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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0031]

Pine Shoot Beetle; Addition of Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by adding areas in the States of Illinois, Maryland, Missouri, New York, and Virginia and the States of Indiana and New Jersey in their entirety to the list of quarantined areas. The interim rule also updated the list of regulated articles. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: Effective on October 10, 2014, we are adopting as a final rule the interim rule published at 79 FR 21595–21597 on April 17, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Maguylo, National Policy Manager, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1231; (301) 851–3128.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Pine Shoot Beetle,'' (7 CFR 301.50 through 301.50–10, referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

In an interim rule [1] effective and published in the **Federal Register** on April 17, 2014 (79 FR 21595–21597, Docket No. APHIS–2010–0031), we amended the regulations by adding the following counties to the area quarantined for PSB: Cumberland, Effingham, Fayette, Knox, Mercer, Rock Island, and Warren Counties, IL; Baltimore, Carroll, Harford, and Howard Counties, MD; Adair, Clark, Lewis, Macon, and Marion Counties, MO; Dutchess, Putnam, and Westchester Counties, NY; and Loudon County, VA. We also added the States of Indiana and New Jersey in their entirety to the list of quarantined areas. In addition, to clarify that firewood is a regulated article, we updated the list of regulated articles to include firewood.

We solicited public comments for 60 days, ending June 16, 2014. We received one comment by that date from a private citizen, who supported the rule. Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by adding areas to the list of quarantined areas and regulated articles for PSB. We took that action based on the detection of PSB in areas not previously infested. As a result of the interim rule, there are additional restrictions on the interstate movement of regulated articles to prevent the spread of PSB to noninfested areas.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 603, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. The full analysis may be viewed on the Regulations.gov Web site (see footnote 1 above for a link to Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Tip feeding by PSB causes various malformations that reduce the value of the tree. This kind of damage is especially severe in Christmas tree plantations, where tree form is the primary consideration. PSB generally infests weakened, stressed, or dying trees, but will also attack and kill apparently healthy trees.

In 2007, there were at least 137 Christmas tree farms and 288 nurseries and greenhouses in the affected counties that may be impacted by this rule. These figures understate the number of potentially affected entities because the number of these businesses was not disclosed for several of the counties. Moreover, data on the number of entities other than nurseries and Christmas tree farms that may be affected, such as sawmills and logging operations, are not available.

Based on our review of available information, APHIS does not expect the interim rule to have a significant economic impact on small entities. In the absence of significant economic impacts, we have not identified alternatives that would minimize such impacts.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 79 FR 21595–21597 on April 17, 2014.

Done in Washington, DC, this 6th day of October 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–24245 Filed 10–9–14; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule, its supporting economic analysis, and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0031.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0045]

RIN 0579–AD82

Importation of Fresh Bananas From the Philippines Into Hawaii and U.S. Territories

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh bananas from the Philippines into Guam, Hawaii, and the Northern Mariana Islands. As a condition of entry, the bananas will have to be produced in accordance with a systems approach that includes requirements for importation of commercial consignments, monitoring of fruit flies to establish low-prevalence places of production, harvesting only of hard green bananas, and inspection for quarantine pests by the national plant protection organization of the Philippines. The bananas will also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were grown, packed, and inspected and found to be free of quarantine pests in accordance with the proposed requirements. This action will allow the importation of bananas from the Philippines into Guam, Hawaii, and the Northern Mariana Islands while continuing to protect against the introduction of plant pests.

DATES: Effective November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. George Apgar Balady, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2240.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–71, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On January 28, 2014, we published in the **Federal Register** (79 FR 4410–4414, Docket No. APHIS–2013–0045) a proposal [1] to amend the regulations to allow the importation of bananas from the Philippines into Guam, Hawaii, and the Northern Mariana Islands. We also prepared a pest risk assessment (PRA) entitled ''Importation of Banana, Musa spp., as Fresh, Hard Green Fruit from the Philippines to Guam, Hawaii, and the Northern Mariana Islands'' (January 2013). The PRA assesses the risks associated with the importation of fresh bananas from the Philippines into Guam, Hawaii, and the Northern Mariana Islands. Based on the information contained in the PRA, we prepared a risk management document (RMD) that recommends appropriate mitigation measures needed beyond the port-of-entry inspection requirements.

Based on the recommendations of the RMD, we proposed to allow the importation of bananas from the Philippines into Hawaii and U.S. Territories only if they were produced in accordance with a systems approach. The systems approach we proposed included requirements for:

- Registration, monitoring, and oversight of places of production;
- Trapping for the fruit flies *Bactrocera* spp. to establish low-prevalence places of production;
- Covering bananas with pesticide bags during the growing season;
- Harvesting only of hard green bananas;
- Requirements for culling, safeguarding, and identifying the fruit; and
- Inspection by the national plant protection organization (NPPO) of the Philippines for quarantine pests.

We also proposed to require bananas from the Philippines to be accompanied by a phytosanitary certificate with an additional declaration stating that the bananas were grown, packed, and inspected in accordance with the proposed requirements. These are the same conditions under which bananas from the Philippines were already authorized for importation into the continental United States.

We solicited comments on the proposed rule for 60 days ending March 31, 2014. We received 46 comments from private citizens by the close of the comment period. Three of the commenters supported the proposed rule. The issues raised by the other commenters are discussed below by topic.

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0045.*

General Comments

The majority of commenters stated that the Animal and Plant Health Inspection Service (APHIS) should prohibit the importation of bananas from other countries into Hawaii and U.S. territories, as locally grown bananas are plentiful or because importing commodities from other countries would conflict with local food initiatives. Many commenters expressed concerns that the importation of lower-priced bananas from other countries would make it more difficult for local producers to compete within the market. Several commenters objected to using tax dollars to implement and enforce the proposed regulations rather than using them to support local growers.

Such prohibitions would be beyond the scope of APHIS' statutory authority under the Plant Protection Act (7 U.S.C. 7701 *et seq.,* referred to below as the PPA). Under the PPA, APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. APHIS does not have the authority to restrict imports solely on the grounds of potential economic effects on domestic entities that could result from increased imports. Current Hawaiian banana production provides considerable banana supply to the Hawaiian market, however it is apparently not enough to satisfy the demand for banana consumption in Hawaii. Any impact of the rule on U.S. banana producers in Hawaii and U.S. territories is likely to be small. To the extent that new imports of bananas from the Philippines arrive in Hawaii and U.S. territories, consumers will benefit from this additional source of fresh bananas. In addition, the importation of Philippine bananas is expected to add jobs in the produce shipping and marketing industry within Hawaii and the Territories, which would help offset any potential losses. Tax dollars would not be used to support the proposed regulations. The importation of Philippine bananas would require the NPPO of the Philippines to enter into a trust fund agreement with APHIS. Under the trust fund agreement, the NPPO of the Philippines would be required to pay in advance all estimated costs that APHIS expects to incur in providing inspection services in the exporting country. This includes administrative expenses such as inspector salaries and travel expenses. The cost of inspecting shipments at U.S.

ports of entry is recovered through user fees.

Additionally, as a signatory to the World Trade Organization Agreement on Sanitary and Phytosanitary Measures, the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence, and will not be maintained without sufficient scientific evidence. The blanket prohibitions requested by the commenters would not be in keeping with this agreement.

One commenter suggested that we should allow bananas from the Philippines to be imported into Alaska, where there is no local production, rather than importing bananas into Hawaii and the U.S. territories.

Under § 319.56–58, bananas from the Philippines are already allowed into the continental United States, including Alaska.

One commenter expressed frustration that bananas grown in Hawaii could not be exported, while bananas grown in other countries could be imported into Hawaii.

APHIS has an export staff to aid growers in exporting their agricultural commodities to other countries. Contact information for this staff is available on the APHIS Web site at *http://www.aphis.usda.gov/* under the Plant Health tab.

Monitoring and Oversight

Under paragraph (b)(3), the NPPO of the Philippines would be required to retain all forms and documents related to export program activities in groves and packinghouses for at least 1 year and, as requested, provide them to APHIS for review. Such forms and documents include, but are not limited to, fruit fly trapping and inspection records. One commenter pointed out that the International Plant Protection Convention (IPPC) requires that records be retained for at least the 2 previous years or as long as necessary to support the export program from areas of low pest prevalence.

Requiring the NPPO of the Philippines to retain records for 1 year is consistent with our recordkeeping requirements for all offshore phytosanitary mitigation programs. From past experience, retaining records for longer than 1 year has provided little value in traceback efforts as any issues that may occur are generally related to the current growing season. While we do not require NPPO's to retain records for longer than 1 year, this does not pertain to APHIS pest interception records. Those records are maintained for the life of the export program.

One commenter stated that certain growers may import bananas from smaller growers to meet consumer demand and suggested that production areas be canvassed and shipments inspected to ensure that bananas not of approved varieties or stage of maturity are prohibited importation.

Just one interception of a target pest would be enough to cause APHIS to suspend a commercial import program until APHIS and the Philippine NPPO agree that the pest eradication measures taken have been effective and that the pest risk has been eliminated. Because bananas from non-registered places of production present a greater pest risk than does fruit grown in registered places of production, we believe that it is unlikely that the growers and packers in a registered place of production would allow their entire export operation to be jeopardized by allowing potentially infested fruit from non-registered places of production to be commingled with their export-quality fruit. In addition to that purely economic disincentive, APHIS and Philippine NPPO inspectors will also be present in the places of production and packinghouses during the shipping season to ensure that all requirements of the regulations are being observed. That includes ensuring that only green bananas are packed for export. There are no restrictions on the variety of bananas that can be imported from the Philippines under the regulations.

The commenter also suggested that shipments from noncompliant production areas be restricted until the production areas are determined to be in compliance with the regulations per the NPPO and APHIS, and that records be kept regarding banana varieties and stage of maturity.

The NPPO of the Philippines would be responsible for enforcing the requirements in the operational workplan, including maintaining records of growers and packers and periodically conducting inspections or audits to ensure that growers are producing bananas in accordance with the systems approach. If the NPPO of the Philippines finds that a place of production or packinghouse is not complying with the regulations, no fruit from the place of production or packinghouse is eligible for export to the United States until APHIS and the NPPO of the Philippines conduct an investigation and appropriate remedial actions have been implemented.

Inspection

The majority of commenters expressed concern regarding the potential for Philippine bananas to act as a pathway for the introduction of insect pests and diseases into Hawaii and the U.S. territories.

Two commenters expressed concern about the ability to detect diseases in their incubation period and control them following establishment.

APHIS has seldom intercepted pests on commercial bananas when produced under a systems approach including bagging bananas after flower drop with plastic bags impregnated with pesticides and harvest of green bananas. Therefore, based on this track record, we are confident the NPPO of the Philippines can effectively oversee the application of the proposed systems approach to importing Philippine bananas to Guam, Hawaii, and the Northern Mariana Islands. We evaluated the potential for diseases to follow the pathway of bananas from the Philippines into Hawaii and the U.S. territories in our PRA and determined that the only disease of concern that could follow that pathway is *Ralstonia solanacearum.* However, based on the requirements of the proposed systems approach, such as bagging the inflorescence at the bending stage, which prevents access to the fruit by disease vectors, and standard industry procedures such as disinfecting tools, we determined that bananas from the Philippines are not likely to present a risk of introducing *R. solanacearum* to Hawaii and the U.S. territories. In addition, APHIS has no record of any interceptions of *R. solanacearum* on banana imports from any country. Therefore, because diseases are not likely to follow the pathway of bananas, the potential latency of disease symptoms is not an issue.

Several commenters expressed concern that Hawaii and the U.S. territories do not have the resources necessary to implement and enforce the proposed regulations, which would increase the risk of accidental or incidental introduction of quarantine pests and diseases.

As stated previously, any required oversight by APHIS in the Philippines will be paid for using monetary support from the industry through establishment of a trust fund. Inspection at the port of arrival will be conducted by APHIS employees in conjunction with Customs and Border Protection, and will be funded by user fees. Hawaii and the U.S. territories will not have any implementation or enforcement responsibilities for the proposed regulations.

Several commenters called for increased inspections of bananas from the Philippines to mitigate pest risk. One commenter stated that, because the PRA identified five times the number of

significant quarantine pests for Guam, Hawaii, and the Northern Mariana Islands than were identified in the PRA prepared for the mainland United States, the proposed systems approach should require a stricter inspection process. However, the commenter did not elaborate on what aspect of the inspection process could be improved. One commenter stated that large inspection fees should be charged for imports, including banana imports, in order to prevent the importation of pests and diseases.

As stated previously, APHIS seldom intercepts pests on commercially produced bananas produced under the proposed systems approach. Therefore, APHIS considers the multiple layers of safeguards sufficient to mitigate the risk posed by the quarantine pests listed in the PRA. These mitigations are based on those currently used in Central and South America for export of bananas to the United States. User fees are charged commensurate with the cost of inspecting imports. We are unable to charge more for inspecting specific goods from certain countries.

One commenter asked why we do not have a set sampling rate established in § 319.56–58(h)(2). The commenter expressed concern that, in the absence of a current sampling rate, monitoring of the procedures required of the Philippine NPPO by APHIS will be insufficient.

Rather than establishing a sampling rate within the regulations, APHIS has determined that setting a sampling rate within the operational workplan provides greater flexibility in the event that the sampling rate must be changed in the future. For most imported fruit, our sampling regime is designed to detect pest infestations if the pest is present in more than 1 or 2 percent of sampled fruit. This corresponds to sampling 150 to 300 fruit.

PRA and RMD

One commenter expressed concern that varieties of banana from the Philippines would be imported for which no risk analysis has been conducted or risk mitigations determined due to lack of published data.

The PRA considered the risks associated with the importation of all banana varieties.

Several commenters noted that the PRA does not assess the risk that quarantine pests may pose to endangered banana or other species found within Hawaii.

The PRA found that no pests were likely to follow the pathway of mature green bananas because the stage of maturity at harvest and several other standard production and post-harvest practices, as detailed in the PRA, were determined to be adequate mitigations. Because no pests were likely to follow the pathway, no further analysis was conducted.

Several commenters referenced pests that have become established in Hawaii or the U.S. territories as a result of the importation of commodities. In the RMD, we stated that between 3.8 and 4 million metric tons of bananas were imported into the United States from Central and South America each year between 2003 and 2007, however, only 1,400 actionable quarantine pests were intercepted on imported bananas in that time period. One commenter stated that citing the small number of pest interceptions on bananas from Central and South America versus the volume of shipments is misleading given that the number of pests that remained undetected would be correspondingly larger for larger shipments.

Most pest interceptions, specifically fruit fly, occur in fruit seized in passenger baggage rather than in commercial imports. Fruit in passenger baggage will continue to be prohibited under this rule. While the commenter may be correct that larger shipments could potentially contain larger numbers of undetected quarantine pests, just one interception of a target pest in a commercial shipment would be enough to cause APHIS to suspend a commercial import program. This was the case for the suspension of the Spanish clementine import program when a very small number of live Mediterranean fruit fly (*Ceratitis capitata*) larvae were discovered in a shipment. Importations of clementine from Spain did not resume until a review was conducted and pest mitigations strengthened. Therefore, we consider the multiple layers of safeguards in the proposed rule sufficient to mitigate the risk posed by the quarantine pests listed in the PRA.

One commenter stated that all bananas grown in production areas should be produced from tissue culture in order to deter disease and asked whether this is currently the case in the Philippines. The commenter further stated that, since tissue culture for specialty bananas may not be available, those banana varieties may need to be restricted from importation until tissue culture is viable.

The Philippines has indicated that producing bananas using tissue culture is part of their standard industry practices.

The PRA lists *Imperata cylindrica* L. as a Federal noxious weed present in the Philippines, but that is not likely to follow the pathway of Philippine bananas due to production procedures and post-harvest processing requirements, such as bagging of bananas during the growing season and the use of high-pressure water sprays. One commenter stated that these measures are insufficient to prevent introduction of the weed to Hawaii and suggested that bananas grown in fields near *I. cylindrica* L. be inspected and safeguarded from contamination with *I. cylindrica* L. seeds.

Paragraph (b)(1) requires that the Philippine NPPO conduct inspections of places of production beginning 3 months before harvest and throughout the shipping season to ensure compliance with the regulations. In addition, APHIS may also conduct inspections of production areas as necessary to ensure compliance. This inspection regimen coupled with the use of bagging and high-pressure water sprays makes it highly unlikely that seeds of *I. cylindrical* L. could contaminate shipments of Philippine bananas. Therefore, the PRA concluded the weed was highly unlikely to follow the pathway.

One commenter raised concerns about the chemicals used in the Philippines to treat bananas in the field. The commenter stated that these chemicals are illegal in the United States and questioned whether the field inspectors in the Philippines would actually test the bananas for disease and pesticide residues prior to exportation. A second commenter raised concerns about the quality of life of Filipino field workers and suggested revisions to the proposed systems approach to ensure their safety and wellbeing, particularly when handling harmful pesticides.

While the United States does not have direct control over pesticides that are used on food commodities such as bananas in other countries, there are regulations in the United States concerning the importation of food to ensure that commodities do not enter the United States containing illegal pesticide residues. Through section 408 of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) has the authority to establish, change, or cancel tolerances for food commodities. These EPA-set tolerances are the maximum levels of pesticide residues that have been determined, through comprehensive safety evaluations, to be safe for human consumption. Tolerances apply to both food commodities that are grown in the United States and food commodities that are grown in other countries and imported into the United States. The

EPA tolerance levels are enforced once the commodity enters the United States. Chemicals such as DDT that are banned in the United States do not have tolerances on food commodities. Federal Government food inspectors are responsible for monitoring food commodities that enter the United States to confirm that tolerance levels are not exceeded and that residues of pesticide chemicals that are banned in the United States are not present on the commodities. Tolerance levels for all chemicals that are acceptable for use on bananas may be found in EPA's regulations in 40 CFR 180.101 through 180.2020. Tolerance information can also be obtained at *http://www.epa.gov/pesticides/food/viewtols.htm.* Pesticide use in the Philippines is regulated through the Fertilizer and Pesticide Authority (FPA). Under this authority, all pesticides are required to be registered and all pesticide handlers must be licensed. In addition, the FPA restricts or bans the use of any pesticide when evidence shows that the pesticide is an imminent hazard to crops, fish, livestock, the environment, or public health.

One commenter stated that repeated use of pesticides and bait sprays may increase pest resistance and that the operational workplan must include a requirement to review the long-term efficacy of pesticides.

APHIS uses information based on studies conducted by the EPA to determine the appropriate chemical and dosage requirements for use against quarantine pests. It is outside the scope of APHIS' mission to review pesticide resistance.

One commenter pointed out inconsistencies between the PRA and RMD and expressed concern regarding the omission of certain standard industry practices from the requirements in the RMD. The commenter stated that removing standard industry practices effectively dismantles the systems approach, making the following steps in the systems approach less effective. To address this concern, the commenter suggested we explain that the standard industry practices outlined in the PRA remain in place for bananas from the Philippines and that we edit the RMD to reflect this clarification.

APHIS does not require industry standard practices that are not technically and scientifically justified as a way to prevent or remove pests. APHIS omitted certain standard industry practices from the requirements in the RMD because those practices are designed to produce marketable fruit rather than to remove plant pests. Although we are not requiring those practices, they are routinely conducted in the Philippines.

One commenter pointed out that the references used for the PRA did not include more recent publications important for analyzing the potential for establishment of *Bactrocera musae* (banana fruit fly) in Hawaii. The commenter cited one publication in particular which indicated that banana fruit fly may oviposit in bananas earlier than the mature green stage, necessitating mitigations earlier than is common practice, and that they may demonstrate varietal host preferences.

Although we recognize the commenter's concern, our pest interception data does not indicate a higher risk of *Bactrocera* spp. fruit fly infestations in bananas than *Anastrepha* spp. fruit fly infestations. In addition, according to highly regarded scientific sources referenced in the PRA, the banana fruit fly is not present in the Philippines. However, as an additional precaution, the fruit is required to be bagged as soon as the blossom falls, while the fruit is still very small. The banana will remain in the pesticide-impregnated bag for months until harvest. Therefore, it is very unlikely that the banana will be subject to fruit fly infestation during the growing season. APHIS will also require sampling and fruit cutting to ensure the efficacy of the systems approach.

One commenter referred to table 6 in the PRA and asked whether the column header ''Quarantine pest'' refers to whether or not Hawaii and the U.S. territories consider the listed pest a State quarantine pest. If so, the commenter stated that APHIS should check the responses with respect to Hawaii to ensure accuracy.

The PRA was drafted with respect to pest status in Hawaii and the U.S. territories. Therefore, the quarantine pests referred to are those that are considered quarantine pests with respect to those States.

Fruit Fly Mitigations

One commenter opposed the importation of hard green bananas from the Philippines, testifying to the occurrence of fruit fly attacks on hard green bananas in the aftermath of a typhoon. Due to the frequency of typhoon activity in the Philippines, the commenter expressed concern that the risk of introducing fruit flies into Hawaii and the U.S. territories increases with the importation of bananas from the Philippines even when the bananas have been harvested at the hard green stage.

