 3035.15.

Consistent with new subsection (a), new subsection (b) replaces a term (Consumer Price Index) with an abbreviation (CPI–U index). Subsection (c) states that the Commission will publish the $10 Million Adjusted Limitation each year on its Web site.

The Commission clarifies that the $10 Million Adjusted Limitation and $50 Million Adjusted Limitation will be reduced during deflationary periods. 39 U.S.C. 3641(g) states that each dollar amount contained in section 3641 must be adjusted by the change in the CPI index for such year. This provision is reflected in rules 3035.15 and 3035.16. The term adjusted implies any change in the CPI–U index. Thus, the $10 Million Adjusted Limitation and $50 Million Adjusted Limitation would either increase or decrease depending on whether the previous fiscal year was an inflationary or deflationary period.

7. Section 3035.16—Exemption from Dollar Amount Limitation

Rule 3035.16 describes the procedures for requesting an exemption from the $10 Million Adjusted Limitation. Similar to rule 3035.15, the Public Representative suggests amending the rule to reflect the CPI–U index and to state when the Commission will publish the $50 Million Adjusted Limitation. PR Comments, Appendix A at 8.

The Public Representative comments on several aspects of subsection (f). First, she reiterates her recommendation to define a phrase (unfair or otherwise inappropriate competition). *Id.* at 11–12. Second, she argues that subsection (f)(2) is problematic because it requests revenue on a fiscal year rather than fiscal quarter basis. *Id.* at 12. She contends that if the Postal Service requests an exemption for a market test that has been in operation for less than one full fiscal year, the total revenue received from the market test would not be required under the rule. *Id.* She suggests amending subsections (f)(2) and (f)(3) to require the Postal Service to report revenue for each fiscal quarter and provide supporting documentation. *Id.* Third, she requests clarification in subsection (f)(3) of language concerning the duration of a market test before it concludes, suggesting alternative language. *Id.* The Postal Service does not comment on these recommendations.

The Commission revises rules 3035.16(a) and (b) to reflect the Public Representative's suggestions concerning the CPI–U index and time of publication for the reasons discussed in Section IV.A.6. However, the Commission finds it unnecessary to define the term unfair or otherwise inappropriate competition for the reasons discussed in Section IV.C.1, below. In addition, the Commission declines to adopt the Public Representative's suggestion of reporting revenue for each fiscal quarter. As previously explained, the term fiscal year is more appropriate than fiscal quarter for purposes of the rules. See Section IV.A.1.a; see also Order No. 1803 at 9.

The Commission notes that the requirements of rule 3035.16(f) for market tests in effect for less than one fiscal year parallel those applicable to extensions. With regard to the latter, the Commission stated that a request for extension must both calculate the total revenue received by the Postal Service from the market test and estimate the additional revenue anticipated by the Postal Service for each fiscal year (or part thereof) before the market test ends, including any extension period. Order No. 1803 at 7. Similarly, if the Postal Service requests an exemption under rule 3035.16 for a market test that has been in operation for less than one full fiscal year, it must also report revenue received to date in that fiscal year.

The Commission adopts the Public Representative's suggestion in subsection (f)(2) to require the Postal Service to provide supporting documentation for its calculations of total revenue received from the market test. This change, which parallels the change to rule 3035.11(b)(3), will help the Commission verify the information provided.

The Commission notes that the phrase concerning the duration of a market test extension period in the proposed rules is intended to cover the duration of the market test, including any extensions. In final subsection (f)(3), the Commission adopts the Public Representative's revisions, which conveys this concept more clearly.

The Commission also revises rule 3035.16(f) to require requests for an exemption to include product specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented. The proposed rules contained a requirement that the Postal Service quantify start-up costs in its data collection reports. As further explained in Section IV.A.10.a, below, the Commission revises the rules to require the Postal Service to quantify start-up costs in two situations, one of which is when the Postal Service applies for an exemption from the $10 Million Adjusted Limitation under rule 3035.16(f). The other situation in which the Postal Service must quantify start-up costs is when the Postal Service files a request to make an experimental product permanent. See 39 CFR 3020.32(b) and (c); Section IV.A.10.a, below.

In applications for exemptions, the identification of start-up costs is necessary for the Commission to determine whether an experimental product will likely contribute to the Postal Service's financial stability. See 39 U.S.C. 3641(e)(2)(B). The Postal Service also requested clarification of the type of information the Commission was seeking for these start-up costs. Postal Service Comments at 6–7. As discussed in more detail below, in the final rules, the term start-up costs is replaced with product specific costs, a term that is well known and has long been used to attribute costs to specific products. See Section IV.A.10.a, below.

Examples of product specific costs required by rule 3035.16(f) can be found in other proceedings. For example, in Docket No. MT2012–1, the Postal Service reported that the costs incurred in conducting the First-Class Tracer market test included the production and fulfillment of displays in addition to manufacturing the product (Tracer

barcode stickers).[16] Similarly, in Docket Nos. MC2011–20, R2009–5, and R2009–3, the Postal Service reported that costs for the Reply Rides Free Volume Incentive Program, the First-Class Mail Incentive Program, and the Standard Mail Volume Incentive Pricing Program included the registration and creation of Web sites.[17] If such costs were incurred before the market test or incentive programs began, they are examples of product specific costs that must be reported under rule 3035.16(f).