Under paragraph (b) of § 319.56–3, all consignments of fruits and vegetables are subject to inspection at the port of entry. Inspectors will monitor for all pests listed in the PRA. Harvesting bananas at a hard green stage (i.e., bananas with no yellow or green color break) is a standard industry practice for banana production in Central and South America, the Philippines, Hawaii, and most of the world because ripe bananas are more likely to be infested by fruit flies. Bananas will be inspected at the port of entry to verify that they are at the proper stage of ripeness. APHIS interception records going back to 1983 indicate that there have been no interceptions of fruit flies in commercially produced bananas from Central and South America. However, two additional mitigations (fruit fly trapping and population control) were added specifically for the Philippine bananas program to address fruit fly risk. If a typhoon were to occur during the growing season, the likelihood is that the bags required to be placed over the fruit would not stay in place. This would disqualify such fruit from importation into the United States as it would no longer have been produced in accordance with the systems approach. In addition, even if fruit flies were to infest the fruit and the fruit were not immediately culled, the NPPO would cull such fruit during inspection due to the visible damage done by fruit fly feeding. Finally, as mentioned previously, APHIS requires sampling and cutting of fruit to detect pests in shipments. These measures provide an added measure of protection against the introduction and establishment of fruit flies.

Two commenters expressed concern that APHIS would stop requiring fruit fly trapping after 2 years of inspections with no interception of fruit fly larvae. One commenter asked how APHIS would monitor changes in the fruit fly population in the Philippines if we no longer required trapping. The second commenter stated that 2 years of trapping data are not representative of future fruit fly populations when pesticide applications are not standardized between production areas and when production areas and the varieties of bananas they grow may change as well. The commenter further suggested using the bait sprays as a way for areas that do not have low prevalence for fruit flies to attain low prevalence or requiring importation only from pest free areas.

As stated in the proposed rule, we do not want to impose trapping requirements if they are not justified by the presence of fruit fly larvae in

Philippine bananas. This is in accordance with IPPC standards, which require that phytosanitary measures represent the least restrictive measures available and result in the minimum impediment to the international movement of people, commodities, and conveyances. Bananas are poor hosts of fruit flies, especially when harvested green. In addition, we have never intercepted fruit flies in shipments of commercial bananas from Central or South America where the same systems approach is in place. Although *Bactrocera* spp. fruit flies have been intercepted in bananas found in passenger baggage, these interceptions were very rare and they did not originate from the Philippines. The only fruit fly known to infest green bananas is the banana fruit fly, which as stated previously, is not present in the Philippines. APHIS does not require fruit fly trapping for bananas from Central or South America and we are requiring trapping for 2 years within the Philippines only as an abundance of caution. The primary mitigation methods are the poor host status of green bananas and the pesticide-impregnated bagging. Therefore, we do not believe it is necessary to continue to require fruit fly trapping in the absence of fruit fly larvae after 2 years. If fruit flies are discovered during sampling of commercial fruit, the export program will be suspended and trapping or other, equivalent measures, may be reinstated.

One commenter stated that, because of the prevalence of fruit fly species in Hawaii, the banana fruit fly could remain undetected there when it would likely be easily detected and eradicated in the continental United States.

While it is the case that a number of fruit fly species are present in Hawaii, this is not a sound scientific and technical justification for requiring permanent fruit fly trapping in the Philippines. In the proposed rule, we proposed to require the NPPO of the Philippines to monitor the bananas for pests, and if we have any problems in the first 2 years of the program, we may consider extending the trapping requirement.

Bagging Requirements

In the proposed rule, we proposed that each place of production would have to follow a pest management program specified by the NPPO of the Philippines to reduce populations of quarantine pests. This management program would include applying pesticides to reduce pest populations and bagging bananas after flower drop with plastic bags impregnated with pesticides. One commenter stated that the time between flower removal and bagging may vary with different banana varieties, which may allow for longer exposure times to the banana fruit fly for varieties that may be preferred hosts of the banana fruit fly. The commenter also asked whether bagging is done for all banana varieties when the inflorescence is at the bending stage, which is included in the planned mitigations for Bugtok and Moko banana varieties per the PRA.

Because the growing period of commercial bananas is longer than the life cycle of fruit flies within the Philippines, in the unlikely event that fruit are bagged after fruit fly infestation, larvae would have emerged prior to harvest. The presence of fruit flies in the bags along with larval emergence holes would disqualify such bananas from importation.

Post-harvest Processing

Citing pest interception data, one commenter stated that the cleaning process to remove surface pests has not been effective in bananas from Central and South America. The commenter indicated that this may be a particular problem with pests that are known disease vectors. The commenter suggested that utilizing standard industry practices within the Philippines, such as using aluminum sulfate, may be more effective as a mitigation.

We disagree with the commenter that the cleaning process to prevent surface pests has been ineffective. The number of pests intercepted in shipments of bananas from Central and South America has been very low given the volume of imported bananas from those areas. If, however, we find that a significant number of surface pests are arriving on bananas from the Philippines, we will either suspend the import program or amend the required mitigation measures to address the issue.

Phytosanitary Certificate

One commenter stated that phytosanitary certificates from the Philippines are not effective in preventing the introduction of foreign pests and diseases because fake phytosanitary certificates can be easily purchased in Manila.

The Philippines is a signatory to the IPPC, like the United States. As a signatory to the IPPC, one of the Philippines' responsibilities is to issue phytosanitary certificates with accurate and complete information. We have no reason to doubt that the Philippines will do this.

Economic Analysis

Two commenters objected to the number of unknowns in the economic analysis of the proposed rule, including the volume of bananas to be imported. The commenters stated that, unlike the continental United States, Hawaii in particular is a large producer of bananas. Therefore, the proposed rule could have unforeseen economic impacts on Hawaiian growers.

The information contained in the economic analysis was based on the best information available. As stated previously, APHIS does not have the authority to restrict imports solely on the grounds of potential economic effects on domestic entities that could result from increased imports. Current Hawaiian banana production provides considerable banana supply to the Hawaiian market, however it is apparently not enough to satisfy the demand for banana consumption in Hawaii. Any impact of the rule on U.S. banana producers in Hawaii and U.S. territories is likely to be small. To the extent that new imports of bananas from the Philippines arrive in Hawaii and U.S. territories, consumers will benefit from this additional source of fresh bananas. In addition, part of APHIS' examination of the economic impact of a regulation is to determine the regulation's net benefits and costs to U.S. consumers as well as U.S. producers.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Commercial production of bananas in the United States takes place in Hawaii, where most if not all of the banana farms are small entities. Currently, about 4.1 million metric tons (MT) of bananas are imported into the United States (including the State of Hawaii) every year. In 2011, Hawaii's banana harvest totaled about 7,900 MT.

We do not have information at this point on the quantity of bananas that the Philippines expects to ship to the State of Hawaii or to the U.S. territories, or the quantity and origin of bananas already imported into these destinations. However, Hawaii as well as the U.S. territories, already import bananas from other places since the volume of banana consumption is greater than their production. In general, the quantity of U.S. imports from the Philippines is expected to be relatively insignificant, equivalent to about 0.05 percent of U.S. imports from other countries. What percent would go to Hawaii depends on the demand from the consumers in the State of Hawaii and in the other U.S. territories. Consumers in Hawaii and the U.S. territories would benefit from the additional source of fresh bananas, which are of similar quality as the domestic ones.

Executive Order 12988

This final rule allows bananas to be imported into Guam, Hawaii, and the Northern Mariana Islands from the Philippines. State and local laws and regulations regarding bananas imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment (EA) and finding of no significant impact were prepared in 2012 for a final rule for importation of bananas from the Philippines into the continental United States. The EA provided a basis for the conclusion that the importation of bananas from the Philippines into the continental United States, under the conditions specified in that rule, would not have a significant impact on the quality of the human environment. APHIS reviewed the proposal to import bananas from the Philippines into Guam, Hawaii, and the Northern Mariana Islands under the conditions specified in this rule, and determined that this will not have a significant impact on the quality of the human environment. APHIS prepared an amended finding of no significant impact, and the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The 2012 EA and amended finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The EA and amended finding of no significant impact may be viewed on the Regulations.gov Web site (see footnote 1). Copies of the EA and amended finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0415, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–58 is amended as follows:

■ a. The introductory text is revised;

■ b. In paragraph (c), the date ''February 9, 2015'' is removed and the date ''November 10, 2016'' is added in its place;

■ c. In paragraph (h)(2), in the second sentence, the words ''introductory text of this section'' are removed and the words ''operational workplan required by paragraph (a)(1) of this section'' are added in their place; and

■ d. In the OMB citation at the end of the section, the words ''number 0579–0394'' are removed and the words ''numbers 0579–0394 and 0579–0415'' are added in their place.

The revision reads as follows:

§ 319.56–58 Bananas from the Philippines.

Bananas (*Musa* spp., which include *M. acuminate* cultivars and *M. acuminate* x *M. balbisiana* hybrids) may be imported into the continental United States, Guam, Hawaii, and the Northern Mariana Islands from the Philippines only under the conditions described in this section.

* * * * *

Done in Washington, DC, this 6th day of October 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–24246 Filed 10–9–14; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2009–0038]

RIN 0960–AH03

Revised Medical Criteria for Evaluating Genitourinary Disorders

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules revise the criteria in the Listing of Impairments (listings) that we use to evaluate cases

involving genitourinary disorders in adults and children under titles II and XVI of the Social Security Act (Act). The revisions reflect our program experience and address adjudicator questions we have received since we last comprehensively revised this body system in 2005.

DATES: These rules are effective December 9, 2014.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are making final the rules for evaluating genitourinary disorders that we proposed in a notice of proposed rulemaking (NPRM) we published in the **Federal Register** on February 4, 2013 at 78 FR 7695. The preamble to the NPRM provides the background for these revisions. You can view the preamble to the NPRM by visiting *http://www.regulations.gov* and searching for document ''SSA–2009–0038–0005.'' We are making a number of changes in response to public comments to the NPRM, which we explain below.

Why are we revising the listings for evaluating genitourinary disorders?

We are revising the listings for evaluating genitourinary disorders to update the medical criteria, clarify how we evaluate genitourinary disorders, and address adjudicator questions.

Public Comments

In the NPRM, we provided the public with a 60-day comment period, which ended on April 5, 2013. We received six comments. The comments came from members of the public, disability adjudicators, and a national association representing disability examiners in the State agencies that make disability determinations for us.

We carefully considered all of the comments. We have tried to summarize the commenters' views accurately and respond to all of the significant issues raised by the commenters that were within the scope of these rules. Some commenters noted provisions with which they agreed and did not make suggestions for changes in those provisions. We did not summarize or respond to those comments.

Comment: One commenter asked if we would require the estimated glomerular filtration rate (eGFR) to be adjusted for race and sex. The commenter also suggested that we establish an eGFR calculator to calculate the eGFR for the criterion in proposed 6.05A.

Response: We did not adopt this comment. The eGFR is a calculated value based on the measured serum creatinine. The formulas used by laboratories to calculate eGFR all include adjustments for age, race, and sex. We will use the eGFR value as calculated by the laboratory and will not independently calculate eGFR. Thus, we will not develop a calculator for eGFR.

Comment: Another commenter noted that the weight loss criterion in proposed listing 6.05B4 (body mass index (BMI) of 18.0 or less) is not consistent with the weight loss criterion in listing 5.08 (BMI of less than 17.5) and suggested that we change the criterion for consistency.

Response: We did not adopt this comment. We believe it is appropriate to use a different BMI criterion for listing 6.05B4 than we use in listing 5.08. The criterion in listing 6.05B4 considers the severity of a person's underlying chronic kidney disease (CKD) and its effect on his or her nutrition and metabolic status. People with CKD are unable to maintain adequate weight due to decreased dietary protein intake and decreased dietary energy intake, which are hallmarks of kidney failure. People with CKD may have an increased prevalence of protein energy malnutrition. Furthermore, listing 5.08 requires a lower BMI because the listing considers only weight loss due to any digestive disorder. Listing 5.08 does not consider the severity of the individual's underlying digestive disorder.

In listing 5.08, we require BMI of less than 17.5 calculated on at least two evaluations, at least 60 days apart, within a consecutive 6-month period. In final listing 6.05B4, we require the same number of BMI evaluations within a consecutive 12-month period. We are using the consecutive 12-month period to be consistent with the 12-month duration requirement.[1] The 12-month period is also consistent with the period we use when we evaluate hospitalizations due complications of a genitourinary disorder in 6.09 and 106.09.

Comment: One commenter expressed concern about proposed listing 6.09, regarding how to explain ''CKD complications requiring hospitalizations versus hospitalizations due to a group of co-morbid conditions, including CKD.'' The same commenter also suggested that we add guidance in the introductory text to address acute worsening of CKD during hospitalizations for co-occurring conditions.

Response: We agree with the comment and provided clarification regarding CKD complications in final listings 6.00C8 and 106.00C5.

Comment: A commenter suggested revisions to proposed listing 106.07 requesting a 24-month period with 3 surgeries for childhood genitourinary disorders instead of 3 surgeries within 12-month period.

Response: We are not adopting this comment because using a 12-month period for evaluating an impairment is an intrinsic part of our basic definition of disability.[2] We consider the combinations of impairments and limitations in functioning at step 3 of the sequential evaluation process, using our medical equivalence and functional equivalence rules.[3] We recognize that some children who have multiple surgeries for genitourinary impairments may have limitations in functioning that last longer. In such cases, we evaluate those limitations under our medical equivalence and functional equivalence rules.

Comment: One commenter stated that there are undefined and poorly defined terms in the genitourinary listings. The commenter said these terms included ''frequent,'' ''intractable,'' ''interferes,'' ''anasarca,'' ''anorexia,'' and ''severe bone pain.''

Response: We partially adopted this comment. We provide brief definitions for several medical terms when we first use the terms in the introductory text of these final listings. We define anasarca in 6.00C6 and 106.00C3; anorexia in 6.00C7; and ''severe bone pain'' and ''intractable'' in 6.00C3. We have not provided definitions for the terms ''frequent'' and ''interferes.'' We use these two terms in our definition of ''severe bone pain'' and use them in their common English usage.

Comment: A commenter stated that there are no listings for combinations of impairments. The commenter stated that the NPRM includes only single genitourinary disorders and leaves out many important combinations of disorders. Examples that the commenter provided included severe CKD not requiring dialysis and coronary artery disease; peripheral neuropathy and

[1] 20 CFR 404.1509 and 416.909.

[2] See 42 U.S.C. 423(d)(1)(a) and (d)(2)(a), and 1382c(a)(3)(A) and 20 CFR 404.1505, 404.1509, 416.905, 416.906, and 416.909.

[3] See 20 CFR 416.926 and 416.926a(a).

generalized edema; and fluid overload and coronary artery disease. The commenter also noted ''a complete lack of listings that consider obesity.''

Response: We did not adopt this comment. We recognize that genitourinary disorders may co-occur with impairments in other body systems. In some cases, the impairment in another body system results from a genitourinary disorder; for example, peripheral neuropathy resulting from CKD. In other cases, the impairment in another body system is not related to the genitourinary disorder; for example, peripheral neuropathy resulting from diabetes mellitus.

We intend the listings to address genitourinary disorders and the complications of those disorders. When the co-occurring condition or complication is due to a genitourinary disorder, we evaluate it under final listing 6.09. However, when the co-occurring impairments are unrelated, we believe it is more appropriate to evaluate the combination under our medical equivalence rule at step 3 of the sequential evaluation process, or at steps 4 and 5 of the sequential evaluation process.[4] At these steps, adjudicators can account for specific combinations of impairments, complications of those impairments, and limitations of functioning on an individual case basis. We address this in the introductory text of final listing 6.00C8.

Comment: A commenter noted that we provide no quantitative data to show the validity of any of our genitourinary proposed listings and noted that many people engage in substantial gainful activity (SGA) even though they meet the requirements of a listing. The commenter believes that this challenges the validity of using the listings to determine whether a person is disabled.

Response: We disagree with this comment. Our NPRM included an extensive list of medical and other references that we relied on in proposing these rules. We also invited the public to comment on these references and the data contained within them.

The listings help to ensure that determinations or decisions of disability have a sound medical basis, that claimants receive equal treatment throughout the country, and that we can readily identify the majority of persons who are disabled. The level of severity described in the listings is such that an individual, whom is not engaging in SGA and has an impairment that meets or medically equals all of the criteria of the listing, is generally considered unable to work because of the medical impairment alone at step three of the sequential evaluation process. Thus, when such a person's impairment or combination of impairments meets or medically equals the level of severity described in the listing for the required duration, disability will be found on the basis of the medical facts alone in the absence of evidence to the contrary, for example, the actual performance of SGA.

Comment: A commenter stated that the proposed criteria discriminate against the poor because they include medical tests that people cannot afford and that we will not purchase, such as kidney or bone biopsies, imaging studies, and 24-hour urine protein tests. The same commenter also stated that requirements, such as 90 consecutive days of prescribed therapy, urologic surgical procedures, and hospitalization, discriminate against people who cannot afford treatment, and suggested that we delete the requirements ''[u]nless the Administration is willing to make a commitment to purchase these.''

Response: We did not adopt the commenter's suggestion. People with the very serious genitourinary impairments described in these listings generally receive the kinds of diagnostic tests and treatments described in these final rules because of urgent medical need. However, we do not penalize people who do not have the kinds of medical evidence that we describe in these listings. Under our rules, we may purchase medical examinations or tests to obtain the evidence that we need, but we will not purchase diagnostic tests that involve significant risk to the person, such as kidney or bone biopsies.[5] Furthermore, we provide several alternatives for people with genitourinary impairments to establish that their impairment is of listing-level severity at step three of the sequential evaluation process. If the impairment is not of listing-level severity, we may find the person disabled at subsequent steps of the sequential evaluation process when considering the person's residual functional capacity, age, education, and work experience.

Comment: Two commenters pointed out stylistic and technical editorial issues in the preamble and the proposed rules.

Response: We have made appropriate corrections in these final rules.

Other Changes

In addition to the changes we made in response to public comments, we revised 6.00C1 and 106.00C1 to clarify the documentation requirement for hemodialysis or peritoneal dialysis.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them.[6]

How long will these final rules be effective?

These final rules will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and was reviewed by OMB.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These final rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, survivors, and disability

[4] See 20 CFR 404.1526 and 416.926.

[5] See 20 CFR 404.1519m and 416.919m.

[6] 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1).

insurance, Reporting and recordkeeping requirements, Social Security.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404, subpart P as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by:

■ a. Revising item 7 of the introductory text before part A;

■ b. In part A:

■ i. Revising the body system name for section 6.00 in the table of contents; and

■ ii. Revising section 6.00;

■ c. In part B:

■ i. Revising the body system name for section 106.00 in the table of contents; and

■ ii. Revising section 106.00.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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7. Genitourinary Disorders (6.00 and 106.00): December 9, 2019.

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Part A

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6.00 Genitourinary Disorders.

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6.00 GENITOURINARY DISORDERS

A. Which disorders do we evaluate under these listings?

We evaluate genitourinary disorders resulting in chronic kidney disease (CKD). Examples of such disorders include chronic glomerulonephritis, hypertensive nephropathy, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies. We also evaluate nephrotic syndrome due to glomerular dysfunction under these listings.

B. What evidence do we need?

1. We need evidence that documents the signs, symptoms, and laboratory findings of your CKD. This evidence should include reports of clinical examinations, treatment records, and documentation of your response to treatment. Laboratory findings, such as serum creatinine or serum albumin levels, may document your kidney function. We generally need evidence covering a period of at least 90 days unless we can make a fully favorable determination or decision without it.

2. *Estimated glomerular filtration rate (eGFR).* The eGFR is an estimate of the filtering capacity of the kidneys that takes into account serum creatinine concentration and other variables, such as your age, gender, and body size. If your medical evidence includes eGFR findings, we will consider them when we evaluate your CKD under 6.05.

3. *Kidney or bone biopsy.* If you have had a kidney or bone biopsy, we need a copy of the pathology report. When we cannot get a copy of the pathology report, we will accept a statement from an acceptable medical source verifying that a biopsy was performed and describing the results.

C. What other factors do we consider when we evaluate your genitourinary disorder?

1. *Chronic hemodialysis or peritoneal dialysis.*

a. Dialysis is a treatment for CKD that uses artificial means to remove toxic metabolic byproducts from the blood. Hemodialysis uses an artificial kidney machine to clean waste products from the blood; peritoneal dialysis uses a dialyzing solution that is introduced into and removed from the abdomen (peritoneal cavity) either continuously or intermittently. Under 6.03, your ongoing dialysis must have lasted or be expected to last for a continuous period of at least 12 months. To satisfy the requirements in 6.03, we will accept a report from an acceptable medical source that describes your CKD and your current dialysis, and indicates that your dialysis will be ongoing.

b. If you are undergoing chronic hemodialysis or peritoneal dialysis, your CKD may meet our definition of disability before you started dialysis. We will determine the onset of your disability based on the facts in your case record.