8. Section 3035.17—Prevention of Market Disruption

Rule 3035.17 authorizes the Commission to limit the amount of revenues received by the Postal Service from any geographic market as necessary to prevent market disruption as defined in 39 U.S.C. 3641(b)(2). The Public Representative recommends defining the terms geographic market and market disruption. PR Comments at 12. She argues that the rule should define market disruption rather than refer to section 3641(b)(2). *Id.* at 3. She contends that the rule should also provide additional information concerning how and when the Commission plans to exercise its authority to limit revenues from any geographic market. *Id.* at 12–13. She recommends that the rule explain: (1) The circumstances under which the Commission will consider exercising its authority; (2) the procedures used, including whether the Commission will notice the issue, solicit comments, and provide the Postal Service an opportunity to respond; and (3) the criteria used to assess whether to limit revenues from particular geographic markets. *Id.* at 13.

The Postal Service opposes the Public Representative's recommendation to define the terms geographic market and market disruption. Postal Service Reply Comments at 1–2, 10–11; see Section IV.C.1, below.

The Commission finds it unnecessary to define these terms for the reasons explained in Section IV.C.1, below. To avoid confusion, rule 3035.17 is revised to identify each of the elements of market disruption in 39 U.S.C. 3641(b)(2) rather than simply cite the relevant statutory provision. Otherwise, the Commission declines to revise the rule as suggested by the Public Representative.

9. Section 3035.18—Filing for Permanent Product Status

a. Suggested Amendments to Regulations

Rule 3035.18 outlines the procedures for making an experimental product permanent. The Public Representative notes that experimental products are added to either the market dominant or competitive product list. PR Comments at 13. Thus, she argues that the definition of modifications in 39 CFR 3020.30 should be amended to include changing an experimental product to a permanent offering. *Id.* In addition, she states that 39 CFR 3015.2, 3015.3, and 3015.5 apply to changes in rates or class of general applicability, but not to new products. *Id.* at 14. She recommends revising 39 CFR part 3015 and/or rule 3035.18 to ensure that the rates for any competitive experimental product considered for permanent product status are evaluated for compliance with 39 U.S.C. 3633. *Id.*

The Postal Service does not respond to these comments.

The Commission finds it unnecessary to amend section 3020.30 at this time. 39 CFR 3020.13 requires the market dominant and competitive product lists to identify a product as an experimental product undergoing a market test.[18] Although permanent and experimental products both appear on the product lists, they are distinct and serve different purposes. Experimental products undergoing market tests are subject to unique regulatory treatment under the PAEA. Order No. 26 ¶ 4017. They are identified on the product lists to facilitate transparency during the market tests. *Id.* ¶ 4002. They also are included because the Postal Service must identify experimental products as either market dominant or competitive for purposes of a market test. See 39 U.S.C. 3641(b)(3).

However, experimental products, unlike permanent products, are not subject to the requirements of 39 U.S.C. 3622, 3633, or 3642, or regulations promulgated under those sections. *Id.* 3641(a)(2). If the Postal Service determines to make an experimental product permanent it must file a request—pursuant to 39 U.S.C. 3642 and 39 CFR part 3020, subpart B—to add a new product or price category to the market dominant or competitive product list. The Commission revises rule 3035.18 to make this requirement clear.

The Commission declines to amend 39 CFR part 3015 and rule 3035.18 as recommended by the Public Representative. If the Postal Service determines to make an experimental product a permanent competitive product of general applicability, the statute and the Commission's rules contain sufficient safeguards that ensure that the rates for the new competitive product are evaluated for compliance with 39 U.S.C. 3633. Costs and revenues attributable to an experimental competitive product must be included in any determination under 39 U.S.C. 3633(a)(3). 39 U.S.C. 3641(b)(3). As part of its request to add a new product to the product list, the Postal Service must provide supporting justification, including an explanation of why the addition, deletion, or transfer of a competitive product will not violate any of the standards of 39 U.S.C. 3633. 39 CFR 3020.32(c).

b. Procedures for Filing Request

The Public Representative proposes procedural changes to rule 3035.18. First, she suggests that when the Postal Service requests to make an experimental product permanent, the Postal Service file a notice of application for permanent product status in the market test proceeding's docket, which should include the docket number(s) for the proceeding evaluating request. PR Comments at 14. Second, she recommends setting a finite deadline for filing the request. *Id.* at 15. She suggests 45 days, but does not have a strong opinion on the length of time required for review. *Id.* at 15 n.19. She states that tying the deadline to the date on which the Postal Service wishes the product to become permanent would provide additional flexibility. *Id.* at 15.

The Postal Service commends the Public Representative for her observation regarding the limited nature of tying the deadline for filing a permanent product request to the date on which the revenue cap would be exceeded. Postal Service Reply Comments at 12. It notes that reasons unrelated to the revenue cap may trigger the decision to request permanent product status. *Id.* However, it objects to the 45-day deadline suggested by the Public Representative and prefers the more flexible standard reflected in rule 3035.18. *Id.*

The Commission adopts the Public Representative's suggestion to require the Postal Service to file a notice of its request to make an experimental product permanent in the market test

[16] Docket No. MT2012–1, First-Class Tracer Data Collection Report FY 12, Q1–4 and FY 13, Q1–2 April 19, 2013, at 1–2.

[17] Docket No. MC2011–20, Amended Reply Rides Free Data Collection Report, June 11, 2012, at 3; Docket No. R2009–5, United States Postal Service Notice of Market-Dominant Price Adjustment, August 11, 2009, at 7; Docket No. R2009–3, United States Postal Service Notice of Market-Dominant Price Adjustment, May 1, 2009, at 6.

[18] Docket No. RM2007–1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, ¶ 4017 (Order No. 26); see Order No. 27, Errata to Order No. 26, August 16, 2007; 39 CFR 3020.13(a)(5), (b)(4).

proceeding's docket. This requirement will help mailers and the general public track the progress of a market test from an experimental product to a permanent product. It will also provide more transparency into the Commission's review of both experimental and permanent products. The notice must include the applicable docket number(s) for the proceeding evaluating the request. Rule 3035.18 is revised to add this requirement.

The Postal Service recently filed notices requesting that two experimental products—Alternate Postage Payment Method and Gift Cards—become permanent price categories.[19] Based on these proceedings, the Commission finds it appropriate to clarify and revise the procedures and deadline for filing requests to make an experimental product permanent. First, the Commission amends rule 3035.18 to clarify that future requests to make an experimental product permanent must be filed pursuant to 39 U.S.C. 3642 and 39 CFR part 3020, subpart B. This rule applies whether the Postal Service is adding an experimental product as a new product or price category. This requirement is consistent with the Commission's directive in its order granting classification and price changes for Alternate Postage Payment.[20] The Postal Service complied with this order in its request to add Gift Cards to the competitive product list as a new price category. Gift Cards Request at 1 n.1.

Second, the Commission amends rule 3035.18 to clarify the deadline for filing requests to make an experimental product permanent. In Docket No. MC2014–26, the Postal Service filed its request to add Gift Cards as a new price category 18 days before the Gift Cards market test was scheduled to expire.[21] This did not provide sufficient time for the Commission to review the Postal Service's request before the market test expired. Discontinuing the market test during the pendency of the proceeding would have been inefficient and inconvenient to gift card customers. *Id.* at 4. To avoid the disruption of service and inconvenience, the Commission conditionally approved the addition of Gift Cards to the competitive product list as a price category of the Greeting Cards, Gift Cards, and Stationery competitive product. *Id.* It noted, however, that the Postal Service jeopardized the continuation of the Gift Cards service by filing the permanent product request so close to the expiration date of the market test. *Id.* at 4 n.6. It noted that this risk was unnecessary and could have been easily cured by a more timely filing. *Id.*

The Commission revises rule 3035.18 to avoid this situation in future filings. In general, the Postal Service may file a request for permanent product status any time it wishes. However, if the Postal Service determines to make an existing experimental product[22] permanent before the market test terminates, it must submit a request for permanent product status at least 60 days before the market test terminates. For the Commission to approve a request for permanent product status before a market test terminates, the Postal Service must file the request sufficiently in advance of the market test termination date to provide adequate time for public input and Commission review of the request. A market test must terminate if: (1) It reaches the end of the market test duration period (24 months or up to 36 months if an extension is granted); or (2) the revenues received by the Postal Service from a market test reach any applicable authorized adjusted limitation in any fiscal year. The Commission finds that 60 days' notice before either event occurs is an appropriate time period because it is consistent with the 60-day deadline for requesting a market test extension under 39 U.S.C. 3641(d)(2).

The final rules require that requests to make existing experimental products permanent must be filed at least 60 days before the market test expires (including any extension period granted) or exceeds any authorized adjusted limitation in any fiscal year, whichever is earlier. The 60-day notice period under rule 3035.18 applies to Postal Service requests to make existing experimental products permanent. The Postal Service may file requests to make former experimental products permanent any time after the market test terminates.

The Commission also revises rule 3035.18 to require requests for permanent product status to include product specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented. The proposed rules contained a requirement that the Postal Service quantify start-up costs in its data collection reports. As further explained in Section IV.A.10.a, below, the Commission revises the rules to require the Postal Service to quantify start-up costs in two situations, one of which is when the Postal Service files a request to make an experimental product permanent. The other situation in which the Postal Service must quantify start-up costs is when the Postal Service applies for an exemption from the $10 Million Adjusted Limitation under rule 3035.16(f). See 39 U.S.C. 3641(e)(2); Section IV.A.10.a, below.

A quantification of start-up costs is necessary for the Commission to evaluate whether a competitive product covers its attributable costs and whether a market dominant product assures adequate revenues, including retained earnings, to maintain financial stability. See 39 CFR 3020.32(b) and (c); 39 U.S.C. 3622(b)(5).[23] The Postal Service also requested clarification of the type of information the Commission was seeking for these start-up costs. Postal Service Comments at 6–7. As discussed in more detail below, the final rules replace the term start-up costs with product specific costs, a term that is well known and has long been used to attribute costs to specific products. See Section IV.A.10.a, below. Examples of product specific costs required by rule 3035.18(b) are discussed in Section IV.A.7, above.

10. Section 3035.20—Data Collection and Reporting Requirements

a. Administrative, Ancillary, and Start-Up Costs

The proposed rules required the Postal Service to periodically report several types of costs associated with each market test: Administrative, ancillary, and start-up costs. The Postal Service does not propose definitions for these terms but instead requests that the

[19] Docket No. R2014–1, United States Postal Service Notice of Market Dominant Classification and Price Changes for the Alternative Postage Payment Method, November 5, 2013; Docket No. MC2014–26, Request of the United States Postal Service to Add Gift Cards as a New Price Category in the Greeting Cards and Stationery Product, June 9, 2014 (Gift Cards Request).

[20] Docket No. R2014–1, Order No. 1917, Order Granting Classification and Price Changes for Alternate Postage Payment, December 20, 2013, at 8.

[21] Docket No. MC2014–26, Order No. 2091, Notice and Order of Filing Request to Add Gift Cards to the Competitive Product List and Conditionally Authorizing the Sale of Gift Cards Pending Conclusion of Proceeding, June 13, 2014, at 1–2.