2. *Kidney transplant.*

a. If you receive a kidney transplant, we will consider you to be disabled under 6.04 for 1 year from the date of transplant. After that, we will evaluate your residual impairment(s) by considering your post-transplant function, any rejection episodes you have had, complications in other body systems, and any adverse effects related to ongoing treatment.

b. If you received a kidney transplant, your CKD may meet our definition of disability before you received the transplant. We will determine the onset of your disability based on the facts in your case record.

3. *Renal osteodystrophy.* This condition is the bone degeneration resulting from chronic kidney disease-mineral and bone disorder (CKD–MBD). CKD–MBD occurs when the kidneys are unable to maintain the necessary levels of minerals, hormones, and vitamins required for bone structure and function. Under 6.05B1, ''severe bone pain'' means frequent or intractable (resistant to treatment) bone pain that interferes with physical activity or mental functioning.

4. *Peripheral neuropathy.* This disorder results when the kidneys do not adequately filter toxic substances from the blood. These toxins can adversely affect nerve tissue. The resulting neuropathy may affect peripheral motor or sensory nerves, or both, causing pain, numbness, tingling, and muscle weakness in various parts of the body. Under 6.05B2, the peripheral neuropathy must be a severe impairment. (See §§ 404.1520(c), 404.1521, 416.920(c), and 416.921 of this chapter.) It must also have lasted or be expected to last for a continuous period of at least 12 months.

5. *Fluid overload syndrome.* This condition occurs when excess sodium and water retention in the body due to CKD results in vascular congestion. Under 6.05B3, we need a description of a physical examination that documents signs and symptoms of vascular congestion, such as congestive heart failure, pleural effusion (excess fluid in the chest), ascites (excess fluid in the abdomen), hypertension, fatigue, shortness of breath, or peripheral edema.

6. *Anasarca* (generalized massive edema or swelling). Under 6.05B3 and 6.06B, we need a description of the extent of edema, including pretibial (in front of the tibia), periorbital (around the eyes), or presacral (in front of the sacrum) edema. We also need a description of any ascites, pleural effusion, or pericardial effusion.

7. *Anorexia (diminished appetite) with weight loss.* Anorexia is a frequent sign of CKD and can result in weight loss. We will use body mass index (BMI) to determine the severity of your weight loss under 6.05B4. (BMI is the ratio of your measured weight to the square of your measured height.) The formula for calculating BMI is in section 5.00G.

8. *Complications of CKD.* The hospitalizations in 6.09 may be for different complications of CKD. Examples of complications from CKD that may result in hospitalization include stroke, congestive heart failure, hypertensive crisis, or acute kidney failure requiring a short course of hemodialysis. If the CKD complication occurs during a hospitalization that was initially for a co-occurring condition, we will evaluate it under our rules for determining medical equivalence. (See §§ 404.1526 and 416.926 of this chapter.) We will evaluate co-occurring conditions, including those that result in hospitalizations, under the listings for the affected body system or under our rules for medical equivalence.

D. How do we evaluate disorders that do not meet one of the genitourinary listings?

1. The listed disorders are only examples of common genitourinary disorders that we consider severe enough to prevent you from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926 of this

chapter.) Genitourinary disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not meet or medically equal the criteria of a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. We proceed to the fourth and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

6.01 Category of Impairments, Genitourinary Disorders

6.03 *Chronic kidney disease,* with chronic hemodialysis or peritoneal dialysis (see 6.00C1).

6.04 *Chronic kidney disease,* with kidney transplant. Consider under a disability for 1 year following the transplant; thereafter, evaluate the residual impairment (see 6.00C2).

6.05 *Chronic kidney disease,* with impairment of kidney function, with A and B:

A. Reduced glomerular filtration evidenced by one of the following laboratory findings documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

1. Serum creatinine of 4 mg/dL or greater; or

2. Creatinine clearance of 20 ml/min. or less; or

3. Estimated glomerular filtration rate (eGFR) of 20 ml/min/1.73m^2 or less.

AND

B. One of the following:

1. Renal osteodystrophy (see 6.00C3) with severe bone pain and imaging studies documenting bone abnormalities, such as osteitis fibrosa, osteomalacia, or pathologic fractures; or

2. Peripheral neuropathy (see 6.00C4); or

3. Fluid overload syndrome (see 6.00C5) documented by one of the following:

a. Diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg despite at least 90 consecutive days of prescribed therapy, documented by at least two measurements of diastolic blood pressure at least 90 days apart during a consecutive 12-month period; or

b. Signs of vascular congestion or anasarca (see 6.00C6) despite at least 90 consecutive days of prescribed therapy, documented on at least two occasions at least 90 days apart during a consecutive 12-month period; or

4. Anorexia with weight loss (see 6.00C7) determined by body mass index (BMI) of 18.0 or less, calculated on at least two occasions at least 90 days apart during a consecutive 12-month period.

6.06 *Nephrotic syndrome,* with A and B:

A. Laboratory findings as described in 1 or 2, documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

1. Proteinuria of 10.0 g or greater per 24 hours; or

2. Serum albumin of 3.0 g/dL or less, and

a. Proteinuria of 3.5 g or greater per 24 hours; or

b. Urine total-protein-to-creatinine ratio of 3.5 or greater.

AND

B. Anasarca (see 6.00C6) persisting for at least 90 days despite prescribed treatment.

6.09 *Complications of chronic kidney disease* (see 6.00C8) requiring at least three hospitalizations within a consecutive 12-month period and occurring at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

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Part B

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106.00 Genitourinary Disorders.

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106.00 GENITOURINARY DISORDERS

A. Which disorders do we evaluate under these listings?

We evaluate genitourinary disorders resulting in chronic kidney disease (CKD). Examples of such disorders include chronic glomerulonephritis, hypertensive nephropathy, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies. We also evaluate nephrotic syndrome due to glomerular dysfunction, and congenital genitourinary disorders, such as ectopic ureter, exotrophic urinary bladder, urethral valves, and Eagle-Barrett syndrome (prune belly syndrome), under these listings.

B. What evidence do we need?

1. We need evidence that documents the signs, symptoms, and laboratory findings of your CKD. This evidence should include reports of clinical examinations, treatment records, and documentation of your response to treatment. Laboratory findings, such as serum creatinine or serum albumin levels, may document your kidney function. We generally need evidence covering a period of at least 90 days unless we can make a fully favorable determination or decision without it.

2. *Estimated glomerular filtration rate (eGFR).* The eGFR is an estimate of the filtering capacity of the kidneys that takes into account serum creatinine concentration and other variables, such as your age, gender, and body size. If your medical evidence includes eGFR findings, we will consider them when we evaluate your CKD under 106.05.

3. *Kidney or bone biopsy.* If you have had a kidney or bone biopsy, we need a copy of the pathology report. When we cannot get a copy of the pathology report, we will accept a statement from an acceptable medical source verifying that a biopsy was performed and describing the results.

C. What other factors do we consider when we evaluate your genitourinary disorder?

1. *Chronic hemodialysis or peritoneal dialysis.*

a. Dialysis is a treatment for CKD that uses artificial means to remove toxic metabolic byproducts from the blood. Hemodialysis uses an artificial kidney machine to clean waste products from the blood; peritoneal dialysis uses a dialyzing solution that is introduced into and removed from the abdomen (peritoneal cavity) either continuously or intermittently. Under 106.03, your ongoing dialysis must have lasted or be expected to last for a continuous period of at least 12 months. To satisfy the requirement in 106.03, we will accept a report from an acceptable medical source that describes your CKD and your current dialysis, and indicates that your dialysis will be ongoing.

b. If you are undergoing chronic hemodialysis or peritoneal dialysis, your CKD may meet our definition of disability before you started dialysis. We will determine the onset of your disability based on the facts in your case record.

2. *Kidney transplant.*

a. If you receive a kidney transplant, we will consider you to be disabled under 106.04 for 1 year from the date of transplant. After that, we will evaluate your residual impairment(s) by considering your post-transplant function, any rejection episodes you have had, complications in other body systems, and any adverse effects related to ongoing treatment.

b. If you received a kidney transplant, your CKD may meet our definition of disability before you received the transplant. We will determine the onset of your disability based on the facts in your case record.

3. *Anasarca* (generalized massive edema or swelling). Under 106.06B, we need a description of the extent of edema, including pretibial (in front of the tibia), periorbital (around the eyes), or presacral (in front of the sacrum) edema. We also need a description of any ascites, pleural effusion, or pericardial effusion.

4. *Congenital genitourinary disorder.* Procedures such as diagnostic cystoscopy or circumcision do not satisfy the requirement for urologic surgical procedures in 106.07.

5. *Complications of CKD.* The hospitalizations in 106.09 may be for different complications of CKD. Examples of complications from CKD that may result in hospitalization include stroke, congestive heart failure, hypertensive crisis, or acute kidney failure requiring a short course of hemodialysis. If the CKD complication occurs during a hospitalization that was initially for a co-occurring condition, we will evaluate it under our rules for determining medical equivalence. (See § 416.926 of this chapter.) We will evaluate co-occurring conditions, including those that result in hospitalizations, under the listings for the affected body system or under our rules for medical equivalence.

D. How do we evaluate disorders that do not meet one of the genitourinary listings?

1. The listed disorders are only examples of common genitourinary disorders that we consider severe enough to result in marked and severe functional limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not

meet a listing, we will determine whether your impairment(s) medically equals a listing. (See § 416.926 of this chapter.) Genitourinary disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not medically equal a listing, we will also consider whether it functionally equals the listings. (See § 416.926a of this chapter.) We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

106.01 Category of Impairments, Genitourinary Disorders

106.03 *Chronic kidney disease,* with chronic hemodialysis or peritoneal dialysis (see 106.00C1).

106.04 *Chronic kidney disease,* with kidney transplant. Consider under a disability for 1 year following the transplant; thereafter, evaluate the residual impairment (see 106.00C2).

106.05 *Chronic kidney disease,* with impairment of kidney function, with one of the following documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

A. Serum creatinine of 3 mg/dL or greater;

OR

B. Creatinine clearance of 30 ml/min/1.73m^2 or less;

OR

C. Estimated glomerular filtration rate (eGFR) of 30 ml/min/1.73m^2 or less.

106.06 *Nephrotic syndrome,* with A and B:

A. Laboratory findings as described in 1 or 2, documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

1. Serum albumin of 3.0 g/dL or less, or
2. Proteinuria of 40 mg/m^2/hr or greater;

AND

B. Anasarca (see 106.00C3) persisting for at least 90 days despite prescribed treatment.

106.07 *Congenital genitourinary disorder* (see 106.00C4) requiring urologic surgical procedures at least three times in a consecutive 12-month period, with at least 30 days between procedures. Consider under a disability for 1 year following the date of the last surgery; thereafter, evaluate the residual impairment.

106.09 *Complications of chronic kidney disease* (see 106.00C5) requiring at least three hospitalizations within a consecutive 12-month period and occurring at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

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[FR Doc. 2014–24114 Filed 10–9–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 123, 126, and 130

[Public Notice 8898]

RIN 1400–AD64

Amendment to the International Traffic in Arms Regulations: Corrections, Clarifications, and Movement of Definitions

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: In an effort to streamline, simplify and clarify the recent revisions to the International Traffic in Arms Regulations (ITAR) made pursuant to the President's Export Control Reform (ECR) initiative, the Department of State is amending the ITAR as part of the Department of State's retrospective plan under Executive Order 13563 completed on August 17, 2011.

DATES: This rule is effective October 10, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Omnibus Clarifications. The Department of State's full retrospective plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

SUPPLEMENTARY INFORMATION:

Changes in this Rule

The following changes are made to the ITAR with this final rule: (1) Definitions previously provided in §§ 121.3, 121.4, 121.14, and 121.15 are removed from these sections and incorporated into U.S. Munitions List Categories VIII, VII, XX, and VI, respectively; (2) USML Category II is amended to clarify that grenade launchers are controlled in paragraph (a) as a result of the revisions previously made to USML Category IV pursuant to Export Control Reform; (3) USML Category IX is amended to enumerate military training not directly related to a defense article, which is a controlled activity pursuant to ITAR § 120.9(a)(3). This change is required in order to provide exporters a USML category to cite for military training when not related to a defense article; (4) The note to paragraph (b) in the specially designed definition is revised to clarify that catch-all controls are only those that generically control parts, components, accessories, and attachments for a specified article and do not identify a specific specially designed part, component, accessory, or attachment. This revision is intended to help ensure that exporters properly apply ITAR § 120.41 when classifying their article and clarify that when a specific article is described on the USML, it is enumerated and is not part of a catch-all; (5) The definitions previously provided in ITAR § 121.8 are removed to new ITAR § 120.45; (6) The policy with regard to when forgings, castings, and machined bodies are controlled as defense articles is removed from ITAR § 121.10 and placed in ITAR § 120.6; (7) The threshold for lithium-ion batteries controlled in Category VIII(h)(13) is increased from greater than 28 volts of direct current (VDC) nominal to greater than 38 VDC nominal, so as not to control on the USML such batteries in normal commercial aviation use; (8) A control for specially designed parts, components, accessories, and attachments is added to the helmets controlled in Category VIII(h)(15); (9) The phrase ''electric-generating'' is added to the control describing fuel cells in Category VIII(h)(23) to clarify that fuel bladders and fuel tanks are not within this control; (10) The word ''enumerated'' is replaced with the word ''described'' in the paragraphs of the USML for technical data and defense services directly related to the defense articles in that Category to clarify that the controls on technical data and defense services apply even if the defense article is described in a catch-all; (11) Conforming changes are made to citations throughout these sections; and (12) Minor reference corrections are made to Supplement No. 1 to Part 126, including moving the footnote to the entire Supplement from the end to the opening to better clarify if an item is excluded from eligibility in any row, it is excluded from that exemption, even if also described in another row that contains a description that may also include that item.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, a ''major'' rule is a rule that the Administrator of the OMB Office of Information and Regulatory Affairs finds has resulted or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets.

The Department does not believe this rulemaking will have an annual effect on the economy of $100,000,000 or more. Articles that are being removed from coverage in the U.S. Munitions List categories contained in this rule will still require licensing for export, but from the Department of Commerce. While the licensing regime of the Department of Commerce is more flexible than that of the Department of State, it is not expected that the change in jurisdiction of these articles will result in an export difference of $100,000,000 or more.

The Department also does not believe that this rulemaking will result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Parts 120 and 121

Arms and munitions, Classified information, Exports.

22 CFR Part 123

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 130

Arms and munitions, Campaign funds, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, the Department of State amends 22 CFR chapter I as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.6 is revised to read as follows:

§ 120.6 Defense article.

Defense article means any item or technical data designated in § 121.1 of this subchapter. The policy described in § 120.3 is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter. It also includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. It does not include basic marketing information on function or purpose or general system descriptions.

■ 3. Section 120.10 is amended by revising paragraph (a)(4) to read as follows:

§ 120.10 Technical data.

(a) * * *

(4) Software (*see* § 120.45(f)) directly related to defense articles.

* * * * *

■ 4. Section 120.41 is amended by revising paragraph (a) introductory text, paragraph (a)(2), and the note to paragraph (b), to read as follows:

§ 120.41 Specially designed.

(a) Except for commodities or software described in paragraph (b) of

this section, a commodity or software (*see* § 120.45(f)) is specially designed if it:

* * * * *

(2) Is a part (*see* § 120.45 (d)), component (*see* § 120.45(b)), accessory (*see* § 120.45(c)), attachment (*see* § 120.45(c)), or software for use in or with a defense article.

* * * * *

Note to paragraph (b): The term ''enumerated'' refers to any article on the U.S. Munitions List or the Commerce Control List and not in a ''catch-all'' control. A ''catch-all'' control is one that does not refer to specific types of parts, components, accessories, or attachments, but rather controls unspecified parts, components, accessories, or attachments only if they were specially designed for an enumerated item.

* * * * *

■ 5. Section 120.45 is added to read as follows:

§ 120.45 End-items, components, accessories, attachments, parts, firmware, software, systems, and equipment.

(a) An *end-item* is a system, equipment, or an assembled article ready for its intended use. Only ammunition or fuel or other energy source is required to place it in an operating state.

(b) A *component* is an item that is useful only when used in conjunction with an end-item. A major component includes any assembled element that forms a portion of an end-item without which the end-item is inoperable. A minor component includes any assembled element of a major component.

(c) *Accessories* and *attachments* are associated articles for any component, equipment, system, or end-item, and which are not necessary for its operation, but which enhance its usefulness or effectiveness.

(d) A *part* is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of designed use.

(e) *Firmware* and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions, and system test diagnostics) directly related to equipment or systems covered under any category of the U.S. Munitions List are considered as part of the end-item or component. Firmware includes but is not limited to circuits into which software has been programmed.

(f) *Software* includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems, and support software for design, implementation, test, operation, diagnosis and repair. A person who intends to export only software should, unless it is specifically enumerated in § 121.1 of this subchapter (*e.g.,* USML Category XIII(b)), apply for a technical data license pursuant to part 125 of this subchapter.

(g) A *system* is a combination of parts, components, accessories, attachments, firmware, software, equipment, or end-items that operate together to perform a function.

Note to paragraph (g): The industrial standards established by INCOSE and NASA provide examples for when commodities and software operate together to perform a function as a system. References to these standards are included in this note to provide examples for when commodities or software operate together to perform a function as a system. See the INCOSE standards for what constitutes a system at: *http://g2sebok.incose.org/app/mss/asset.cfm?ID=INCOSE%20G2SEBOK%202.00&ST=F,* and in INCOSE SE Handbook v3.1 2007; ISO/IEC 15288:2008. See the NASA standards for examples of what constitutes a system in NASA SE Handbook SP–2007–6105 Rev 1.

(h) *Equipment* is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a function of, as, or for an end-item or system. Equipment may be a subset of an end-item based on the characteristics of the equipment. Equipment that meets the definition of an end-item is an end-item. Equipment that does not meet the definition of an end-item is a component, accessory, attachment, firmware, or software.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 6. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 7. Section 121.1 is amended by:

■ a. Revising the section heading;
■ b. Revising the final sentence of paragraph (b)(2);
■ c. Removing the word ''enumerated'' and adding in its place the word ''described'' in two places in paragraph (b)(2), in two places in paragraph (i) of Category I, in two places in paragraph (k) of Category II, in two places in paragraph (e) of Category III, in one place in paragraph (i) of Category IV, in one place in Note 1 to paragraph (i) of Category VI, in one place in Note to paragraph (h)(1) of Category VIII, in one place in paragraph (i) of Category VIII, in one place in paragraph (e) of Category IX, in one place in paragraph (e) of Category X, in two places in paragraph (d) of Category XI, in two places in paragraph (f) of Category XII, in two places in paragraph (l) of Category XIII, in two places in paragraph (m) of Category XIV, in two places in paragraph (f) of Category XV, in one place in paragraph (e) of Category XVI, in two places in paragraph (f) of Category XVIII, in one place in paragraph (g) of Category XIX, in one place in paragraph (d) of Category XX;
■ d. Revising paragraph (a) of Category II;
■ e. Removing the word ''numerated'' in adding in its place the word ''described'' in paragraph (j) of Category V;
■ f. Revising paragraphs (a) and (b), and adding the note to paragraph (b)(4), and the note to paragraphs (a) and (b) in Category VI;
■ g. Revising paragraphs (a) introductory text, (b), (c), and (e), and adding the note to paragraph (c), and note 1, note 2, and note 3 to Category VII in Category VII;
■ h. Revising paragraphs (a) introductory text, (a)(9), (a)(11), (a)(12), (a)(13), adding paragraphs (a)(14), (a)(15), and (a)(16), revising paragraphs (h)(3), (h)(6), (h)(13), (h)(15), and (h)(23), adding note 1 and note 2 to paragraph (a)(11), and note 1 to paragraph (a), and redesignating the note to paragraph (a) as note 2 to paragraph (a) in Category VIII;
■ i. Revising the title of Category IX, removing the note to paragraph (e) of Category IX, and revising paragraph (e) of Category IX;
■ j. Adding note to paragraph (f)(1) in Category XIX; and
■ k. Revising paragraphs (a) introductory text, (a)(1), and (a)(4), redesignating paragraphs (a)(6), (a)(7), and notes 1 through 3 of paragraph (a)(7) as paragraphs (a)(7), (a)(8), and notes 1 through 3 of paragraph (a)(8), respectively, adding a new paragraph (a)(6) and revising paragraph (a)(7) in Category XX.

The revisions and additions read as follows:

§ 121.1 The United States Munitions List.

* * * * *

(b) * * *

(2) * * * Most U.S. Munitions List categories contain an entry on technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 of this subchapter) related to the defense articles described in that U.S. Munitions List category.