[22] Existing experimental products are experimental products that the Postal Service is currently testing under a market test.

[23] While an experimental product might be initially categorized as market dominant under 39 U.S.C. 3641(b)(3), experience or changes to the market test may dictate that the Commission find that the experimental product should be added to the competitive product list under 39 U.S.C. 3642 if the Postal Service files a request to make the experimental product permanent. Thus, start-up cost information could also be important for proposals to add a market dominant experimental product to the competitive product list.

Commission clarify their meanings. Postal Service Comments at 5–8. The Postal Service asserts that it has responded in good faith to Commission orders requiring the reporting of available administrative costs, but it was not confident that the information provided met Commission expectations. *Id.* at 5. Likewise, it provided available ancillary cost data, but notes it lacked a clear understanding of the types of costs the Commission deems to fall within this category. *Id.* at 5–6. It argues that distinguishing start-up from administrative costs may be difficult and describes the challenges involved in calculating start-up costs. *Id.* at 6–7.

The Postal Service requests that the Commission's cost data reporting requirements recognize the limitations on the Postal Service's ability to record perfectly complete information that may vary on a case-by-case basis. *Id.* at 7. It states that identifying specific cost line items in which the Commission has an interest would be helpful. *Id.* The Public Representative concurs that further clarification of these types of costs will help the Postal Service and the public better understand the Commission's expectations. PR Reply Comments at 2.

In this Order, the Commission clarifies the types of costs that are to be reported under this section. The objective of the rules is to ensure that the Postal Service tracks relevant costs associated with a market test, including the costs incurred in conceiving of and initiating a market test.

The Commission clarifies that start-up costs are costs incurred by the Postal Service to implement a new service or offer a new product. These costs include contractor costs, if applicable; administrative costs, *i.e.,* salary and fringe benefits of employees working on the project, including senior management review;[24] costs to acquire materials, supplies, or equipment relevant to the proposed market test; and costs associated with implementing the market test pursuant to section 3641.

The Commission further clarifies that, generally, administrative costs are a subset of product specific costs and include expenses associated with the general administration of the market test. As discussed below, they include, for example, the cost of employees assigned to the market test, marketing, and materials and supplies. In this context, the Commission intends for ancillary cost to represent all other costs that may be incurred in connection with the market test. They may include certain miscellaneous or unexpected expenses.

The proposed rules contained a requirement that the Postal Service report start-up costs in data collection reports. After considering the comments received, see Postal Service Comments at 6–7, the Commission finds that a quantification of start-up costs is not necessary before a market test is offered. Rather, start-up costs should be reported in certain cases as the market test progresses. This will help display a complete financial picture of whether the market test has a net positive or net negative impact on the Postal Service's finances.[25] A quantification of start-up costs is important to stakeholders because it promotes financial transparency. Moreover, if start-up cost information is not captured early in the process, it may be difficult to recreate start-up costs later on if, for example, the Postal Service proposes to make an experimental product permanent.

Thus, the Commission finds that a quantification of start-up costs associated with market tests is necessary in two situations: (1) The Postal Service applies for an exemption from the $10 Million Adjusted Limitation under 39 U.S.C. 3641(e)(2) and rule 3035.16; and (2) the Postal Service files a request to make an experimental product permanent under 39 U.S.C. 3642 and rule 3035.18. In applications for an exemption, a quantification of start-up costs is necessary for the Commission to determine whether an experimental product will likely contribute to the Postal Service's financial stability. See 39 U.S.C. 3641(e)(2)(B). Similarly, in requests to make an experimental product permanent, a quantification of start-up costs is necessary for the Commission to evaluate whether a competitive product covers its attributable costs and whether a market dominant product assures adequate revenues, including retained earnings, to maintain financial stability.[26] See 39 CFR 3020.32(b) and (c); 39 U.S.C. 3622(b)(5).

The Commission revises rules 3035.16 and 3035.18 to require the Postal Service to report start-up costs when applying for exemptions from the $10 Million Adjusted Limitation and when filing requests for permanent product status. See Sections IV.A.7 and IV.A.9, above. However, the Postal Service is not required to report start-up costs in ongoing data collection reports under rule 3035.20.

Administrative, ancillary, and start-up costs could also be characterized as product specific costs, *i.e.,* costs exclusively incurred by a single product that do not vary by volume (*e.g.,* costs to advertise only Priority Mail or, in this context, research and development costs associated with a market test). Because the term product specific costs is well known and has long been used to attribute costs to specific products, the Commission will substitute that term for start-up, administrative, and ancillary costs. The requirement to report product specific costs is intended to reflect those costs unique to market tests before and after implementation of such tests.

Final rule 3035.20(a) requires the Postal Service to track attributable costs incurred in conducting the market test, including product specific costs related to the administration of the market test. The Commission observes that examples of the product specific costs required by rule 3035.20(a) can be found in other proceedings. For example, in Docket No. R2013–6, the Postal Service stated that the costs of implementing the Technology Credit Promotion included the cost of implementing software changes in the PostalOne! system, as well as customer support and headquarters administrative costs.[27] These costs are examples of product specific costs related to the administration of the Technology Credit Promotion. They are the types of product specific costs related to the administration of a market test that must be reported under rule 3035.20.

b. Data Collection Plans and Reports

The Public Representative argues that the proposed rules do not clearly distinguish between the requirements for the data collection plan and data collection reports. PR Comments at 15. She suggests that rule 3035.3 regarding the contents of the notice set forth expectations for the data collection plan. *Id.* She recommends that rule 3035.20 set forth requirements for the data collection reports. *Id.* at 15–16. Her suggested revisions to rule 3035.20 include requiring data collection reports to be filed no more than 40 days after the close of each fiscal quarter during which the market test is offered. *Id.,* Appendix A at 10. She proposes adding

[24] The Commission appreciates the difficulty in isolating the costs related to staff time given that Postal Service employees may be assigned to more than one project. Reasonable good faith estimates should suffice.

[25] See, *e.g.,* United States General Accounting Office, U.S. Postal Service: Development and Inventory of New Products (GAO/GGD–99–15), November 24, 1998, at 4 (stating that new products generally take several years to become established and recover their start-up costs).

[26] Start-up cost information could also be important for proposals to add a market dominant experimental product to the competitive product list. See footnote 23, above.

[27] Docket No. R2013–6, Responses of the United States Postal Service to Chairman's Information Request No. 1, May 7, 2013, question 4.

a requirement that the Postal Service report volumes of the experimental product by fiscal quarter. *Id.*

The Postal Service objects to the Public Representative's suggestion that data collection reports be filed no more than 40 days from the end of the preceding quarter. It argues that the Commission should preserve the flexibility reflected in the proposed rule. Postal Service Reply Comments at 12. The Postal Service takes no position on the Public Representative's suggestion that data collection reports also include volume figures.

The Commission agrees that the distinction between data collection plans and data collection reports in the proposed rules is unclear, and the revised rules clarify these terms. As discussed above, revised rule 3035.3(a)(2)(vi) requires notices of proposed market tests to include a data collection plan, which is a plan for monitoring the performance of a market test. See Section IV.A.1.d. The Commission modifies rule 3035.20(a) to reiterate this requirement and list the specific items that must be included in the data collection plan. These items will also include volumes of the experimental product by fiscal quarter, as suggested by the Public Representative. This requirement is consistent with Commission orders in past market tests and thus codifies present Commission practice.[28] Rule 3035.20(d) requires the Postal Service to file the information required by the data collection plan in the data collection reports.

The Commission declines to adopt the Public Representative's suggestion concerning the timing of data collection reports. In general, the Postal Service must file data collection reports no more than 40 days after the close of each fiscal quarter during which the market test is offered. However, in some cases the Commission may find it appropriate to prescribe a reporting deadline other than 40 days if circumstances warrant. The final rules provide the Commission that flexibility.

B. Rules With Non-Substantive Changes

The Public Representative suggests several non-substantive stylistic and editorial changes to the rules. PR Comments at 1; see Appendix A. The Postal Service does not comment on these suggestions. As set forth below, the Commission adopts the following non-substantive stylistic and editorial changes suggested by the Public Representative (in addition to others) to promote consistency and clarity in the rules:

- Rule 3001.5(v) contains style revisions to conform to official publication requirements.
- Rule 3035.1 contains a minor editorial revision.
- Rule 3035.3 was renumbered to conform to official publication requirements. In addition, rule 3035.3 contains minor editorial revisions.
- Rules 3035.4 and 3035.5 contain style revisions and renumbered sections to conform to official publication requirements.
- Rule 3035.10 contains a style revision to conform to official publication requirements.
- Rule 3035.11 contains a style revision to conform to official publication requirements and minor editorial changes.
- Rule 3035.12 contains style revisions to conform to official publication requirements.
- Rule 3035.15 contains style revisions to conform to official publication requirements.
- Rule 3035.16 contains style revisions to conform to official publication requirements.
- Rule 3035.17 contains style revisions to conform to official publication requirements.
- Rule 3035.18 adds subsections to incorporate new provisions.
- Rule 3035.20 contains a style revision to conform to official publication requirements.

C. Other Issues

1. Definitions

The Public Representative contends that the Commission should clarify several ambiguous terms in the proposed rules. PR Comments at 2. She recommends defining market disruption rather than referencing 39 U.S.C. 3641(b)(2). *Id.* at 3. She argues that a phrase (unfair or otherwise inappropriate competitive advantage) should be clarified in the rules. *Id.* She asserts that because the Commission explained the concept of unfair competitive advantage in Order No. 1739 (concerning the proposed rules applicable to 39 U.S.C. 404a), the Commission should use its prior analysis to develop a clear definition of the phrase unfair or otherwise inappropriate competitive advantage.[29]

The Public Representative also recommends defining the term geographic market. PR Comments at 4. Citing Black's Law Dictionary and federal statutes, she defines the relevant geographic market as an area of effective competition or the locale in which consumers of a product or service can turn for alternative sources of supply. *Id.* at 4–5. She argues that the Commission should follow this approach when it (1) evaluates whether the market test creates an unfair or otherwise inappropriate competitive advantage and (2) limits revenues in a geographic market to abate anticompetitive behavior. *Id.* at 5.

In addition, the Public Representative recommends defining several other terms: CPI–U index, experimental product, market test, and unfair or otherwise inappropriate competition. *Id.* at 6. She suggests placing these terms in a separate definitions section in part 3035, which would also include the definition of small business concern. *Id.* at 5–6. She notes that the term small business concern is also used in 39 CFR part 3020 and suggests amending part 3020 to add a cross-reference to the definition of small business concern in part 3035. *Id.* at 6–7.

The Postal Service argues that a detailed and technically precise definition of the term market disruption may be difficult to achieve in the abstract given the narrow purpose of the market test policy guidelines and the fact-specific nature of determining market disruption under 39 U.S.C. 3641(b)(2). Postal Service Reply Comments at 10–11. It encourages the Commission to proceed by viewing each market test on a case-by-case basis without pre-determined constraints that could stifle the investigation of potential product concepts and product innovation. *Id.* at 11.