* * * * *

Category II—Guns and Armament

*(a) Guns over caliber .50 (*i.e.,* 12.7 mm), whether towed, airborne, self-propelled, or fixed, including but not limited to, howitzers, mortars, cannons, recoilless rifles, and grenade launchers.

* * * * *

Category VI—Surface Vessels of War and Special Naval Equipment

*(a) Warships and other combatant vessels (*i.e.,* battleships, aircraft carriers, destroyers, frigates, cruisers, corvettes, littoral combat ships, mine sweepers, mine hunters, mine countermeasure ships, dock landing ships, amphibious assault ships), Coast Guard Cutters (with or equivalent to those with U.S. designations WHEC, WMEC, WMSL, or WPB for the purpose of this subchapter), or foreign-origin vessels specially designed to provide functions equivalent to those of the vessels listed above;

(b) Other vessels not controlled in paragraph (a) of this category, as follows:

(1) High-speed air cushion vessels for transporting cargo and personnel, ship-to-shore and across a beach, with a payload over 25 tons;

(2) Surface vessels integrated with nuclear propulsion plants or specially designed to support naval nuclear propulsion plants;

(3) Vessels armed or specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.,* firing lasers, launching torpedoes, rockets, or missiles, or firing munitions greater than .50 caliber); or

(4) Vessels incorporating any mission systems controlled under this subchapter.

Note to paragraph (b)(4): ''Mission systems'' are defined as ''systems'' (*see* § 120.45(g) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

Note to paragraphs (a) and (b): Vessels specially designed for military use that are not identified in paragraph (a) or (b) of this category are subject to the EAR under ECCN 8A609, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and unmodified since 1949. Vessels with modifications made to incorporate safety features required by law, are cosmetic (*e.g.,* different paint), or that add parts or components otherwise available prior to 1950 are considered ''unmodified'' for the purposes of this paragraph.

* * * * *

Category VII—Ground Vehicles

*(a) Armored combat ground vehicles as follows:

* * * * *

*(b) Ground vehicles (not enumerated in paragraph (a) of this category) and trailers that are armed or are specially designed to be used as a firing or launch platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.,* firing lasers, launching rockets, firing missiles, firing mortars, firing artillery rounds, or firing other ammunition greater than .50 caliber) (MT if specially designed for rockets, space launch vehicles, missiles, drones, or unmanned aerial vehicles capable of delivering a payload of at least 500 kg to a range of at least 300 km).

(c) Ground vehicles and trailers equipped with any mission systems controlled under this subchapter (MT if specially designed for rockets, space launch vehicles, missiles, drones, or unmanned aerial vehicles capable of delivering a payload of at least 500 kg to a range of at least 300 km).

Note to paragraph (c): ''Mission systems'' are defined as ''systems'' (*see* § 120.45(g) of this subchapter) that are defense articles that perform specific military functions, such as by providing military communication, target designation, surveillance, target detection, or sensor capabilities.

* * * * *

*(e) Armored support vehicles capable of off-road or amphibious use specially designed to transport or deploy personnel or materiel, or to move with other vehicles over land in close support of combat vehicles or troops (e.g., personnel carriers, resupply vehicles, combat engineer vehicles, recovery vehicles, reconnaissance vehicles, bridge launching vehicles, ambulances, and command and control vehicles).

Note 1 to Category VII: Ground vehicles specially designed for military applications that are not identified in this category are subject to the EAR under ECCN 0A606, including any unarmed ground vehicles, regardless of origin or designation, manufactured prior to 1956 and unmodified since 1955. Ground vehicles with modifications made to incorporate safety features required by law, are cosmetic (*e.g.,* different paint, repositioning of bolt holes), or that add parts or components otherwise available prior to 1956 are considered ''unmodified'' for the purposes of this paragraph. ECCN 0A606 also includes unarmed vehicles derived from otherwise EAR99 civilian vehicles that have been modified or otherwise fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better and that do not have reactive or electromagnetic armor.

Note 2 to Category VII: Armored ground vehicles are (i) ground vehicles that have integrated, fully armored hulls or cabs, or (ii) ground vehicles on which add-on armor has been installed to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better. Armored support vehicles do not include those that are merely capable of being equipped with add-on armor.

Note 3 to Category VII: Ground vehicles include any vehicle meeting the definitions or control parameters regardless of the surface (*e.g.,* highway, off-road, rail) upon which the vehicle is designed to operate.

* * * * *

Category VIII—Aircraft and Related Articles

(a) Aircraft, as follows:

* * * * *

(9) Air refueling aircraft;

* * * * *

(11) Aircraft incorporating any mission system controlled under this subchapter;

Note 1 to paragraph (a)(11): ''Mission systems'' are defined as ''systems'' (*see* § 120.45(g) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

Note 2 to paragraph (a)(11): This does not include tethered aerostats. Mission systems incorporated on otherwise EAR-controlled aerostats are controlled as the mission systems themselves just as if they were mounted, for example, on a tower or a pole.

(12) Aircraft capable of being refueled in flight including hover-in-flight refueling (HIFR);

*(13) Optionally Piloted Vehicles (OPV) (i.e. aircraft specially designed to operate with and without a pilot physically located in the aircraft) (MT if the OPV has a range equal to or greater than 300km);

(14) Aircraft with a roll-on/roll-off ramp, capable of airlifting payloads over 35,000 lbs. to ranges over 2,000 nm without being refueled in-flight, and landing onto short or unimproved airfields;

*(15) Aircraft not enumerated in paragraphs (a)(1) through (a)(14) as follows:

(i) U.S.-origin aircraft that bear an original military designation of A, B, E, F, K, M, P, R, or S; or

(ii) Foreign-origin aircraft specially designed to provide functions equivalent to those of the aircraft listed in paragraph (a)(15)(i) of this category; or

(16) are armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy targets (*e.g.,* firing lasers, launching rockets, firing missiles, dropping bombs, or strafing);

Note 1 to paragraph (a): Aircraft specially designed for military applications that are not identified in paragraph (a) of this section are subject to the EAR and classified as ECCN 9A610, including any unarmed military aircraft, regardless of origin or designation, manufactured prior to 1956 and unmodified since manufacture. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are considered ''unmodified'' for the purposes of this paragraph.

* * * * *

(h) * * *

(3) Tail boom folding systems, stabilator folding systems or automatic rotor blade folding systems, and specially designed parts and components therefor;

* * * * *

(6) Bomb racks, missile launchers, missile rails, weapon pylons, pylon-to-launcher adapters, unmanned aerial vehicle (UAV) airborne launching systems, external stores support systems for ordnance or weapons, and specially designed parts and components therefor (MT if the bomb rack, missile launcher, missile rail, weapon pylon, pylon-to-launcher adapter, UAV airborne launching system, or external stores support system is for a UAV, drone, or missile that has a ''range'' equal to or greater than 300 km);

* * * * *

(13) Aircraft Lithium-ion batteries that provide greater than 38VDC nominal;

* * * * *

(15) Integrated helmets incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions (*e.g.,* Helmet Mounted Cueing Systems, Joint Helmet Mounted Cueing Systems (JHMCS), Helmet Mounted Displays, Display and Sight Helmets (DASH)), and specially designed parts, components, accessories, and attachments therefor;

* * * * *

(23) Electricity-generating fuel cells specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

* * * * *

Category IX—Military Training Equipment and Training

* * * * *

(e) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter):

(1) Directly related to the defense articles enumerated in paragraphs (a) and (b) of this category;

(2) Directly related to the software and associated databases enumerated in paragraph (b)(4) of this category even if no defense articles are used or transferred; or

(3) Military training (*see,* § 120.9(a)(3) of this subchapter) not directly related to defense articles or technical data enumerated in this subchapter.

* * * * *

Category XIX—Gas Turbine Engines and Associated Equipment

* * * * *

(f) * * *

(1) * * *

Note to paragraph (f)(1): Specially designed (*see* § 120.41(b)(3)(ii) of this subchapter) does not control parts, components, accessories, and attachments that are common to engines enumerated in paragraph (a) through (d) of this category but not identified in paragraph (f)(1), and those identified in paragraph (f)(1). For example, a part common to only the F110 and F136 is not specially designed for purposes of the ITAR. A part common to only the F119 and F135—two engine models identified in paragraph (f)(1)—is specially designed.

* * * * *

Category XX—Submersible Vessels and Related Articles

(a) Submersible and semi-submersible vessels that are:

*(1) Submarines specially designed for military use;

* * * * *

(4) Armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.,* firing torpedoes, launching rockets, firing missiles, deploying mines, deploying countermeasures) or deploy military payloads;

* * * * *

(6) Integrated with nuclear propulsion systems;

(7) Equipped with any mission systems controlled under this subchapter; or

Note to paragraph (a)(7): ''Mission system'' is defined as a ''system'' (see § 120.45(g) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

* * * * *

■ 8. Sections 121.2, 121.3, 121.4, 121.8, 121.10, 121.14, and 121.15 are removed and reserved.

PART 123—LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES

■ 9. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 10. Section 123.1 is amended by removing the word ''enumerated'' and adding in its place the word ''described'' in one place in paragraph (b)(1).

■ 11. Section 123.16 is amended by revising paragraph (b)(4) to read as follows:

§ 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(4) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of unclassified models or mock-ups of defense articles, provided that such models or mock-ups are inoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b) of this subchapter and do not contain components (*see* § 120.45(b) of this subchapter) covered by the U.S. Munitions List (*see* § 121.1 of this subchapter). Some models or mockups built to scale or constructed of original materials can reveal technical data. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met. This exemption does not imply that the

Directorate of Defense Trade Controls will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 12. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

§ 126.1 [Amended]

■ 13. Section 126.1 is amended by removing the word ''enumerated'' and adding in its place the word ''described'' in one place in paragraph (c).

■ 14. Supplement No. 1 to part 126 is revised to read as follows:

Supplement No. 1 to Part 126

SUPPLEMENT NO. 1*

[*An ''X'' in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I–XXI	Classified defense articles and services. See Note 1	X	X	X
I–XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex	X	X	X
I–XXI	U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.		X	X
I–XXI	Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.	X		
I–XXI	Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with § 123.15 and § 124.11 of this subchapter.	X		
I–XXI	U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.		X	X
I–XXI	Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment.	X		
I–XXI	Defense articles and services specific to the existence or method of compliance with anti-tamper measures, where such measures are readily identifiable, made at originating Government direction.		X	X
I–XXI	Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. See Note 2.		X	X
I–XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. See Note 3.		X	X
I–XXI	Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems.		X	X
I–XXI	Nuclear power generating equipment or propulsion equipment (e.g., nuclear reactors), specifically designed for military use and components therefor, specifically designed for military use. See also § 123.20 of this subchapter.			X
I–XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. See Note 13.			X
I–XXI	Defense services or technical data specific to applied research as defined in § 125.4(c)(3) of this subchapter, design methodology as defined in § 125.4(c)(4) of this subchapter, engineering analysis as defined in § 125.4(c)(5) of this subchapter, or manufacturing know-how as defined in § 125.4(c)(6) of this subchapter. See Note 12.	X		
I–XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a department or agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal, Provincial, or Territorial Government Program. See Note 14.	X		
I	Firearms, close assault weapons, and combat shotguns	X		
II(k)	Software source code related to USML Category II(c), II(d), or II(i). See Note 4		X	X
II(k)	Manufacturing know-how related to USML Category II(d). See Note 5	X	X	X
III	Ammunition for firearms, close assault weapons, and combat shotguns listed in USML Category I	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in USML Category II.			X
III(e)	Manufacturing know-how related to USML Category III(d)(1) or III(d)(2) and their specially designed components. See Note 5.	X	X	X
III(e)	Software source code related to USML Category III(d)(1) or III(d)(2). See Note 4		X	X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). See Note 6.	X	X	X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (i.e., not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes		X	X
IV	Defense articles and services specific to anti-personnel landmines. See Note 15	X	X	X

SUPPLEMENT NO. 1*—Continued

[*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
IV	Defense articles and services specific to cluster munitions	X	X	X
IV(i)	Software source code related to USML Category IV(a), IV(b), IV(c), or IV(g). See Note 4		X	X
IV(i)	Manufacturing know-how related to USML Category IV(a), IV(b), IV(d), or IV(g) and their specially designed components. See Note 5.	X	X	X
V	The following energetic materials and related substances: a. TATB (triaminotrinitrobenzene) (CAS 3058–38–6); b. Explosives controlled in USML Category V(a)(38); c. Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;. d. BOBBA–8 (bis(2-methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives;. e. N-methyl-p-nitroaniline (CAS 100–15–2); or f. Trinitrophenylmethylnitramine (tetryl) (CAS 479–45–8)			X
V(a)(13)	ANF or ANAzF as described in USML Category V(a)(13)(iii) and (iv)			X
V(a)(23)	Difluoraminated derivative of RDX as described in USML Category V(a)(23)(iii)			X
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN)			X
V(i)	Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors therefor, funded by the Department of Defense via contract or other funding authorization in accordance with notes 1 to 3 for USML Category V(i). This exclusion does not apply if such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.		X	X
VI	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VI	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
VI(a)	Nuclear powered vessels	X	X	X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7	X	X	X
VI(g)	Software source code related to USML Category VI(a) or VI(c). See Note 4		X	X
VII	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VII	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII	Defense articles and services specific to cryogenic equipment, and specially designed components and accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VIII	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII(a)	All USML Category VIII(a) items	X		
VIII(f)	Developmental aircraft parts, components, accessories, and attachments identified in USML Category VIII(f).	X		
VIII(i)	Manufacturing know-how related to USML Category VIII(a) or VIII(e), and specially designed parts or components therefor. See Note 5.	X	X	X
VIII(i)	Software source code related to USML Category VIII(a) or VIII(e). See Note 4		X	X
IX	Training or simulation equipment for Man Portable Air Defense Systems (MANPADS). See Note 6		X	X
IX(e)	Software source code related to USML Category IX(a) or IX(b). See Note 4		X	X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios.			X

SUPPLEMENT NO. 1*—Continued

[*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
X(e)	Manufacturing know-how related to USML Category X(a)(1) or X(a)(2), and specially designed components therefor. See Note 5.	X	X	X
XI(a)	Defense articles and services specific to countermeasures and counter- countermeasures See Note 9.		X	X
XI(a)	High Frequency and Phased Array Microwave Radar systems, with capabilities such as search, acquisition, tracking, moving target indication, and imaging radar systems. See Note 16.		X	
XI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
XI(b), XI(c), XI(d).	Defense articles and services specific to USML Category XI (b) (e.g., communications security (COMSEC) and TEMPEST).		X	X
XI(d)	Software source code related to USML Category XI(a). See Note 4		X	X
XI(d)	Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. See Note 5.	X	X	X
XII	Defense articles and services specific to countermeasures and counter- countermeasures. See Note 9.		X	X
XII	Defense articles and services specific to USML Category XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End-items in USML Category XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (i.e., federal, provincial, territorial, or municipal) consistent with § 126.5, other exclusions, and the provisions of this subchapter.	X		
XII	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.	X	X	X
XII(f)	Manufacturing know-how related to USML Category XII(d) and specially designed components therefor. See Note 5.	X	X	X
XII(f)	Software source code related to USML Category XII(a), XII(b), XII(c), or XII(d). See Note 4		X	X
XIII(b)	Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems, cryptographic devices, software, and components).		X	X
XIII(d)	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.			X
XIII(e)	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. See Note 11.			X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials			X
XIII(h)	Energy conversion devices other than fuel cells			X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.		X	X
XIII(l)	Software source code related to USML Category XIII(a). See Note 4		X	X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.		X	X
XIV(a), XIV(b), XIV(d), XIV(e), XIV(f).	Chemical agents listed in USML Category XIV(a), (d) and (e), biological agents and biologically derived substances in USML Category XIV(b), and equipment listed in USML Category XIV(f) for dissemination of the chemical agents and biological agents listed in USML Category XIV(a), (b), (d), and (e).	X		
XV(a)	Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload.	X	X	X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control. Defense articles and services are not excluded under this entry if they do not control the spacecraft. Receivers for receiving satellite transmissions are also not excluded under this entry.		X	X
XV(c)	Defense articles and services specific to GPS/PPS security modules		X	X
XV(c)	Defense articles controlled in USML Category XV(c) except end-items for end-use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X		
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X		
XV(e)	Antennas having any of the following: a. Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; b. All sidelobes less than or equal to -35 dB relative to the peak of the main beam; or c. Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nautical miles in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).	X		
XV(e)	Optical intersatellite data links (cross links) and optical ground satellite terminals	X		

SUPPLEMENT NO. 1*—Continued

[*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XV(e)	Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment.	X	.....	.....
XV(e)	Propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1 g.	X	.....	.....
XV(e)	Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X	.....	.....
XV(e)	All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for all USML Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites.	X	.....	.....
XV(e)	Defense articles and services specific to spacecraft and ground control station systems (only for telemetry, tracking and control as controlled in USML Category XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment.	.....	X	X
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for USML Category XV.	X	X	X
XVI	Defense articles and services specific to design and testing of nuclear weapons	X	X	X
XVII	Classified articles, and technical data and defense services relating thereto, not elsewhere enumerated. See Note 1.	X	X	X
XVIII	Defense articles and services specific to directed energy weapon systems	.....	X	X
XIX(e), XIX(f)(1), XIX(f)(2), XIX(g).	Defense articles and services specific to gas turbine engine hot section components and to Full Authority Digital Engine Control Systems (FADEC) or Digital Electronic Engine Controls (DEEC). See Note 8.	.....	X	X
XIX(g)	Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). See Note 8.	X	X	X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X	X	X
XX	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.	.....	X	X
XX	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).	.....	.....	X
XX	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.	.....	.....	X
XX(a)	Nuclear powered vessels	X	X	X
XX(b)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7	X	X	X
XX(c)	Defense articles and services specific to submarine combat control systems	.....	X	X
XX(d)	Software source code related to USML Category XX(a). See Note 4	.....	X	X
XXI	Articles, and technical data and defense services relating thereto, not otherwise enumerated on the USML, but placed in this category by the Director, Office of Defense Trade Controls Policy.	X	X	X

Note 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin articles, technical data, and services controlled in USML Category XVII are not eligible for export under the UK Treaty exemption. U.S. origin classified defense articles and services are not eligible for export under either the UK or AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive, or contract that provides for the export of the defense article or service.

Note 2: The phrase "any part of the spectrum" includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as:

(a) Signature reduction (radio frequency (RF), infrared (IR), Electro-Optical, visual, ultraviolet (UV), acoustic, magnetic, RF emissions) of defense platforms, including systems, subsystems, components, materials (including dual-purpose materials used for Electromagnetic Interference (EM) reduction), technologies, and signature prediction, test and measurement equipment and software, and material transmissivity/reflectivity prediction codes and optimization software.

(b) Electronically scanned array radar, high power radars, radar processing algorithms, periscope-mounted radar systems (PATRIOT), LADAR, multistatic and IR focal plane array-based sensors, to include systems, subsystems, components, materials, and technologies.

Note 3: Defense articles and services related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons engagement. Sensor fusion involves sensors such as acoustic, infrared, electro optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.

Note 4: Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 5: Manufacturing know-how, as defined in § 125.4(c)(6) of this subchapter, is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

SUPPLEMENT NO. 1*—Continued

[*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17

Note 6: Defense articles and services specific to Man Portable Air Defense Systems (MANPADS) includes missiles that can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

Note 7: Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information consists of technical data that concern the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (see USML Categories VI and XX).

Note 8: A complete gas turbine engine with embedded hot section components or digital engine controls is eligible for export or transfer under the Treaties. Technical data, other than those data required for routine external maintenance and operation, related to the hot section is not eligible for export under the Canadian exemption. Technical data, other than those data required for routine external maintenance and operation, related to the hot section or digital engine controls, as well as individual hot section parts or components are not eligible for the Treaty exemption whether shipped separately or accompanying a complete engine. Gas turbine engine hot section exempted defense article components and technology are combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), and Ultra-Efficient Engine Technology (UEET), which are also excluded from export under the exemptions.

Note 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK Treaty exemptions are:

(a) IR countermeasures;

(b) Classified techniques and capabilities;

(c) Exports for precision radio frequency location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and Radio Direction Finding (RDF) capabilities. Precision RF location is defined as angle of arrival accuracy of less than five degrees (RMS) and RF emitter location of less than ten percent range error;

(d) Providing the capability to reprogram; and

(e) Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures.

Note 10: Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded); automated control algorithms embedded in on-board autonomous platforms which enable (a) group behaviors for target detection and classification, (b) adaptation to the environment or tactical situation for enhancing target detection and classification; "intelligent autonomy" algorithms that define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad band "acoustic color," active acoustic "fingerprint" sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise (controlled under Category USML XI(a)(1), (a)(2), (b), (c), and (d)).