The Postal Service questions whether a prophylactic rule can be drafted to define the term geographic market relevant to every market test. *Id.* at 2. It notes that relevant factors include the types and numbers and proximity of available channels through which postal customers can access an experimental product. *Id.* It prefers that the Commission not establish a definition for geographic market based solely on its limited experience with market tests. *Id.*

The Commission finds it unnecessary to define additional terms at this time. The market test rules are designed to increase flexibility and to facilitate a more entrepreneurial approach to product development. See Senate Report at 16. To that end, 39 U.S.C. 3641 envisions a relatively simple process for the Postal Service to engage in experimental market tests. Three

[28] See, *e.g.,* Docket No. MT2013–2, Order No. 1806, Order Authorizing Market Test to Proceed and Granting Extension, August 12, 2013, at 5; Docket No. MT2013–1, Order No. 1539, Order Approving Metro Post Market Test, November 14, 2012, at 12.

[29] *Id.* at 4; see Docket No. RM2013–4, Notice of Proposed Rulemaking Establishing Rules Pursuant to 39 U.S.C. 404a, June 5, 2013 (Order No. 1739).

conditions must be satisfied: (1) The experimental product must be significantly different from all Postal Service products offered within the past two fiscal years; (2) the introduction or continued offering of the experimental product will not provide an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer; and (3) the Postal Service identifies the experimental product as either market dominant or competitive. 39 U.S.C. 3641(b). While the term market disruption is defined in 39 U.S.C. 3641(b)(2), each market test raises fact-specific inquiries that militate against attempting to define terms such as geographic market and unfair or otherwise inappropriate competitive advantage in a vacuum.

The Commission finds that the best course of action is to proceed on a case-by-case basis to evaluate these terms. In discussing the benefits of adjudication of statutory standards on a case-by-case basis, the Supreme Court noted that not every principle essential to administering a statute can or should be turned into a general rule.[30] For several reasons, some principles must develop on their own, while others must be adjusted to meet particular, unforeseeable situations. *Id.* First, problems may arise in a case an agency could not reasonably foresee. *Id.* Those problems must be solved without a relevant general rule. *Id.* Second, an agency may not have had sufficient experience with a particular problem to justify creating a hard and fast rule. *Id.* Third, a problem may be so specialized and different that it cannot be solved within the boundaries of a general rule. *Id.* at 203. In those situations, an agency must retain the authority to address problems on a case-to-case basis if the administrative process is to be effective. *Id.*

As a result of these considerations, the Supreme Court concluded that the choice between proceeding by general rule or individual order lies primarily in the informed discretion of the agency. *Id.* For purposes of these market test rules, the Commission declines to define geographic market and unfair or otherwise inappropriate competitive advantage in the rules. It will consider each market test on its own merits, including whether it causes an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer.

As the Public Representative suggests, in Order No. 1739, the Commission did outline in general terms how it might evaluate or consider allegations of unfair competition by the Postal Service under section 404a. In Order No. 1739, the Commission stated that it would apply analogous federal precedent concerning claims of unfair competition to adjudicate claims under 39 U.S.C. 404a(a)(1). Order No. 1739 at 8. The Commission noted that federal claims of unfair competition are reviewed under the rule of reason analysis, which focuses on whether the behavior unreasonably restricts competition. *Id.* at 7. In making such a determination, the decision maker reviews the anticompetitive effects of the action, which must harm the competitive process and harm consumers. *Id.* Harm to one or more competitors will not suffice. *Id.* While unnecessary to define the term unfair or otherwise inappropriate competitive advantage for purposes of these rules, the Commission undoubtedly will be guided by analogous precedent concerning claims of unfair competition when reviewing specific market tests.

As discussed above, the Commission adopts the definition of small business concern with minor style revisions and places that definition in 39 CFR 3001.5. See Section IV.A.1.b. The Commission declines to adopt the Public Representative's proposals to place that term in a separate definitions section in 39 CFR part 3035 and add a cross-reference to that definition in 39 CFR part 3020. The Public Representative correctly observes that the term is also used in 39 CFR part 3020. However, adopting the Public Representative's suggestions would require amending part 3020. Leaving the term in section 3001.5 ensures that the definition applies to all parts of title 39 of the Code of Federal Regulations (CFR) administered by the Commission, including parts 3020 and 3035.

2. Deadlines

The Public Representative suggests adding a rule to 39 CFR part 3035 if the Commission plans to waive deadlines of rules related to market tests. PR Comments at 2. She notes that in several recent market test proceedings, the Commission waived the 60 day statutory deadline for requesting extensions of market tests. *Id.;* see 39 U.S.C. 3641(d)(2). The Postal Service does not comment on this suggestion.

The Commission declines to adopt the Public Representative's suggestion regarding deadlines. The Commission reiterates the importance of filing by the appropriate deadlines required under 39 U.S.C. 3641 and the Commission's market test rules. All future filings must be submitted in conformance with the applicable deadline. Future requests for waivers of deadlines will be assessed on a case-by-case basis. However, the Postal Service should not assume that waivers will be granted absent exceptional circumstances.[31]

V. Ordering Paragraphs

It is ordered:

1. Part 3001 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. Part 3035 of title 39, Code of Federal Regulations, is adopted as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects

39 CFR Part 3001

Administrative practice and procedure; Freedom of information; Postal Service; Sunshine Act.