Note 11: This exclusion does not apply to the platforms (e.g., vehicles) for which the armored plates are applied. For exclusions related to the platforms, refer to the other exclusions in this list, particularly for the category in which the platform is controlled.

The excluded defense articles include constructions of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase "suitable for military use" applies to any articles or materials which have been tested to level IIIA or above IAW NIJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or other protective garments which may be exported IAW the terms of the AS or UK Treaty.

Note 12: Defense services or technical data specific to applied research (§ 125.4(c)(3) of this subchapter), design methodology (§ 125.4(c)(4) of this subchapter), engineering analysis (§ 125.4(c)(5) of this subchapter), or manufacturing know-how (§ 125.4(c)(6) of this subchapter) are not eligible for export under the Canadian exemptions. However, this exclusion does not include defense services or technical data specific to build-to-print as defined in § 125.4(c)(1) of this subchapter, build/design-to-specification as defined in § 125.4(c)(2) of this subchapter, or basic research as defined in § 125.4(c)(3) of this subchapter, or maintenance (i.e., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item) of non-excluded defense articles which may be exported subject to other exclusions or terms of the Canadian exemptions.

Note 13: The term "libraries" (parametric technical databases) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.

Note 14: In order to utilize the authorized defense services under the Canadian exemption, the following must be complied with:

(a) The Canadian contractor and subcontractor must certify, in writing, to the U.S. exporter that the technical data and defense services being exported will be used only for an activity identified in Supplement No. 1 to part 126 of this subchapter and in accordance with § 126.5 of this subchapter; and

(b) A written arrangement between the U.S. exporter and the Canadian recipient must:

(1) Limit delivery of the defense articles being produced directly to an identified manufacturer in the United States registered in accordance with part 122 of this subchapter; a department or agency of the United States Federal Government; a Canadian-registered person authorized in writing to manufacture defense articles by and for the Government of Canada; a Canadian Federal, Provincial, or Territorial Government;

(2) Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person;

(3) Provide that any subcontract contain all the limitations of § 126.5 of this subchapter;

(4) Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and

SUPPLEMENT NO. 1*—Continued

[*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17

(5) Include a clause requiring that all documentation created from U.S. origin technical data contain the statement that, "This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in § 126.5 of the International Traffic in Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR."

(c) The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report regarding all of their on-going activities authorized under § 126.5 of this subchapter. The report shall include the article(s) being produced; the end-user(s); the end-item into which the product is to be incorporated; the intended end-use of the product; and the names and addresses of all the Canadian contractors and subcontractors.

Note 15: This exclusion does not apply to demining equipment in support of the clearance of landmines and unexploded ordnance for humanitarian purposes.

As used in this exclusion, "anti-personnel landmine" means any mine placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person; any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act; any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.

Note 16: The radar systems described are controlled in USML Category XI(a)(3)(i) through (v). As used in this entry, the term "systems" includes equipment, devices, software, assemblies, modules, components, practices, processes, methods, approaches, schema, frameworks, and models.

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

■ 15. The authority citation for part 130 continues to read as follows:

Authority: Sec. 39, Pub. L. 94–329, 90 Stat. 767 (22 U.S.C. 2779); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 16. Section 130.8 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 130.8 Vendor.

(a) *Vendor* means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of $500,000 or more which are end-items or major components as defined in § 120.45 of this subchapter. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of $500,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

* * * * *

Rose E. Gottemoeller,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2014–23792 Filed 10–9–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505–AC49

Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Interim final rule.

SUMMARY: The Department of the Treasury is issuing regulations concerning the amounts available to eligible Louisiana parishes from the Gulf Coast Restoration Trust Fund, a fund established by the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). These regulations amend an interim final rule for the RESTORE Act published on August 15, 2014.

DATES: Effective October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Please send questions by email to *RESTORERule@treasury.gov* or contact Janet Vail, 202–622–6873.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act makes funds available for the restoration and protection of the Gulf Coast region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund. The trust fund will contain 80 percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. One component of the Act, the Direct Component, sets aside 35 percent of the penalties paid into the trust fund for grants to the State of Alabama, the State of Mississippi, the State of Texas, the State of Louisiana and 20 Louisiana parishes, and 23 Florida counties. The Direct Component provides an equal amount to each of the five Gulf Coast States, and allocates 30 percent of Louisiana's share to the 20 eligible parishes.

On September 6, 2013, Treasury proposed a rule to implement the Direct Component and four other components in the RESTORE Act. Among its provisions, the proposed rule identified the 20 Louisiana parishes eligible to receive funds under the Direct Component, but not the share of each parish. Treasury requested public comments on the data and methodology for calculating these shares, and received comments from the State of Louisiana and one Louisiana parish.

On July 31, 2014, Treasury proposed a rule identifying the share of each Louisiana parish under the Direct Component, based on a formula in the RESTORE Act and data from the United States Census Bureau and the United States Coast Guard. 79 FR 44325. Treasury considered the comments submitted previously, and opened a new public comment period for 30 days. Treasury received two substantive comments.

After considering public comments, Treasury now issues the regulations as an interim final rule. The rule for Louisiana parishes amends the RESTORE Act rule published on August 15, 2014 (79 FR 48039), which covers

other aspects of the Direct Component and the Act. Both rules take effect on October 14, 2014. Treasury will publish a final, comprehensive rule for the RESTORE Act in the near future.

II. Public Comment and Summary of the Interim Final Rule

In the July 2014 proposed rule, Treasury proposed an allocation for each eligible Louisiana parish using a statutory formula that has three elements: (a) 40 percent based on the weighted average of miles of parish shoreline oiled, (b) 40 percent based on the weighted average of the population of the parish, and (c) 20 percent based on the weighted average of the land mass of the parish. 33 U.S.C. 1321(t)(1)(D)(i). One commenter recommended that Treasury give greater weight to miles of oiled shoreline (60 percent) and less weight to population (30 percent) and land mass (10 percent). The commenter asserted that its formula would be more fair to those parishes that were most impacted by the spill.

The formula in the proposed rule comes directly from the RESTORE Act. Treasury does not have discretion to change the formula in order to favor parishes with more oiled shoreline.

For the three elements in the formula, Treasury's proposed rule used government data to determine the share of each parish. For the first element, Treasury used data from the United States Coast Guard showing the number of miles of parish shoreline oiled between 2010, the initial year of response to the *Deepwater Horizon* spill, and July 6, 2012, the date of enactment for the RESTORE Act. According to the Coast Guard, the data were gathered using the Shoreline Clean-up Assessment Technique (SCAT), a systematic method for surveying an affected shoreline after an oil spill.[1] The second element is the weighted average of the parish population. Treasury used 2012 population estimates for each parish published by the United States Census Bureau.[2] The third element is the weighted average of the parish land mass. Treasury used data from 2010, the most recent available from the United States Census Bureau.[3]

The Act does not specify the year Treasury should use for oiled shoreline or population. The proposed rule used oiled shoreline data collected between 2010 and 2012, and population data for 2012, thereby fixing the share of each parish in the year of enactment. Treasury received two comments on this data. One Louisiana parish recommended that Treasury use population data from 2010, because this data is closer in time to the *Deepwater Horizon* incident. Another parish preferred 2013 population estimates, because these estimates are closer in time to publication of the regulation. Neither commenter addressed Treasury's oiled shoreline data.

Treasury's proposed rule used 2012 data for both population and oiled shoreline, believing this to be a reasonable choice that furthers Congress's purposes. While 2010 data would be closer in time to the oil spill, there is no indication that Congress gave this fact any importance. There is also no indication that Congress intended to base each parish's share on population changes and oiling occurring after enactment. Treasury believes that it is reasonable to use 2012 data for population and oiling, because that data best represents conditions in Louisiana when Congress passed the Act. It is notable that Congress expected procedures for implementing the Act would be completed shortly after enactment, including procedures concerning each parish's share. RESTORE Act, Public Law 112–141 sec. 1602(e), 126 Stat. 588. The Act refers to ''parish shoreline oiled'' in the past tense. 33 U.S.C. 1321(t)(1)(D)(i)(II)(aa). Using data from later years would produce results that Congress could not have foreseen in 2012. Because population in 2013 went up for some parishes and down for others, using 2013 data would increase some parish shares and decrease others with little correlation to the miles of oiled shoreline. Accordingly, Treasury interprets the Act as referring to shoreline oiled before July 6, 2012, and to parish populations in 2012.

Using the data described above and the statutory factors, Treasury determined each parish's share with the following formula: Parish allocation = (40% * (parish miles oiled/sum of all oiled shoreline for eligible parishes)) + (40% * (parish population/sum of all population for eligible parishes)) + (20% * parish land mass/sum of all land mass for eligible parishes). A detailed description of the data Treasury used to determine each parish's share is available in the docket for the interim final rule at *http://www.regulations.gov,* and at *http://www.treasury.gov/services/restore-act/Pages/default.aspx.* The resulting shares, which are unchanged from the proposed rule, are listed in the interim final rule.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires agencies 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. Treasury previously certified that the interim final rule for the entire Act, published on August 15, 2014, will not have a significant economic impact on a substantial number of small entities. While that rule describes procedures concerning the allocation and expenditure of amounts from the trust fund, most of these requirements come from the Act itself or other Federal law, including the total allocation due to Louisiana parishes under the Direct Component.

Treasury certifies that the interim final rule for Louisiana parishes will not have a significant impact on a substantial number of small entities. This rule affects only 20 Louisiana parishes, of which six meet the definition of a small entity under the RFA. Even if a substantial number of small entities was affected, any economic impact of this interim final rule would be minimal. The interim final rule is limited to allocating funds to eligible Louisiana parishes according to a statutory formula, and does not impose any new obligations on these parishes.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

The interim final rule for the RESTORE Act, published on August 15, 2014, is a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. The notification for that rule includes a Regulatory Impact Assessment, which covers any economic impact incident to the interim final rule for Louisiana parishes. The interim final rule for Louisiana parishes has been designated a significant regulatory action, although not economically significant, and has been reviewed by the Office of Management and Budget.

[1] SCAT data are appropriate for determining the share of each Louisiana parish under the relevant standards of the Direct Component in the Act. Treasury takes no position on the data that may be appropriate for other uses in connection with ongoing litigation or natural resource damage assessments.

[2] These estimates are available at *http://factfinder2.census.gov/bkmk/table/1.0/en/PEP/2013/PEPANNCHG.ST05/0400000US22.*

[3] The data are available at *http://quickfacts.census.gov/qfd/states/22000.html.*

C. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) provides that agency rules should become effective 30 days after publication in the **Federal Register**. See 5 U.S.C. 553(d). The APA, however, allows agencies to dispense with a delayed effective date when the agency finds that good cause exists. 5 U.S.C. 553(d)(3). In this case, Treasury finds that good cause exists to effectuate this rule on October 14, 2014. As discussed earlier in the preamble, this rule for Louisiana parishes amends the RESTORE Act interim rule that was published on August 15, 2014 (79 FR 48039). The August 15, 2014 interim rule covers other aspects of the Direct Component and the Act and takes effect on October 14, 2014. It would be contrary to the public interest to make the RESTORE Act funds available to some recipients ahead of others. So that all entities eligible to receive Direct Component funds are treated equally, Treasury believes good cause exists to make this parishes rule effective on the same date as the August 15, 2014 interim rule.

List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife.

For the reasons set forth in the preamble, the Department of the Treasury amends 31 CFR subtitle A, part 34, to read as follows:

PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 *et seq.*

■ 2. In § 34.302, revise the section heading and add a second sentence in paragraph (e) to read as follows:

§ 34.302 Allocation of funds—Direct Component.

* * * * *

(e) * * * The share of each coastal zone parish is as follows: Ascension, 2.42612%; Assumption, 0.93028%; Calcasieu, 5.07063%; Cameron, 2.10096%; Iberia, 2.55018%; Jefferson, 11.95309%; Lafourche, 7.86746%; Livingston, 3.32725%; Orleans, 7.12875%; Plaquemines, 17.99998%; St. Bernard, 9.66743%; St. Charles, 1.35717%; St. James, 0.75600%; St. John the Baptist, 1.11915%; St. Martin, 2.06890%; St. Mary, 1.80223%; St. Tammany, 5.53058%; Terrebonne, 9.91281%; Tangipahoa, 3.40337%; and Vermilion, 3.02766%.

* * * * *

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2014–24283 Filed 10–9–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0862]

RIN 1625–AA00

Safety Zone: Suisun Bay Electromagnetic Scan and Ordnance Recovery, Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of Suisun Bay in support of the Military Ocean Terminal Concord (MOTCO) electromagnetic scan and ordnance recovery operations. These safety zones are established to ensure the safety of the ordnance identification and recovery teams and mariners transiting the area. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective without actual notice from October 10, 2014 until October 31, 2014. For the purposes of enforcement, actual notice will be used from September 29, 2014, through October 31, 2014. This rule will be enforced from 7 a.m. to 6 p.m. on the dates mentioned above.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0862. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
DoD Department of Defense
FR Federal Register
MMRP Military Munitions Response Program
MOTCO Military Ocean Terminal Concord
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. MOTCO notified the Coast Guard on September 4, 2014 that they intend to conduct an intrusive electromagnetic scan and ordnance recovery operation in selected areas of Suisun Bay with a high probability of containing ordnance items, and the operation would occur before the rulemaking process would be completed. It would be impracticable to collect and respond to comments before the recovery operations begin. The safety zone is necessary to ensure the safety of the teams conducting ordnance scanning and recovery operations as well as provide for the safety of vessels transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064;

Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

MOTCO is conducting Electromagnetic Scan and Ordnance Recovery operations from September 29, 2014 through October 31, 2014 in the navigable waters of the Suisun Bay, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. The Military Munitions Response Program (MMRP) addresses the safety and environmental hazards presented by munitions and explosives. MOTCO recently completed an underwater geophysical survey of Suisun Bay whereby they identified 55 locations throughout Suisun Bay with ferrous-based objects that may contain ordnance deposited as a result of the Port Chicago explosion on July 17, 1944. They completed 33 of the locations in 2013 and are now finishing the last 22.

These safety zones are necessary to ensure the safety of teams conducting electromagnetic scans and ordnance recovery operations and to ensure the safety of mariners transiting the area. These safety zones will be enforced from September 29, 2014 to October 31, 2014 between the hours of 7 a.m. and 6 p.m. The safety zones shall terminate at the conclusion of the electromagnetic scan and ordnance recovery operations.

C. Discussion of the Final Rule

The Coast Guard will enforce a 500 foot moving safety zone around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations from September 29, 2014 to October 31, 2014 between the hours of 7 a.m. and 6 p.m. To minimize impacts to commerce, the ordnance disposal team will cease operations to accommodate commercial vessels requiring transit through the navigation channel in vicinity to the project location. Commercial vessels will be informed via broadcast and local notice to mariners to coordinate passing arrangements with the ordnance disposal team prior to transiting the project area.

A temporary safety zone will be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38°04′24″ N, 122°01′14″ W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is needed, vessel traffic is free to move through the area. A broadcast will be released when the zone will be enforced, giving vessel traffic enough time to leave the area. At the conclusion of the electromagnetic scan and ordnance recovery the safety zones shall terminate.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the electromagnetic scan and ordnance recovery operations. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

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

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The 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.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–666 to read as follows:

§ 165.T11–666 Safety zone; Suisun Bay Electromagnetic Scan and Ordnance Recovery, Suisun Bay, Concord, CA.

(a) *Location.* A temporary 500 foot moving safety zone will be established around a 2-barge configuration, flying a red flag, and traveling throughout Suisun Bay conducting electromagnetic scan and ordnance recovery operations as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. Prior to vessels traveling through the navigational channel, notice will be given to the barges so that they have ample time to move out of the way and not impede traffic. An additional temporary safety zone will be established for emergency ordnance detonation between Roe Island and Ryer Island at the following location: 38°04′24″ N, 122°01′14″ W (NAD 83) for use only in the event that unstable ordnance items are recovered that require immediate detonation on site. Until such a time is needed, vessel traffic is free to move through the area. A broadcast will be released when the zone will be enforced, giving vessel traffic enough time to leave the area.

(b) *Enforcement period.* The zones described in paragraph (a) of this section will be in effect from September 29, 2014 through October 31, 2014 between the hours of 7 a.m. until 6 p.m. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

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

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

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

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

Dated: September 25, 2014.

Michael H. Day,

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

[FR Doc. 2014–24292 Filed 10–9–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

Statewide Data Indicators and National Standards for Child and Family Services Reviews

AGENCY: Children's Bureau (CB), Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Department of Health and Human Services (HHS).

ACTION: Final notice of statewide data indicators and national standards for Child and Family Services Reviews.

SUMMARY: On April 23, 2014, the Administration of Children and Families (ACF) published a document in the **Federal Register** (79 FR 22604). The document provided the Children's Bureau's plan to replace the statewide data indicators used to determine a state's substantial conformity with titles IV–B and IV–E of the Social Security Act through the Child and Family Services Reviews (CFSRs). After consideration of the public comments and additional Children's Bureau analysis, the Children's Bureau is now publishing its final plan. Where relevant, this document addresses key comments from the field in response to the April 23, 2014 **Federal Register** document.

DATES: Effective October 10, 2014.

FOR FURTHER INFORMATION CONTACT: Miranda Lynch Thomas, Children's Bureau, 1250 Maryland Ave. SW., 8th Floor, Washington, DC 20024, (202) 205–8138.

SUPPLEMENTARY INFORMATION:

Background

The Children's Bureau (CB) implemented the CFSRs in 2001 in response to a mandate in the Social Security Amendments of 1994. The legislation required the Department of Health and Human Services to issue regulations for the review of state child and family services programs under titles IV–B and IV–E of the Social Security Act (see section 1123A of the Social Security Act). The reviews are required for CB to determine whether such programs are in substantial conformity with title IV–B and IV–E plan requirements. The review process, as regulated at 45 CFR 1355.31–37, grew out of extensive consultation with interested groups, individuals, and experts in the field of child welfare and related areas.

The CFSRs enable CB to: (1) Ensure conformity with federal child welfare requirements; (2) determine what is actually happening to children and families as they are engaged in child welfare services; and (3) assist states to enhance their capacity to help children and families achieve positive outcomes. CB conducts the reviews in partnership with state child welfare agency staff and other partners and stakeholders involved in the provision of child welfare services. We have structured the reviews to help states identify strengths as well as areas needing improvement within their agencies and programs.

We use the CFSR to assess state performance on seven outcomes and seven systemic factors. The seven outcomes focus on key items measuring safety, permanency, and well-being. The seven systemic factors focus on key state plan requirements of titles IV–B and IV–E that provide a foundation for child outcomes. If we determine that a state has not achieved substantial conformity in one or more of the areas assessed in the review, the state is required to develop and implement a program improvement plan within two years addressing the areas of nonconformity. CB supports the states with technical assistance and monitors implementation of their program improvement plans. We withhold a portion of the state's federal title IV–B and IV–E funds if the state is unable to complete its program improvement plan successfully.

Most relevant to this document are the national standards for state performance on statewide data indicators CB uses to determine whether a state is in substantial conformity with certain child outcomes. We are authorized by the regulations at 45 CFR 1355.34(b)(4) and (5) to add, amend, or suspend any of the statewide data indicators and to adjust the national standards when appropriate. Statewide data indicators are aggregate measures and we calculate them using administrative data available from a state's submissions to the Adoption and Foster Care Analysis and Reporting System (AFCARS),[1] the National Child Abuse and Neglect Data System (NCANDS),[2] or a CB-approved alternate source for safety-related data. If a state is proposing to use alternative source data for NCANDS, such data must be child-level data and contain all of the data elements necessary for CB to calculate performance for an indicator. If we determine that a state is not in substantial conformity with a related outcome due to its performance on an indicator, the state will include that indicator in its program improvement plan. The improvement a state must achieve is relative to the state's baseline performance at the beginning of the program improvement plan period.

In an April 23, 2014 **Federal Register** document (79 FR 22604) we provided a detailed review of the consultation with the field and information considered in developing the third round of the CFSRs. We also proposed a plan for using statewide data indicators and national standards that is different than those used in prior rounds including the method to calculating such indicators and standards and our rationale. During the 30-day public comment period following the **Federal Register** document, we received 52 unique responses from state and local child welfare agencies, national and local advocacy and human services organizations, researchers and other interested persons. CB's reviewed all public comments and questions before making final decisions regarding the statewide data indicators and the methodology. This public notice includes a summary of our response. The public comments and questions that were submitted are available in their original form on *www.regulations.gov.*

Summary of Final Statewide Data Indicators and Methods

We have changed two indicators in response to the public comments. CB will measure the recurrence of maltreatment instead of repeat reports of maltreatment as we proposed in the April **Federal Register** document. We will also add a new indicator to measure permanency in 12 months for children in foster care for 12 months to 23 months.

Therefore our final plan is to use two statewide data indicators to measure maltreatment in foster care and recurrence of maltreatment in evaluating Safety Outcome 1*: Children are, first and foremost, protected from abuse and neglect.* We will use statewide data indicators to measure achievement of permanency in 12

[1] AFCARS collects case-level information from state and Tribal title IV–E agencies on all children in foster care and those who have been adopted with title IV–E agency involvement. Title IV–E agencies must submit AFCARS data to the Children's Bureau twice a year.

[2] NCANDS collects child-level information on every child who receives a response from a child protective services agency due to an allegation of abuse or neglect. States report this data to the Children's Bureau voluntarily. In FFY 2013, all 50 states, the District of Columbia, and Puerto Rico submitted NCANDS data.

months for children entering foster care, permanency in 12 months for children in foster care for 12 months to 23 months, permanency in 12 months for children in foster care for 24 months or more, re-entry to foster care in 12 months, and placement stability. These five permanency indicators will be used in evaluating Permanency Outcome 1: *Children have permanency and stability in their living situations.*

A description of each of the seven statewide data indicators, how we will calculate them, a summary of relevant public comments, and our rationale for the final indicators and response to the public comments follows. This document includes our approach to measuring a state's program improvement on the indicators should the state not meet a national standard. We also provide information on how we will share data and information related to state performance as well as data quality issues that may impact the indicators and methods.

Attachment A provides a summary of each final statewide data indicator including the numerators, denominators, adjustments and data periods used to calculate the national standards. Attachment B provides a comparison of the data measures used during CFSR Round 2 with the statewide data indicators we will use during Round 3. Attachment C provides information on the AFCARS and NCANDS data elements that are used to calculate the indicators and national standards. Attachment D provides information on the data quality thresholds applied in determining whether to include state data for calculating the indicators.

Finally we are issuing concurrent to this document, CFSR Technical Bulletin #8 that expands on this document with additional technical information and discussion relevant to the statewide data indicators, national standards and states' performance on them. The technical bulletin will be available on CB's Web site *www.acf.hhs.gov/programs/cb.*

Statewide Data Indicators for CFSR Safety Outcome 1: Children Are, First and Foremost, Protected From Abuse and Neglect

Safety Performance Area 1: Maltreatment in Foster Care

Indicator Description: Of all children in foster care during a 12-month period, what is the rate of victimization per day of foster care?

Calculation: The denominator is of children in foster care during a 12-month period, the total number of days these children were in foster care as of the end of the 12-month period. The denominator is drawn from AFCARS. The numerator is of children in the denominator, the total number of substantiated or indicated reports of maltreatment (by any perpetrator) during a foster care episode within the 12-month period. Rates are calculated per day of foster care. However, we will multiply the rate by 100,000 to produce larger and more readily understood numbers. This indicator is calculated using data that match children across AFCARS and NCANDS using the AFCARS record number.

Some states provide incident dates in their NCANDS data submissions. If a state provides incident dates that are associated with the maltreatment report, those records with an incident date occurring outside of the removal episode will be excluded, even if the report dates fall within the episode. We will also exclude the following: Complete foster care episodes lasting less than 8 days, any report of maltreatment that occurs within the first 7 days of removal, victims who are age 18 or more and youth in foster care at age 18 or more. For those youth who at the beginning of an included report period are 17 years of age and turn age 18, any time spent in foster care beyond the young person's 18th birthday is not counted in the denominator.

Justification for Inclusion: This indicator provides a measure of whether the state child welfare agency is able to ensure that children do not experience abuse or neglect while in the state's foster care system. The indicator holds states accountable for keeping children safe from harm while under the responsibility of the state, no matter who perpetrates the maltreatment while the child is in foster care.

Public Comments and CB Response: Many commenters supported the statewide data indicator for maltreatment in foster care that we proposed originally. Such commenters endorsed how the rate will be calculated, the inclusion of all maltreatment types by any perpetrator (including parents), the exclusion of children in foster care less than eight days, and the use of incident dates.

Regarding incident dates, some of the comments noted concern that not all states were consistently reporting incident dates and some states have difficulty identifying those dates. CB acknowledges that there is variation in states' capacity to report and actual reporting of incident dates. We are committed to continuing technical assistance to states so that they can improve their ability to report incident dates. Since the report of an actual incident date can clarify whether an occurrence of maltreatment is actually separate from another or whether there were multiple reports that refer to the same incident in the data, we are compelled to use this information where it exists. Additionally, to prevent potential over-counting of reports that are made when a child first enters foster care that reflect what may have occurred prior to the child's foster care entry, we will exclude all reports of maltreatment that occur within the first 7 days of a child's removal from home. We will apply this exclusion consistently for all states.

Some commenters also expressed concern about the variation in how states decide to accept a report for investigation and define substantiated or indicated maltreatment to classify incidents of abuse or neglect. One commenter suggested that CB should have a consistent definition of substantiation or indication. We acknowledge that there is variation in how states screen in reports of maltreatment, define maltreatment, and substantiate maltreatment. This variation reflects the discretion that states have to define abuse and neglect and build a responsive child protective services system. CB does not have authority to mandate a singular definition or process. Further, doing so would result in skewing our understanding of how state child protective systems respond to alleged maltreatment. It may be helpful to think about this indicator as capturing how well the state is able to prevent child maltreatment, as it defines it, once the state has made a determination that a child needs the protection of the state's foster care system. How well the state is able to prevent child maltreatment in this circumstance is relative to a national standard based on how all states perform in preventing maltreatment in foster care as each state has defined maltreatment.

A couple of commenters were concerned that this indicator did not seem to capture how the agency protects children from maltreatment if such children do not enter foster care. It is accurate that this indicator is focused on protection from subsequent maltreatment for children who are already in the state agency's custody. We have another indicator that looks at victims of abuse and neglect more broadly to address the recurrence of maltreatment. We believe it is important to emphasize, however, that the set of indicators that are used for CFSR purposes are limited. We encourage states to have a more comprehensive set

of indicators in their own CQI systems as measures of their performance for improvement and/or public accountability purposes. CB, through joint planning with states and the provision of technical assistance can assist states as they consider appropriate indicators and measures to be included in their Child and Family Services Plan.

Two commenters questioned how trial home visits would impact the indicator. One commenter advocated for the inclusion of trial home visits in the denominator while the other suggested that it should be excluded since the public may consider children on trial home visits to be at home. Since this indicator is intentionally capturing the maltreatment of a child while in the placement and care responsibility of the state agency, including when the child is visited by his parent or on a trial home visit, we have factored in the entire length of the trial home visit (until discharge) in the indicator. As such we will not apply a trial home visit adjustment to this indicator.

One commenter expressed concern that this indicator will make it more difficult for children in foster care to achieve normalcy in their lives. The concern was that a national measure of maltreatment in foster care may influence child welfare agencies to require all adults who a child comes into contact with to have criminal and child abuse background checks. CB is supportive of ensuring that children in foster care are afforded normalcy to the extent practicable. We would like to work with states that may have higher rates of maltreatment in foster care to analyze which populations appear at risk of such harm and the circumstances in which maltreatment is occurring. That way we can help states strategize how to address these issues programmatically while balancing the well-being and other needs of the children the state serves.

Finally, a few commenters were concerned that the difficulty some states experience in using a common identifier in the AFCARS and NCANDS files could impact the accuracy of this measure. We have set data quality thresholds (see attachment D) to ensure that states' data quality issues do not affect the integrity of the standard. We have required states to have consistent identifiers of children used in the reporting of AFCARS data since it began (1993) and we have requested the AFCARS record number in the NCANDS child files since FY 2003. In the last round of CFSRs, we provided states with data profiles that indicated the percentage of records with AFCARS record numbers reported in the NCANDS child file. This was a means of improving state reporting and providing context to the data that was provided to states on maltreatment by parents in foster care. As such, we proposed this indicator noting that states had improved their reporting of AFCARS record numbers which made viable using an indicator with this link in this round of reviews. We have identified the states for which using a consistent identifier is an issue and will be engaging in discussions with them on how they can improve their reporting of AFCARS record numbers.

Safety Performance Area 2: Recurrence of Maltreatment

Indicator Description: Of all children who were victims of a substantiated or indicated report of maltreatment during a 12-month reporting period, what percent were victims of another substantiated or indicated maltreatment allegation within 12 months of their initial report?

Calculation: The denominator is the number of children with at least one substantiated or indicated report of maltreatment in a 12-month period. The numerator is the number of children in the denominator that had another substantiated or indicated report of maltreatment within 12 months of their initial report. This indicator is calculated using data from NCANDS.

We will use report dates as the primary data element to determine when the maltreatment occurred, and include only reports occurring in the 12-month period. Substantiated or indicated maltreatments reports with report dates in the 12-month period with disposition dates after the 12-month period are included, as well. If there is a subsequent report of maltreatment within 14 days of the earlier report we will not count it as recurrent maltreatment. If the state provides the incident date and it indicates that multiple reports refer to the same incident, we will also not count it as recurrent maltreatment. Youth who are age 18 or more are excluded from the calculation of the indicator.

Justification for Inclusion: This indicator provides an assessment of whether the agency was successful in preventing subsequent maltreatment for a child if the child is the subject of a substantiated or indicated report of maltreatment.

Summary of Public Comments: We proposed originally an indicator of the percent of children with a screened-in report of alleged maltreatment that occurs within 12 months of an initial screened-in report. We justified the proposed indicator to replace the recurrence of maltreatment indicator used in prior CFSRs as we thought it could better assess the scope of the child welfare agency's protection response to incoming reports of maltreatment. We also believed the proposed indicator would address potential measurement problems of a substantiation-based indicator should a state change to a differential response approach during the course of a CFSR program improvement period.

A couple of commenters supported the re-report of maltreatment indicator as we proposed it originally. However, the majority of commenters, particularly state child welfare agencies, expressed their concerns with the proposed indicator. Many commenters were concerned about several unintended consequences or challenges in messaging what the results of this indicator mean.

One concern expressed by commenters was the potential for any state changes in the policy or program criteria for screening in reports to impact a state's performance on the indicator, either negatively or positively. Another concern was that the indicator was perceived as contrary to state and federal laws that encourage and support reporting of potential child maltreatment. Similarly, some commenters believed that the indicator, if constructed as a measure of safety, could be interpreted to mean that agencies that had high rates of screened-in reports of maltreatment were not ensuring child safety and that there were higher rates of actual recurrence of substantiated maltreatment. These commenters noted that some states screen in reports for children who are at little to no risk of maltreatment, such as for community or public service referrals. They noted that such referrals should not be thought of in the same way as actual allegations of maltreatment.

Secondary concerns raised by commenters were around the variation in state responses to screened-in reports as a matter of practice that could make interpretation of the indicator challenging. For example, commenters identified challenges associated with the variation in state screening decisions and unsubstantiated report expunction requirements. Several commenters provided suggestions for retaining the re-report of maltreatment indicator including: Requiring a substantiated report to follow the initial screened-in report to qualify as a re-report of maltreatment; risk adjusting based on the state's screen-in rate; and

allowing for a defined period of time between a report and subsequent report.

We believe that there is good reason for a revision to our approach. We are mindful that an indicator must be readily explainable to the field and the public in terms of what it tells us about a child welfare system's response to vulnerable children and families. We also were concerned about the potential for unintended consequences with the proposed measures. We considered some of the commenter's suggestions for improving a re-report indicator but each proposed solution raised some level of concern. Still, CB believes that this indicator does hold potential to shed light on how well states are providing services to the larger population of children at risk. As such, we will include the re-report indicator as originally proposed as a context measure in the state's data profile.

CB will return to an indicator of recurrence of maltreatment, similar to that used in the prior two rounds. One of the modifications to this indicator over the one used in prior rounds will be to have an expanded timeframe—looking at substantiated or indicated reports in an initial 12-month period and whether there is a subsequent one within 12 months. We are also using similar adjustments as used in the recurrence of maltreatment indicator. We will use incident dates where available, exclude reports made within 14 days of an earlier report, and exclude youth age 18 and older. With this indicator, however, we are not able to address one of our concerns about the potential impact of a state implementing differential or alternative response on the measure. Where states implement differential response during program improvement, we will consider on a case-by-case basis the situation and its implications for accurate depictions of compliance and/or meeting improvement goals.

CFSR Permanency Outcome 1: Children Have Permanency and Stability in Their Living Situations

Permanency Performance Area 1: Permanency in 12 Months for Children Entering Foster Care

Indicator Description: Of all children who enter foster care in a 12-month period, what percent discharged to permanency within 12 months of entering foster care?

Calculation: The denominator is the number of children who enter foster care in a 12-month period. The numerator is the number of children in the denominator who discharged to permanency within 12 months of entering foster care and before turning age 18. This indicator is calculated using data from AFCARS. For the purposes of this indicator, discharged to permanency includes the AFCARS foster care discharge reasons of: Reunification with parents or primary caretakers, living with other relative(s), adoption and guardianship. This indicator excludes youth who enter foster care at or after age 18 and children who have a complete foster care episode lasting less than 8 days. For children with multiple foster care episodes in the 12-month period, this indicator will use the first episode reported.

We apply a trial home visit adjustment to this indicator. This means that if a child discharges from foster care during the 12-month period to reunification with parents or other caretakers after a placement setting of a trial home visit, any time in that trial home visit that exceeds 30 days is discounted from the length of stay in foster care. A similar trial home visit adjustment has been applied to permanency indicators in prior rounds of CFSRs. The adjustment is made to address variations in state policy regarding returning children to their families for a period of time before the state makes a formal discharge from foster care ending the agency's placement and care responsibility.

Justification for Inclusion: This indicator provides a focus on the child welfare agency's responsibility to reunify or place children in safe and permanent homes as soon as possible after removal.

Public Comments and CB Response: Many commenters expressed support for one or more aspects of the permanency in 12 months for children entering foster care indicator. In particular, commenters supported the inclusion of guardianship and adoption within the concept of permanency and the use of an entry cohort to assess the state's achievement of permanency for children. A few commenters requested clarification on whether we would apply the trial home visit adjustment to this indicator, which we have confirmed above.

A significant number of commenters believed that this indicator, in combination with the permanency in 12 months indicator for children who have been in foster care for 24 months or more, left a significant gap in understanding the experiences of children who have been in foster care for 12 to 23 months. We are addressing these comments by adding an indicator. We provide details on the new indicator in the next section.

Two commenters pointed out issues with our original description of the indicator as evaluating the first episode within the period for children who have multiple episodes during the same 12-month period. One commenter noted that we indicated in an attachment that we would rely on the ''date of most recent removal'' data element and questioned whether the description of capturing episodes was accurate. Another commenter pointed out that multiple episodes within a six-month period may be masked since you cannot duplicate children within a report period. Both commenters are accurate about the limits of the AFCARS data. Each six-month report period from AFCARS includes detail on the most recent foster care episode as of the end of the six-month period. We do not have information in AFCARS about any intervening foster care episodes. These 'masked' episodes represent a very small percentage of all episodes reported to AFCARS. When we refer to using the first episode within the period, we mean we will use the episode provided in the first six-month report period of the year. We are using the earliest one available to us, given the structure of AFCARS. In the past, when we merged six-month submissions together we kept only the most recent reported episode for the 12-month period, so this represents a change from that practice.

Permanency Performance Area 2: Permanency in 12 Months for Children in Foster Care 12 to 23 Months

Indicator Description: Of all children in foster care on the first day of a 12-month period who had been in foster care (in that episode) between 12 and 23 months, what percent discharged from foster care to permanency within 12 months of the first day of the 12-month period?

Calculation: The denominator is the number of children in foster care on the first day of a 12-month period who had been in foster care (in that episode) between 12 and 23 months. The numerator is the number of children in the denominator who discharged from foster care to permanency within 12 months of the first day of the 12-month period and before turning 18. This indicator is calculated using data from AFCARS. For the purposes of this indicator, discharged to permanency includes AFCARS foster care discharge reasons of: Reunification with parents or primary caretakers, living with other relative(s), adoption and guardianship. Youth who are aged 18 years or more on the first day of the 12-month period are excluded from the calculation. We

apply the trial home visit adjustment, as defined earlier, to this indicator.

Justification for Inclusion: This indicator provides a focus on the child welfare agency's responsibility to reunify or place children in safe and permanent homes timely if not achieved in the first 12 months of foster care.

Public Comments and CB Response: As noted above a number of commenters were concerned about the potential for a significant gap in the understanding and measurement of performance for children who may achieve permanency between 12 and 23 months. Some of the concerns expressed noted that a significant portion of children who remain in care beyond a year achieve permanency within the next year and that could not be captured with the two originally proposed indicators. Some made a programmatic argument about the requirements in title IV–B and IV–E of the Social Security Act (primarily due to amendments made by the Adoption and Safe Families Act) that focus on procedural safeguards for children who remain in care beyond 12 months. These include requirements for permanency hearings every 12 months that focus on moving a child to permanency and requirements to file petitions for termination of parental rights once a child has been in foster care for 15 out of the most recent 22 months, unless exceptions apply. Similarly, some commenters noted that guardianships and adoptions often take more than 12 months due to procedural and legal requirements, but could still be considered timely if occurred within 18 to 24 months. These commenters advocated for adding an indicator that incorporates the performance of the state in achieving permanency for children between their 1st and 3rd year of foster care. We found these arguments to be compelling and have added this 2nd indicator to be responsive to these points.

Before adding this indicator, we considered whether to extend either the permanency achievement indicator for the entry cohort to include children who enter foster care in a 24-month period, or to expand the cohort of children in care 24 months or more to include children in care 12 months or more. With the former option, we believed that the longer cohort would weaken the focus on the large group of children who are likely to exit to permanency quickly. We also noted that by changing the cohort we could no longer pair it with a companion measure of re-entry to foster care within 12 months (discussed later). With the latter option we were similarly concerned that we would no longer be able to focus attention to the children who have been in care for long periods of time and are must likely to grow up in foster care. Thus we chose to add a new cohort rather than expand one of the originally proposed indicators.

Permanency Performance Area 3: Permanency in 12 Months for Children in Foster Care 24 Months or More

Indicator Description: Of all children in foster care on the first day of a 12-month period, who had been in foster care (in that episode) for 24 months or more, what percent discharged to permanency within 12 months of the first day of the 12-month period?

Calculation: The denominator is the number of children in foster care on the first day of a 12-month period who had been in foster care (in that episode) for 24 months or more. The numerator is the number of children in the denominator who are discharged from foster care to permanency within 12 months of the first day of the 12-month period and before turning 18. This indicator is calculated using data from AFCARS. For the purposes of this indicator discharged to permanency includes AFCARS foster care discharge reasons of: Reunification with parents or primary caretakers, living with other relative(s), adoption, and guardianship. Young people who are aged 18 years or more on the first day of the 12-month period are excluded from the calculation. The trial home visit adjustment, as defined earlier, is applied to this indicator.

Justification for Inclusion: This indicator monitors the effectiveness of the state child welfare agency in continuing to ensure permanency for children who have been in foster care for longer periods of time.

Public Comments and CB Response: Several commenters expressed support for this indicator as a useful measure because we have a singular concept of permanency to include permanent placement with a relative, reunification, adoption and guardianship. Commenters agreed with using this measure in parallel with the permanency in 12 months for children entering foster care indicator. Commenters also appreciated the indicator's potential to maintain a focus on those children who experience long lengths of stay in foster care. The field expressed concerns similar to those for the permanency in 12 months for children entering foster care indicator. Some commenters also expressed a need to adjust for trial home visits. A few commenters raised concerns about how the experiences of children age 17 and older could impact the measure and if including this group of children in the statewide data indicator would disadvantage states that extend foster care beyond age 18.

CB has specified that this indicator will include the trial home visit adjustment as do the other two permanency achievement indicators. We have also addressed the concern regarding the gap in cohorts by adding another indicator as explained previously. Although we have excluded from the calculation of this indicator young people age 18 or older on the first day of the 12-month period, we will not exclude from the denominator young people who turn age 18 during the 12-month period. Regardless of federal and state provisions that provide young people avenues to remain in foster care beyond 18 for care and services while they transition to adulthood, when young people do not achieve permanency by 18 they cannot be considered to have achieved permanency. While we can agree that providing such extended care can mean better well-being outcomes for youth based on existing research, extending care does not address the young person's need for permanency, which is the focus of this indicator.

Permanency Performance Area 4: Re-entry to Foster Care in 12 Months

Indicator Description: Of all children who enter foster care in a 12-month period who discharged within 12 months to reunification, living with a relative(s), or guardianship, what percent re-enter foster care within 12 months of their discharge?

Calculation: The denominator is the number of children who entered foster care in a 12-month period and discharged within 12 months to reunification, living with a relative(s), or guardianship. The numerator is the number of children in the denominator who re-entered foster care within 12 months of their discharge from foster care. We exclude children in foster care for less than 8 days from this indicator and children who enter or exit foster care at age 18 or more. If a child re-enters foster care multiple times within 12 months of their discharge, only the first reported re-entry into foster care is selected. This indicator is calculated using data from AFCARS.