39 CFR Part 3035

Administrative practice and procedure; Postal Service.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

■ 2. In § 3001.5, add paragraph (v) to read as follows:

§ 3001.5 Definitions.

* * * * *

(v) *Small business concern* means a for-profit business entity that:

(1) Is independently owned and operated;

(2) Is not dominant in its field of operation;

(3) Has a place of business located in the United States;

(4) Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; and

[30] *Securities and Exchange Comm'n* v. *Chenery Corp.,* 332 U.S. 194, 202 (1947).

[31] See Docket No. MT2011–2, Order No. 1781, Order Granting Extension of Gift Card Market Test, July 19, 2013, at 3; Docket No. MC2014–26, Order No. 2145, Order Granting Request to Add Gift Cards to the Competitive Product List, August 8, 2014, at 15.

(5) Together with its affiliates, qualifies as *small* in its primary industry under the criteria and size standards established by the Small Business Administration in 13 CFR 121.201 based on annual receipts or number of employees.

■ 3. Add part 3035 to read as follows:

PART 3035—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

Sec.

3035.1 Applicability.
3035.2 Advance notice.
3035.3 Contents of notice.
3035.4 Review.
3035.5 Commission action.
3035.6 Changes in market test.
3035.7–3035.9 [Reserved]
3035.10 Duration.
3035.11 Extension of market test.
3035.12 Cancellation of market test.
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3035.15 Dollar amount limitation.
3035.16 Exemption from dollar amount limitation.
3035.17 Prevention of market disruption.
3035.18 Filing for permanent product status.
3035.19 [Reserved]
3035.20 Data collection and reporting requirements.

Authority: 39 U.S.C. 3641.

§ 3035.1 Applicability.

The rules in this part apply to market tests of experimental products undertaken pursuant to 39 U.S.C. 3641.

§ 3035.2 Advance notice.

The Postal Service shall file notice with the Commission of its determination to initiate a market test at least 30 days before initiating the market test.

§ 3035.3 Contents of notice.

(a) Notices of proposed market tests shall include:

(1) The basis for the Postal Service's determination that the market test is governed by 39 U.S.C. 3641, which shall:

(i) Describe, from the viewpoint of mail users, how the experimental product is significantly different from all products offered by the Postal Service within the 2 fiscal years preceding the start of the market test;

(ii) Establish that the introduction or continued offering of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in § 3001.5(v) of this chapter; and

(iii) Identify the experimental product as either market dominant or competitive for purposes of the market test, and explain the reasoning for the categorization in accordance with the criteria set forth in 39 U.S.C. 3642(b)(1).

(2) A description of the nature and the scope of the market test that:

(i) Describes the market test and experimental product;

(ii) Demonstrates why the market test is not inconsistent with the requirements of 39 U.S.C. 3641;

(iii) Identifies the beginning and ending dates of the market test;

(iv) Describes the geographic market(s) where the market test may be conducted;

(v) Estimates the total revenue that is anticipated by the Postal Service for each fiscal year of the market test, including available supporting documentation; and

(vi) Includes a data collection plan for the market test, including a description of the specific data items to be collected. The minimum data collection plan requirements are described in § 3035.20.

§ 3035.4 Review.

(a) The Commission will establish a docket for each market test initiated under this part, promptly publish a notice in the **Federal Register**, and post the filing on its Web site. The notice shall:

(1) Describe the general nature of the proceeding;

(2) Refer to the legal authority under which the proceeding is to be conducted;

(3) Identify an officer of the Commission to represent the interests of the general public in the docket;

(4) Specify a period for public comment; and

(5) Include such other information as the Commission deems appropriate.

(b) [Reserved]

§ 3035.5 Commission action.

(a) The Commission shall review the Postal Service notice together with any comments for initial compliance with the statutory requirements of 39 U.S.C. 3641, and:

(1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and order that the market test not go into effect; or

(4) Direct other action as the Commission may consider appropriate.

(b) [Reserved]

§ 3035.6 Changes in market test.

(a) The Postal Service shall file a notice with the Commission describing each material change made to the market test or services offered under the market test at least 10 days before implementing such changes. Material changes are changes that may affect compliance with 39 U.S.C. 3641 and include, without limitation, adjustments to prices, geographic scope, eligibility for service, and termination date.

(b) The Commission may, in its discretion, notice the filing and provide an opportunity for comment.

§§ 3035.7–3035.9 [Reserved].

§ 3035.10 Duration.

A market test may not exceed 24 months in duration unless the Commission authorizes an extension pursuant to a request filed by the Postal Service under § 3035.11.

§ 3035.11 Extension of market test.

(a) The Postal Service may request an extension of the duration of a market test, not to exceed an additional 12 months, if such an extension is necessary to determine the feasibility or desirability of a product being tested. The Postal Service must file a written request for extension with the Commission at least 60 days before the market test is scheduled to terminate.

(b) The request for extension shall:

(1) Explain why an extension is necessary to determine the feasibility or desirability of the experimental product;

(2) List the new end date for the market test;

(3) Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation and provide supporting documentation for the calculations;

(4) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year remaining on the market test, including the requested extension period, and provide available supporting documentation; and

(5) Provide any additional information necessary for the Commission to evaluate the continued consistency with the requirements of 39 U.S.C. 3641.

(c) The Commission shall review the Postal Service request for extension to ensure that an extension is necessary in order to determine the feasibility or desirability of the experimental product and:

(1) Find that the extension is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the extension is inconsistent with the requirements of 39

U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and deny the extension; or

(4) Direct other action as the Commission considers appropriate.