Justification for Inclusion: This indicator enables CB to monitor the effectiveness of programs and practice that support reunification and other permanency goals so that children do not return to foster care.

Public Comments and CB Response: Some commenters expressed support for the re-entry to foster care statewide data

indicator as its own measure and as a companion measure to permanency performance area 1 as we proposed. Companion measures are discussed in the program improvement plan section of this document. Several commenters shared concerns about the possibility that the indicator overlooks the re-entry to foster care for children who did not achieve permanency quickly. Comments in this area point out that, because the indicator focuses on children who achieve permanency within one year, children who leave foster care after a year are not considered. They argued that this creates a truncated view of re-entry to foster care. Some of these commenters noted that the indicator used in the prior round of reviews had this more expanded cohort of children included and provided the state with a better perspective of the children who returned to foster care. A number of alternative approaches to measuring re-entry to foster care were suggested including revising the cohort of focus or adding cohorts or indicators that looked at re-entries into foster care more comprehensively.

During CFSR Round 2, this performance area was evaluated using a similar measure as a part of a composite. For that measure, we calculated the percent of all children discharged from foster care to reunification or living with a relative in a 12-month period, who re-entered foster care in less than 12 months from the date of discharge. The CFSR round 3 indicator differs from the measure used previously, in part, by limiting the children included in the indicator to the 12-month entry cohort. We intentionally limited the indicator to focus on children that enter foster care within a 12-month period to better align it with the other cohorts. We also note again that since most children return to their homes or achieve permanency within the first year of entry into foster care, this indicator will capture the majority of the population that may re-enter foster care.

Proposed Permanency Performance Area 4: Placement Stability

Indicator Description: Of all children who enter foster care in a 12-month period, what is the rate of placement moves per day of foster care?

Calculation: The denominator is of children who enter foster care in a 12-month period, the total number of days these children were in foster care as of the end of the 12-month period. The numerator is of children in the denominator, the total number of placement moves during the 12-month period. The days in care and moves during the placement episodes are cumulative across episodes reported in the same year. Rates are calculated per day of foster care. However, we will multiply the rate by 1,000 to produce larger numbers that are easier to understand. Only those placement settings that are required to be counted in the AFCARS file are used for this indicator. If the child is moved to a living arrangement or setting that would not result in the state increasing the number of placement settings reported in AFCARS such moves are not included in this indicator. Children in foster care for less than 8 days are excluded from the calculation. Youth who turn 18 during the 12-month period will not have time in care beyond their 18th birthday or moves after their 18th birthday counted.

Justification for Inclusion: This indicator emphasizes states' responsibility to ensure that children whom the state removes from their homes experience stability while they are in foster care.

Public Comment and CB Response: Several commenters expressed support for the placement stability data indicator citing it as an improvement over the previous measure and empirically-based. Some commenters agreed with the use of entry cohorts and the move to a rate of placements controlling for the length of stay. A few commenters asked for clarity on which moves in foster care are included in the indicator. In response, we have added to the description above. In general, there are placement settings that are reported in AFCARS but which are not 'counted' in terms of a move. These include trial home visit episodes, runaway episodes, respite care and changes in a single foster family home's status, for example to reflect a licensing change from a foster care home to a home dually licensed for adoption. Additional information on AFCARS placement setting changes can be found in the CB's Child Welfare Policy Manual.[3]

A few commenters voiced concerns about using only entry cohorts for placement stability, which overlooks children who have been in foster care for longer periods of time. Other commenters pointed out that states could track additional cohorts of children without it being a federal indicator for CFSR purposes. During CFSR Round 2, we evaluated placement stability through three individual measures that made up a composite. All three of the measures, differentiated by length of stay in foster care, looked at the percent of children with two or fewer placement settings. The new indicator controls for the length of time children spend in foster care so only one indicator is needed. Further, it looks at moves per day of foster care, rather than children as the unit of analysis, as was employed during CFSR Round 2. The measure used for CFSR Round 2 was unable to differentiate between children who moved twice from children who moved more. The new indicator does not count initial placements, but counts each subsequent move to capture accurately the rate of placement moves given the amount of time they were at risk of moving, rather than the number of children affected.

CB believes that placement stability is important to the permanency and well-being of children in foster care regardless of how long they have been in foster care. Even so, our analysis of AFCARS data indicates that most placement moves occur within a child's first 12 months of foster care, which is why we focused this indicator on that time period. With this refined focus, CB and states can monitor the period during which placement moves are most likely to occur and the state's most recent performance. Since the CFSR Round 2 measures will still be included as a context measures in the data profile, states can use such information to analyze their trends, practice and target areas for improvement.

Some commenters questioned how to calculate the measure and whether the data were available to do so accurately. One concern was whether all placement days could be counted across all episodes in a year. Although the structure of AFCARS obscures some short-term episodes from view, we are using all available information to sum placement days and moves across episodes, to the extent practicable. The number of placement settings is always relevant to the reported episode, so this does not bias the results. Further, it is the same for all states, so we treat states equally methodologically.

Another commenter asked for clarification on whether the indicator would track children for 12 months from entry date, or simply count placement days during the 12-month period for children entering during that period. The calculation is the latter; we will count only the care days used within the 12-month period. Even if the child entered late in the 12-month period, we will count only those days and moves within the 12-month period. This measure allows for this because it controls for time in care.

[3] In particular, see the Child Welfare Policy Manual Section 1.2B.7, *AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Placements* found at *http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp.*

Some commenters were apprehensive about how the placement stability indicator might impact beneficial placement moves in foster care. Several commenters pointed out that there are circumstances when placement changes might produce better outcomes for children or best address their well-being needs such as when children may be moved to be with siblings or to meet the placement Indian Child Welfare Act's placement preferences. These commenters noted that the data generated by the placement stability indicator might not adequately explain these situations or create disincentives to move a child when such moves are appropriate.

As we have noted in response to similar comments on the indicators of placement stability used in prior rounds of review, AFCARS does not have information about whether a placement change reflects a positive move that is made for the best interests of the child and/or towards the achievement of the child's permanency and well-being needs. The current administrative data collection does not capture all of the contextual information necessary for us to understand the dynamic needs of the child or the conditions of the child's placement. We have always used the onsite case review component of the CFSR to provide more evaluative information about a child's moves in foster care and continue to do so in this round of reviews.[4] In so doing, we consider whether moves that legitimately support the child's best interests rather than an agency's resource limitations or other concerns justify the move. States past performance during the onsite case review in this area indicates that children experience many moves that are not for the purposes of meeting their needs.[5]

Finally, a couple of commenters noted that state administrators might have difficulty in explaining this indicator to stakeholders or thinking through how it relates to practice since it is expressed as a rate as opposed to the prior placement stability measure. We understand that the new indicators, particularly those that are expressed as a rate, will require states to acquire new strategies to communicate with the field about how we measuring performance. We will work with states to do so in the data profiles and in the ongoing assistance we provide to states and their stakeholders around practice implications.

Additional Comments on Cross-Cutting Issues or Multiple Indicators

Some commenters opined on cross-cutting issues or requested that CB address other issues in connection with the indicators that are relevant as general concerns or to multiple indicators. There were several additional comments that were outside the scope of this **Federal Register** document and relate to comments or perspectives on child welfare policy that are inappropriate for us to address in this document.

Use of individual indicators and fewer indicators. Many commenters expressed strong support for our proposal to replace the composites used for permanency in round 2 with individual indicators of permanency in this round. Many appreciated our responsiveness to feedback from the field on their challenges with translating composite measures and noted that individual indicators had more promise for engaging their workers and partners in understanding performance and working together towards improvement. Similarly there were several commenters who supported using fewer indicators as part of the CFSR. Some noted that a limited number of indicators would also reduce challenges in the interpretation of multiple measures, which may sometimes appear to offer conflicting perspectives on performance.

Greater reliance on entry cohorts. Commenters generally supported CB's intention to rely more on entry cohorts as a method for measuring performance and gauging state improvement. However, a commenter suggested that CB be more precise in its terminology, noting that the term ''entry cohort'' was overbroad to describe the cohorts of interest the indicators include. While we agree that this term is broad, we included the term to reflect our general change in approach to measurement in some areas. As we have described each indicator's cohort specifically in terms of which children and circumstances are included in the numerator and the denominator we do not believe it is necessary to go into greater detail in naming the type of cohorts used.

Federal data elements and consistency of state practice. A few commenters requested that CB define terms that are referenced in the indicators or require states to have consistency in what is captured in AFCARS. One agency asked for CB to evaluate how to define ''foster care placement'' to ensure that the states report consistently who is in foster care across the country. In particular, the commenter noted that a child's placement outside of his or her own home and with a relative is not always included in the reporting population depending on the circumstances. Another requested that we provide more clarity regarding the discharge reason of 'living with relatives' within AFCARS.

CB is not defining those terms further in this document. However, we will consider how to provide additional technical assistance and guidance to states on how to report AFCARS data accurately consistent with existing policy and also consider whether additional policy is necessary. We note that in defining AFCARS data elements and guidance, CB has intentionally considered the range of states' child welfare practices, authorities and responsibilities. For example, the issue of whether a child 'placed' with a relative is reported as in foster care to AFCARS depends in part on whether the state child welfare agency has placement and care responsibility of the child and not whether the child is residing in his own home. We want all states to understand and apply AFCARS reporting populations, data element definitions and other related guidance consistently. However, the application of that guidance will reflect the unique aspects of a state's foster care program and population.

Well Being indicators. One organization recommended that CB improve well-being metrics used in the CFSR. Particular suggestions included tracking states' implementation of provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 112–34) related to health including that children in foster care receive health screenings, have up-to-date health information and records, and states have processes for health oversight plans including monitoring children's use of psychotropic medications. Another suggestion was for CB to work with the Centers for Medicare and Medicaid Services (CMS) and the National Collaborative for Innovation in Quality to develop effective well-being measures.

CB focuses on how states are providing for children's well-being needs in the CFSR even though we do not have data elements in AFCARS or NCANDS that support the development of meaningful statewide data indicators relevant to child well-being at this time. Through the onsite review component

[4] See the CFSR Onsite Review Instrument, *Stability of Foster Care Placement (item 4)* at *https://training.cfsrportal.org/resources/3044.*

[5] U.S. Department of Health and Human Service, Child and Family Services Reviews Aggregate Report, Findings for Round 2 Fiscal Years 2007–2010. December 16, 2011. Located online at *http://www.acf.hhs.gov/sites/default/files/cb/fcfsr_report.pdf.*

of the CFSR, CB examines whether the state has appropriately assessed a child's health (including dental) and mental health needs, and if applicable, whether the state also identified and managed any health and mental health issues by facilitating the provision of the necessary services for all children in foster care and applicable children receiving services in their own homes. In the evaluation, we consider whether the state conducted initial and periodic health/mental health screenings for the child, the presence or lack thereof of up to date health information and oversight of medications, if applicable. More information on the particular assessment questions in the onsite review can be found in the CFSR Onsite Review Instrument.[6] CB has described some of our efforts to focus child well-being issues in an issuance in 2012.[7] CB will continue to work in collaboration with CMS and other appropriate partners to strengthen our ability to support states in measuring and ensuring positive outcomes in these areas.

Framing indicators in a positive direction. There were several comments along the theme of reframing some of the indicators so that they were stated positively. For example, one commenter suggested that the indicator be renamed to 'permanency maintained' and change the calculation of the indicator to be positively framed so that the denominator includes children exiting care to permanency and the numerator includes those that do not re-enter. Regarding placement stability, two commenters noted that although the indicator nomenclature is positively stated as placement stability, the description clarifies that the indicator itself is calculated negatively as placement instability. These commenters suggested switching the numerator and denominator so that the indicator could be expressed in a positive fashion. CB chose not to revise the indicators or their descriptions in this way. Communicating these indicators can be challenging, and reversing the direction of the indicator makes it less intuitive and more complicated to measure and communicate. Second, maintaining these indicators as described allows us to remain consistent with the concepts as measured during prior CFSR rounds, promoting greater ease of use. In other cases, the measures simply cannot be reversed. As such we are keeping the indicators framed as described.

Applicability to particular populations. We received comments of concern about how the data indicators were perceived to apply to specific groups of children. One organization sought additional consultation with Indian tribes on the data indicators and revisions to round 3 overall to inform our thinking on applicability to Indian children. CB conducted in-person consultation with Indian tribes in 2011 regarding improvements in the CFSR in the areas use of data and performance monitoring overall. We used this feedback, in conjunction with feedback from states and other stakeholders in revising round 3 and the data indicators. However, we understand the need to further engage Indian tribes in meeting the needs of Indian children, particularly those in state custody. In addition to reinforcing with states the importance of engaging and collaborating Indian tribes throughout the CFSR process, CB will work directly with Indian tribes and organizations that advocate on behalf of Indian children to ensure that Indian tribes are informed about the CFSRs and the opportunities to participate in them.

We also received comments of concern about how data indicators can miss how states are performing with regard to Native American children, LGBTQ populations and older youth. We also heard concerns that state results on such indicators could be used as justification for the state to focus their attention on other groups of children or avoid work in accordance with best practices for such populations. We understand that the data indicators are limited and provide generalized information about a state's performance. CB is committed to consulting with states to understand what their statewide performance is or is not revealing about its programs, practice and results for the particular populations of children served by the state. Although the assessment of the state's performance on national indicators is part of our monitoring efforts, it must be paired with a state analysis of cases reviewed during the onsite review and other data or information that the state has its disposal to better understand what is the experience of children involved in the child welfare system.

National Standards and State Performance

We have set the national standard at the national observed performance for each of the seven indicators.

For indicators in which the outcome for a child either occurred or did not occur the standard is calculated as the number of children in the nation experiencing the outcome divided by the number of children in the nation eligible for and therefore at risk of the outcome. This is the case for the indicators that measure permanency (for all cohorts) in 12 months, re-entry to foster care in 12 months and recurrence of maltreatment. The result of the calculation is a proportion. However, we present the standard as a percentage by multiplying the proportion by 100.

For indicators in which the outcome for a child is a count per day in care the standard is calculated as the sum of counts for all children in the nation divided by the sum of days these children were in care. This is the case for the indicators for placement stability (moves per day in care) and maltreatment in foster care (number of victimizations per day in care). The result of the calculation is a rate. We are multiplying the rates to yield more understandable numbers: for placement stability by 1,000 to yield a rate of moves per 1,000 days; and, for maltreatment in foster care by 100,000 to give a rate of victimizations per 100,000 days in care.

The following table shows the national standards for each indicator.

[6] See the CFSR Onsite Review Instrument, *Physical Health of the Child and Mental/Behavioral Health of the Child (items 17 and 18).* Available online at *https://training.cfsrportal.org/resources/3044.*

[7] See for example ACYF–CB–IM–12–04, *Promoting Social and Emotional Well-Being for Children and Youth Receiving Child Welfare Services.* April 17, 2012. Available at *http://www.acf.hhs.gov/sites/default/files/cb/im1204.pdf.*

TABLE 1—NATIONAL STANDARDS FOR CFSR ROUND 3 STATEWIDE DATA INDICATORS

Statewide data indicators for safety outcome 1	National standard
Maltreatment in Foster Care	8.04 victimizations per 100,000 days in care.
Recurrence of Maltreatment	9.0%.
Statewide data indicators for permanency outcome 1	**National standard**
Permanency in 12 Months for Children Entering Foster Care	40.4%.
Permanency in 12 Months for Children in Foster Care 12 to 23 Months.	43.7%.
Permanency in 12 Months for Children in Foster Care 24 Months or More.	30.3%.
Re-Entry to Foster Care in 12 Months	8.3%.
Placement Stability	4.12 moves per 1,000 days in foster care.

Public Comment and CB Response: Some commenters stated that using the national observed performance as the national standard for state performance was an improvement over CFSR round 2. A few others argued that the state should be held to higher standards believing that was consistent with legislative intent in requiring ''substantial conformity'' with federally mandated state plan requirements.

As we considered how to set national standards, we attempted to balance the need for standards that were ambitious yet feasible. We also were mindful of the states' collective historical performance and our historical expectations of substantial conformity. As we noted in the prior document, we believe that the national observed performance is a reasonable benchmark and would appropriately challenge states to improve their performance.

Some commenters urged us to allow states to be measured against their own performance rather than using a national comparison due to the disparate ways states across the country conduct child welfare activities. Although we acknowledge that there are disparities in child welfare activities in the states, we believe it is appropriate for CB to set consistent expectations for states' performance in its title IV–B and IV–E programs. We also note that the regulation that governs CFSRs requires that we determine substantial conformity based in part on national standards versus state-specific benchmarks (45 CFR 1355.31(a) and (b)). CB has, however, set improvement goals based on how each state has performed historically.

Multi-level modeling approach. State performance on each statewide data indicator will be assessed using a multi-level (i.e., hierarchical) model appropriate for that indicator. A multi-level logistic regression model will be used for indicators in which the outcome for a child either occurred or did not occur. A multi-level Poisson regression model will be used for indicators in which the outcome is a count per unit of time. We chose multi-level modeling because it is a widely accepted statistical method that enables fair evaluation of relative performance among states with different case mixes. The multi-level model that we employ when assessing each state's performance takes into account: (1) The variation across states in the age distribution of children served for all indicators, and the state's entry rate for select indicators (risk adjustment); (2) the variation across states in the number of children they serve; and, (3) the variation in child outcomes between states. The result of this modeling is a performance value that is a more accurate and fair representation of each state's performance than can be obtained with simply using the state's observed performance.

Public Comments and CB Response: No specific comments were received on using a multi-level approach.

Risk Adjustment. We will risk adjust on child's age for each indicator (depending on the indicator it is the child's age at entry, exit, or on the first day). See appendix A for details on risk adjusters. We will also risk adjust on the state's foster care entry rate for two indicators: Permanency in 12 months for children entering foster care and re-entry to foster care in 12 months. Adjusting on age allows us to control statistically for the fact that children of different ages have different likelihoods of experiencing the outcome, regardless of the quality of care a state provides. Adjusting on foster care entry rate allows us to control for the impact of the states' case mixes as far as the overall risk children in that state have of experiencing the outcome. We use entry rate to account for the fact that states with lower entry rates tend to have children at greater risk for poor outcomes.

We use a separate ''dummy'' variable for each age when calculating the risk adjustment for age. Use of dummy variables is a common strategy in regression models to measure the impact of a characteristic on an outcome. A dummy variable has a value of 1 or 0 to indicate the presence or absence of the characteristic. For example, a child who entered care at age 2 will have a ''1'' for the ''age 2'' variable and a ''0'' for all others. For all but the first day permanency indicators, 19 age dummy variables are used to represent the ages from birth to 3 months, four to 11 months, and each year from age 1 through 17. The first day permanency measure for children in care 12 to 24 months uses 17 age dummy variables (ages 1 through 17), and the first day permanency indicator for children in foster care 24 months of more uses 16 age dummy variables (ages 2 through 17). The method requires specifying a base or reference age group and for that we use the median age.

We calculate the entry rate as the number of children entering foster care during the 12-month period divided by the number of children in the state's child population, multiplied by 1,000. We obtain the child population data from the population division of the U.S. Census Bureau.[8] This Census data reflect population estimates as of July 1st of each year, whereas the 12-month periods CB uses to define children entering care are either October to September, or April to March. Therefore, we chose to use the Census year closest to the 12-month period the child entered foster care as the denominator. For example, if the indicator follows children who entered care between April 1, 2011 and March 31, 2012 (an ''11B/12A'' file in AFCARS file conventions), we use child population estimates from the July 2011 Census estimate. If the 12-month period spanned October 1, 2012 through

[8] Population estimates can be downloaded from the U.S. Census Bureau's Web site at *https://www.census.gov/popest/index.html.*

September 30, 2013, we would use population estimates as of July 1, 2013.

After we perform all the calculations in the model, the result will be the state's risk standardized performance. The risk standardized performance is the ratio of the number of predicted outcomes over the number of expected outcomes, multiplied by the national observed performance. For details on how the predicted and expected outcomes are calculated, please consult CFSR Technical Bulletin #8 for additional information.

Public Comments and CB Response: Public comments expressed general support for risk adjustment, but many more requested more information, explanation, and transparency to understand and comment on the concept. We have provided more detail in this document to address the issues of transparency with precise methodology explanations in CFSR Technical Bulletin #8. Additionally, we understand that risk adjustment adds complexity to understanding state performance and so we decided as a matter of policy to employ it judiciously in this round of reviews and use only those variables that had wide support from the field and were statistically significant.

Commenters offered numerous suggestions for possible risk adjustment variables, with the most frequently mentioned being child's age, foster care entry rate, and whether states included juvenile justice youth in their child welfare systems. Other variables the field proposed include: The length of time from the date of a report to the date of disposition, the state's screen-in rate, how child maltreatment is defined statutorily, the degree to which states serve mental health populations and adolescents with behavior problems, poverty, parent factors and children's individual risk factors such as sibling group or severe disabilities.