§ 3035.12 Cancellation of market test.

(a) The Postal Service may cancel a market test at any time. It shall file notice of cancellation with the Commission within 10 days of cancelling the market test.

(b) Pursuant to 39 U.S.C. 3641(f), the Commission may direct the Postal Service to demonstrate that the market test continues to meet the requirements of 39 U.S.C. 3641 and the Commission's rules. The Commission, in its discretion, may provide an opportunity for comments.

(c) Based upon its review, the Commission may:

(1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and cancel the market test; or

(4) Direct other action as the Commission may consider appropriate.

§§ 3035.13–3035.14 [Reserved]

§ 3035.15 Dollar amount limitation.

(a) The Consumer Price Index used for calculations under this part is the CPI–U index, as specified in §§ 3010.21(a) and 3010.22(a) of this chapter.

(b) An experimental product may only be tested if total revenues that are anticipated or received by the Postal Service do not exceed $10,000,000 in any fiscal year, as adjusted for the change in the CPI–U index, as specified in paragraph (d) of this section ($10 Million Adjusted Limitation). Total revenues anticipated or received may exceed the $10 Million Adjusted Limitation in any fiscal year if an exemption is granted pursuant to § 3035.16.

(c) For each fiscal year, the $10 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in paragraph (d) of this section. The Commission shall publish this figure annually, after the close of the fiscal year, on its Web site at *http://www.prc.gov*.

(d) The calculation of the $10 Million Adjusted Limitation involves the following steps. First, a simple average CPI–U index was calculated for fiscal year 2008 by summing the monthly CPI–U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.5. Then, a second simple average CPI–U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI–U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying $10,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(e) The formula for calculating the $10 Million Adjusted Limitation is as follows: $10 Million Adjusted Limitation = $10,000,000 * (Recent Average/214.5).

§ 3035.16 Exemption from dollar amount limitation.

(a) The Postal Service may request an exemption from the $10 Million Adjusted Limitation by filing a written request with the Commission. In no instance shall the request for exemption exceed the market test dollar amount limitation of $50,000,000 in any fiscal year, as adjusted for the change in the CPI–U index, as specified in paragraph (c) of this section ($50 Million Adjusted Limitation).

(b) For each fiscal year, the $50 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in paragraph (c) of this section. The Commission shall publish this figure annually, after the close of the fiscal year, on its Web site at *http://www.prc.gov*.

(c) The calculation of the $50 Million Adjusted Limitation involves the following steps. First, a simple average CPI–U index was calculated for fiscal year 2008 by summing the monthly CPI–U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.5. Then, a second simple average CPI–U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI–U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying $50,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(d) The formula for calculating the $50 Million Adjusted Limitation is as follows: $50 Million Adjusted Limitation = $50,000,000 * (Recent Average/214.5).

(e) The Postal Service shall file its request for exemption at least 45 days before it expects to exceed the $10 Million Adjusted Limitation.

(f) The request for exemption shall:

(1) Explain how the experimental product will:

(i) Benefit the public and meet an expected demand;

(ii) Contribute to the financial stability of the Postal Service; and

(iii) Not result in unfair or otherwise inappropriate competition;

(2) Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation, and provide supporting documentation;

(3) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year remaining on the market test, including any extension period granted by the Commission in accordance with § 3035.11(c), and provide available supporting documentation; and

(4) Quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented.

(g) The Commission shall review the request for exemption for consistency with the statutory requirements of 39 U.S.C. 3641 and:

(1) Find that the exemption is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and deny the exemption; or

(4) Direct other action as the Commission may consider appropriate.

§ 3035.17 Prevention of market disruption.

Notwithstanding the $10 Million Adjusted Limitation or any adjustment granted pursuant to § 3035.16, the Commission may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent the creation of an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in § 3001.5(v) of this chapter.

§ 3035.18 Filing for permanent product status.

(a) If the Postal Service determines to make an experimental product permanent, it shall file a request, pursuant to 39 U.S.C. 3642 and part

3020, subpart B of this chapter, to add a new product or price category to the market dominant or competitive product list. Requests to make existing experimental products permanent must be filed at least 60 days before the market test expires (including any extension period granted) or the market test exceeds any authorized adjusted limitation in any fiscal year, whichever is earlier.

(b) A request to make an experimental product permanent must, among other things, quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented.

(c) The Postal Service shall also file a notice of its request to make an experimental product permanent in the market test proceeding's docket. The notice shall include the applicable docket number(s) for the proceeding evaluating the request.

§ 3035.19 [Reserved]

§ 3035.20 Data collection and reporting requirements.

(a) A notice of a market test shall include a data collection plan for the market test as required by § 3035.3(a)(2)(vi). Data collection plans shall include, at a minimum:

(1) The revenue by fiscal quarter received to date by the Postal Service from the market test;

(2) Attributable costs incurred in conducting the market test, including product specific costs related to the administration of the market test; and

(3) Volumes of the experimental product by fiscal quarter.

(b) The Commission may request additional information or data as it deems appropriate.

(c) To assess the potential impact of a market test in a particular geographic market, the Commission may require the Postal Service to report the revenues from the market test for specified geographic markets.

(d) The Postal Service shall file the information required by the data collection plan in data collection reports. Data collection reports must be filed within 40 days after the close of each fiscal quarter during which the market test is offered, or such other period as the Commission may prescribe.

(e) The Postal Service shall file in its Annual Compliance Report information on each market test conducted during the fiscal year pursuant to § 3050.21(h) of this chapter.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–21689 Filed 9–10–14; 8:45 am]

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