CB considered and tested age as a risk adjuster for all indicators and found it to be statistically significant so we are including it as a variable for all indicators. We considered and tested whether the state's foster care entry rate should be used for permanency in 12 months for children entering foster care, re-entry to foster care in 12 months and placement stability. We found that the foster care entry rate was statistically significant for permanency in 12 months for children entering foster care and re-entry to foster care in 12 months and are using those. We found that foster care entry rates were not statistically significant for placement stability. We did not consider using foster care entry rate as an adjuster for the two permanency indicators for children in foster care on the first day. This is because children in foster care on the first day of the period will include children who entered in various years, and therefore an entry rate using data from a single year may not adequately reflect the experience with every child followed in the indicator. For a similar reason, entry rate was not considered for the maltreatment in foster care indicator. This indicator is based on children in foster care during a 12-month period. Although this indicator includes children who entered during the 12-month period, it also includes children who were in foster care on the first day of the period whose entry could have occurred at any point in the past.

For the recurrence of maltreatment indicator, we considered as a risk adjuster the state's screen-in rate, defined as the number of referrals the state screens in per 1,000 children in the child population. However, we decided against using this adjustment because its impact on the outcome is unclear and may have unintended consequences. State's child protective services policies are still under considerable fluctuation, especially with the varied implementation of differential response and structured decision-making. These and other policies that states are implementing may affect screen-in rates in unclear ways, so it would be challenging to explain what the adjustment is doing. We believe more research on the impact of adjusting on screen-in rates is needed before implementing this into the CFSRs.

Despite the call by some commenters to risk adjust for demographic variables, a few commenters argued that doing so could unintentionally relieve providers of their responsibility to work diligently to reunify vulnerable populations. Further, the commenters noted that child welfare agencies have a moderate degree of influence over the nature and adequacy of the services being provided to these populations and that adjusting for demographic variables could mask the disparate negative experiences of higher-risk populations. CB believes the limited use of risk adjustment at this time mitigate some of the concerns expressed in these comments. CB would also like to note that states are still encouraged to examine observed performance for children by age, sex, race and other demographic variables. This level of analysis will help uncover disparities in outcomes for certain populations based on their demographics.

Many of the suggested risk adjustment variables related to the programmatic aspects of the state's child welfare program, such as whether the state child welfare agency serves youth who are involved in the juvenile justice system. Some commenters offered alternative approaches to risk adjustment including focusing on systemic and environmental variables at the state level. We note that state program features are not readily identifiable in the administrative data that states submit to CB at this time. However, risk adjusting on additional state-level variables is an important area of research, and CB encourages researchers to continue to explore the challenges and advantages of implementing such risk adjustment in child welfare.

Some commenters offered alternative approaches to risk adjustment that involved dividing some of the data indicators by sub-populations. CB considered dividing the data indicators by sub-populations as stratifying performance by sub-populations is a useful strategy to see how outcomes vary for children from different backgrounds and experiences. However, in the context of the CFSR, we chose not to pursue this approach because of the unmanageable set of indicators it would produce. For example, if we grouped child age into five groups as is commonly done, and had separate indicators for each age group, the result would be 35 indicators (7 indicators by 5 age groups) based on age, and presumably 35 separate national standards, and so forth. Instead, we chose to implement a risk adjustment strategy that is widely practiced and can incorporate multiple risk adjustment variables into a single outcome.

Some commenters questioned whether CB would provide risk adjusted information to local jurisdictions that would likely need to be responsible for implementing changes based on the states' performance on the indicators. We note that these same models could be implemented at the state level, using as the focus of analysis the county (instead of the state, as the CB is doing). Details about technical assistance available for states interested in performing similar analyses is forthcoming as are further details on the information that will be available to states in data profiles as we finalize them.

A commenter requested clarity on the consequences for program improvement if a state's observed score meets the national standard, but the state's risk adjusted performance does not. In this situation CB will still require the state to enter into program improvement. This is because the state's observed performance is not the most precise

measure of the state's performance after considering its case mix and size in the context of the performance of other states with similar case mixes.

Categorizing State Performance relative to the National Standards: A state's risk standardized performance can be compared directly to the national observed performance to determine if the state's risk standardized performance is statistically higher or lower than the national observed performance. To make this assessment, CB calculates approximate 95% interval estimates around each state's risk standardized performance. For details on how these interval estimates are calculated, see Technical Bulletin #8. CB will compare each state's interval estimate to the national observed performance, and assign each state to one of three groups:

- ''No different than national performance'' if the 95% interval estimate surrounding the state's risk standardized performance includes the national observed performance.
- ''Higher than national performance'' if the entire 95% interval estimate surrounding the state's risk standardized performance is higher than the national observed performance.
- ''Lower than national performance'' if the entire 95% interval estimate surrounding the state's risk standardized performance is lower than the national observed performance.

Whether it is desirable for a state to be higher or lower than the national performance depends on the indicator. For the indicators assessing permanency in 12 months for the three cohorts, a higher value is desirable. For these indicators if the state's risk standardized performance is ''lower than national performance'' we will consider the state not to have met the national standard and will require program improvement. For the remaining indicators, a lower value is desirable. If a state's risk standardized performance is ''higher than the national performance'' for these indicators, we will consider the state not to have met the national standard and will require program improvement. For all indicators, we will consider states that are ''no different than national performance'' to have met the national standard and no program improvement will be required.

Public Comments and CB Response: A commenter requested clarification on whether the national standards will remain fixed over the course of the round. The national standard will remain the fixed standard over round 3 of the CFSRs. However, there are situations in which a state's more recent data will be used to evaluate their performance relative to the standard. Due to the staggered schedule of CFSRs, some states will begin their onsite review one to three years after the establishment of the national standards and any initial assessment we provide of where states fall relative to the standards. Or a state may resubmit data for an earlier reporting period prior to its review. In preparation for these states' statewide assessments, CB will rerun the national model using the state's most current data applicable, but using the fixed data from the original reference population (i.e., the fixed data for all other states). This allows us to assess if the state, given its most recent performance, would now meet the national standard had it performed this way when we provide each state's performance initially.

Sources and Data Periods: The datasets used for the national standard calculations depend on the indicator. Some indicators require more data periods than others. For example, the re-entry indicator requires six report periods of AFCARS data. This is because the cohort of children used requires a look at all children who enter foster care over a 12-month period; then they are followed for another 12-months to establish whether they have exited to permanency; then they are followed for a subsequent 12-months after their exit to see if they reenter foster care. Attachment A specifies the data periods that will be used for calculating the national standard for each indicator.

Monitoring Statewide Data Indicators in Program Improvement Plans

CB will require states that do not meet the national standard for an indicator to include improvement on that indicator in its program improvement plan. If we are unable to determine a state's performance on an indicator due to data quality issues, we will also require the state to include that indicator in its program improvement plan. Data quality levels that prevent CB from identifying a state's performance are described in the next section and are specified in Attachment C. For two of the statewide data indicators, permanency in 12 months for children entering foster care and re-entry to foster care, CB will determine performance for program improvement purposes on one indicator in concert with the other as a companion measure. The key components for setting improvement goals and monitoring a state's progress over the course of a program improvement plan involve calculating baselines, setting improvement goals, and when companion measures are included in an improvement plan, also establishing thresholds. CB will set improvement goals and thresholds in part relative to each state's past performance.

A state can complete its program improvement plan successfully with regard to the indicators by meeting its improvement goal and staying above the threshold for its companion measure, if applicable. The determination that the state has been successful can be made during the program improvement period or the non-overlapping data period. The non-overlapping data period follows the end of the program improvement plan and is the period in which CB is evaluating the state's resulting performance as evidenced in the data. Alternatively, CB can relieve a state of any further obligation to improve for CFSR purposes if the state meets the national standard for an indicator prior to or during the course of program improvement monitoring.

Companion Measures: If a state has a program improvement plan that includes improving on the indicator permanency in 12 months for children entering foster care, CB's determination of whether the state has improved successfully will take into consideration its performance on the re-entry to foster care indicator as a companion measure. Specifically, the state must not allow performance on the companion measure to get worse beyond a certain level from its baseline performance. Thresholds are established as the inverse of performance goals, to provide the bounds in which states should not worsen. For example, a state must stay below a threshold for the companion re-entry to foster care indicator as well as achieve its goal on the permanency in 12 months for children entering foster care indicator to successfully complete the program improvement plan. The reverse is also true. If a state must improve on the re-entry to foster care indicator in its program improvement plan, it must not get worse than the threshold established for permanency in 12 months for children entering foster care. For details about threshold calculations, please see the section below and CFSR Technical Bulletin #8.

Public Comments and CB Response: Several commenters expressed strong support for the use of companion measures, but requested technical assistance to support states' work in translating these concepts and the calculations for thresholds. CB will work to provide states with clear explanations and visuals within their data profiles and technical materials of how the companion measures can be interpreted and are calculated. On the other hand, a commenter requested that

we acknowledge that there could be no evidence or justification that one indicator contributed to the result of the other. CB was careful to select the companion measures because of the close connection between the practices of one and the other. CB has no plans to demonstrate for program improvement purposes that when a state increases its exits to permanency within 12 months and there is a subsequent increase reentry that there is causal relationship between the two (or that decreased reentries was caused by decreased exits to permanency). However, the goal is not to show causality; the concept is that if a state is unable to keep from getting markedly worse on the companion measure it cannot be considered to have successfully improved on the primary indicator as it indicates that something in the state's practices was problematic for the related area of permanency. It will always be incumbent on the state, working in concert with CB, to drill down into the data and assess its practice to understand whether, where and how practices can be aligned to ensure that children's needs are met for permanency to be achieved timely and appears to be long lasting.

State Baselines: CB will set the baseline for each statewide data indicator included in a program improvement plan at the state's observed performance on that indicator for the most recent year of available data at the beginning of the program improvement plan. However, just as there are multiple data periods used for the development of the national standards, multiple time periods are needed to evaluate the state's baseline performance at the time of the PIP and then subsequently throughout the program improvement period. Since the CFSR review schedule is staggered, the applicable year or data periods used in establishing the baseline will vary. For example, a state with an onsite review in April 2015 (FY 2015) and enters into a program improvement plan in September 2015 that includes the recurrence of maltreatment indicator would have its baseline calculated based on its performance in FY 2014. Since recurrence of maltreatment requires two years of NCANDS data, the applicable data periods would be FY 2013 and FY 2014.

Public Comments and CB Response: No comments were received on the proposal in this area and no changes were made.

State Improvement Goals and Thresholds: We will establish improvement factors for program improvement goals and thresholds (if applicable) for the data indicators based on the variability in a state's observed performance in the three most recent years of data. The improvement factor is multiplied to the state's observed performance for each statewide data indicator needing improvement in the most recent year available at the start of the improvement plan. Thresholds are calculated for companion measures and reflect levels of performance decline that the state cannot cross for us to consider the state to have successfully completed the primary statewide indicator. Thresholds are simply the inverse of the improvement goals.

The resulting improvement goal or threshold may be limited or increased for a state based on minimum and maximum levels for improvement that we have set for each indicator. We will set the minimum and maximum improvement levels so that no states are required to improve by more than the amount of improvement at the 50th percentile, and all states engaged in a program improvement plan are to improve by at least the amount of improvement at the 20th percentile (or 80th percentile, depending on whether higher or lower performance is preferable on the indicator). We will then use these values to replace the otherwise resulting improvement goal/threshold. The technical detail of the several steps we will take for these calculations are presented in CFSR Technical Bulletin #8 as well as a full discussion about the methods chosen and our rationales for doing so.

Table 2 provides the range of improvement factors for each statewide data indicator. If the state is required to improve for an indicator, the state will use their most recent year of observed performance as their baseline in determining the applicable improvement factor. For example, for the permanency in 12 months for children entering foster care indicator, improvement factors will be no lower than 1.035 and no higher than 1.057. If the value generated by a state's own prior performance generates a value within that range, they would use that value. For example, if the baseline was 40% and the state has to show the most improvement, they would simply multiply 1.057 with the baseline and obtain a goal of 42.28%.

TABLE 2—MINIMUM AND MAXIMUM IMPROVEMENT ON THE STATEWIDE DATA INDICATORS

Statewide data indicators for safety outcome 1	Minimum	Maximum
Maltreatment in Foster Care	0.922	0.849
Recurrence of Maltreatment	0.953	0.910
Statewide data indicators for permanency outcome 1	**Minimum**	**Maximum**
Permanency in 12 Months for Children Entering Foster care	1.035	1.057
Permanency in 12 Months for Children in Foster Care 12 to 23 months	1.040	1.074
Permanency in 12 Months for Children in Foster Care 24 Months or More	1.034	1.080
Re-Entry to Foster Care in 12 Months	0.912	0.867
Placement Stability	0.953	0.912

Public Comment and CB Response: Some commenters expressed support for the program improvement methodology related to statewide data indicators as an overall concept. Such comments included support for the use of companion measures and thresholds as well as the use of historical performance as the basis for performance improvement targets. However, others commented that they were confused about the methods we proposed and that they would have difficulty explaining them to stakeholders. Commenters requested more explicit descriptions on how we will establish goals and threshold and on the consequences for states that have performance that drops below a threshold during program improvement.

Further, a number of commenters stated that there was not enough information in the original document to inform further comments and challenged a number of our methods chosen as technically inaccurate. These commenters noted concerns with

establishing states performance improvement goals based on only three data points; using four standard deviations as the distance required for improvement; employing the Chebyshev's theorem; and how the application of these techniques could lead to states failing to meet the minimal level of improvement. As alternatives, commenters suggested the use of two standard deviations; relying upon available data, such as historical AFCARS and NCANDS data; applying the Empirical Rule rather than using the Chebyshev theorem; and allowing performance goals to be mutually negotiated between states and ACF.

We made several changes in response to these comments. First, we have provided a more thorough explanation of our methods and rationales for those methods in CFSR Technical Bulletin #8 as we believe it is important for states to see the full detail of our methods. We also took another look at the application of four standard deviations in developing the improvement factors given the concerns about setting goals that were too large. After we conducted additional analysis of the resulting improvement factors we agree with commenters that in some circumstances employing the 4 standard deviations would result in more aggressive improvement factors than round 2 even when also setting minimum and maximum improvement expectations at the 80th and 20th percentiles. In response, we have adjusted the approach to use 2 standard deviations and also to set the maximum improvement of all states' expectations to the 50th percentile of all states' original improvement factors, when calculated for every state and ordered from highest to lowest.

Another commenter requested additional information on whether improvement goals and thresholds for the statewide data indicators can be negotiated. As was the case in the prior round, we have standardized the approach to establish improvement factors that are applied to the state's baseline and are not negotiating the amount of improvement on the indicators. However, we will negotiate with a state how to design its program improvement approaches to attain the improvement goals. We will also still allow a state the opportunity during a program improvement plan to provide data that can be verified, reproduced and otherwise approved by ACF, as evidence that the state has met the requirement for attaining the required improvement.

A commenter requested clarification on whether the same multi-level modeling and risk adjustment will be utilized in assessing a state's performance over time to account for fluctuations in the state's population. When assessing a state's performance over time to determine whether or not states meet program improvement plan goals, we will not be using the same multi-level modeling and risk adjustment approach. We will be using the state's own observed performance on the indicators, regardless of changes in the state's population to make these determination.

Successful completion of program improvement relative to the indicators: Although not specifically outlined in our original proposal, we wanted to clarify that a state can complete its program improvement plan successfully with regard to the indicators in a couple of ways. One is by meeting its improvement goal and not exceeding the threshold for its companion measure, if applicable, at some point before the end of the program improvement monitoring. Alternatively, CB can relieve a state of any further obligation to improve for CFSR purposes if the state meets the national standard for an indicator prior to the approval of a program improvement plan or during the course of program improvement monitoring. This latter provision also means that a state need not meet a program improvement goal (by application of the improvement factor or the minimum or maximum improvement level) for an indicator if the state first meets the national standard for that indicator.

Data

Data Profiles: We will provide data profiles of state performance to each state before the state's CFSR on all seven of the statewide data indicators and other contextual data available from AFCARS and NCANDS. This data profile will assist the state to develop its statewide assessment and begin planning for program improvement, if appropriate. In addition, we will provide data profiles semi-annually to assist states in measuring progress toward the goals identified in the program improvement plan.

Public Comment and CB Response: Several commenters appreciated our commitment to providing data semi-annually, recognizing their importance in preparing for CFSRs and improving practice on a more general basis. Several commenters requested specific categories of information that would be beneficial for continuous quality improvement activities. Requested information included disaggregated data for the statewide data indicators, a rate of placement that is not tied to federal performance standards, and indicators of juvenile justice case type and a child's Indian Child Welfare Act (ICWA) eligibility and status.

In CFSR Technical Bulletin #8 we have outlined the content of the data profiles that we will send to states so that they can evaluate their performance in completing the statewide assessment. We have also outlined our plans for data profile content that will be sent to states during program improvement, if necessary. We welcome continued input from states on the content of program improvement profiles that will support their analysis in developing strategies for improvement. However, we also encourage states to conduct analysis on any data available to the state, including data that is not submitted to CB such as juvenile justice case type and ICWA status, to inform their understanding of their performance and measure progress.

Data Quality: Excluding States From National Standards or State Performance

Setting national standards and measuring state performance on statewide data indicators for CFSR purposes relies upon the states submitting high-quality data to AFCARS and NCANDS. Therefore we will exclude states that have data quality issues that exceed the data quality limits established from the model we use to calculate the national standard (i.e., the national observed performance) and estimate states' risk adjusted performance.

Because errors in the data can misrepresent state performance, we made the decision to remove a state from the analysis entirely if they exceed certain limits on the data quality checks. We reviewed state-by-state performance on each data quality item before establishing these limits. Because we do not want to be too strict and exclude a great number of states, we were conservative and set the limits high for common issues (e.g. 10% for dropped cases). However, some checks are critical to calculations (such as a count of placements for the placement stability measure), and we set the limits a bit lower (5%) in order to not misrepresent state performance.

Data Quality: Case-Level Exclusions

For those states that do not exceed the data quality thresholds but still have identified data quality problems, we will include the state in national standards calculations and measure state performance but we will exclude child-level records with missing or

invalid data on elements needed to determine the child's outcome and perform the risk adjustment. For example, if the risk adjustment for an indicator includes age at entry, a child whose age at entry cannot be determined (due to a missing date of birth) will not be included in the analysis. For each indicator, we will provide each state with a list of records that were excluded from the analyses.

Public Comments and CB Response: Two commenters expressed support for our approach to addressing data quality issues in estimating national standards and a state's risk adjusted performance. One commenter urged us to hold states responsible for producing ''high-quality, consistent, and complete data'' pointing out that we have not found any state in the past 13 years, to be in full compliance with the AFCARS standards through ACF's AFCARS Assessment Reviews. The other commenter commended us for recognizing that quality data is critical to assessing performance. Another commenter was concerned that the thresholds meant that the standards could not be considered national; while another wanted the thresholds raised to allow more states to either participate in the national standard calculations or have their state performance evaluated.

We concur with those commenters that believe that data quality standards are necessary to ensure the integrity of our performance assessment. We believe we have maintained an appropriate balance in setting data quality thresholds so as not to exclude states unreasonably. In terms of the national standards, the number of states excluded was relatively few. For the indicators permanency by 12 months for the 12 to 23 month and 2 or more years first day cohorts, one state was excluded from the national standard calculation. For the permanency by 12 months entry cohort indicator, three states were excluded. For the reentry to foster care, recurrence of maltreatment and maltreatment in foster care indicators, four states were excluded. Six states were excluded from the calculation of the national standard for the placement stability indicator. We will continue to work with states that have their data excluded from the national standards or evaluation of state performance and advise on how they can address the data quality issues in their systems.

(Authority: 42 U.S.C. 1320a–1a; 45 CFR 1355.31–37.)

Mark Greenberg,

Acting Commissioner, Administration on Children, Youth and Families.

Attachment A: Statewide Data Indicators

Category	Measure title	Measure description	Denominator	Numerator	Exclusions & notes	Risk adjustment
Safety	Maltreatment in Foster Care.	Of all children in foster care during a 12-month period, what is the rate of victimization per day of foster care? *For national standard calculation, uses AFCARS periods 2013A and 2013B and NCANDS FY2013 Child File.*	Of children in foster care during a 12-month period, the total number of days these children were in foster care as of the end of the 12-month period [a].	Of children in the denominator, the total number of substantiated or indicated reports of maltreatment (by any perpetrator) during a foster care episode within the 12-month period [b].	—If a state provides incident dates, records with an incident date occurring outside of the removal episode will be excluded, even if report dates fall within the episode. —Complete foster care episodes lasting <8 days are excluded. —Any report that occurs within the first 7 days of removal is excluded. —Victims age 18 or more are excluded, as well as youth in foster care at 18 or more. For youth who start out as 17 years of age and turn 18 during the period, any time in foster care beyond his/her 18th birthday is not counted in the denominator. —Cases are matched across AFCARS and NCANDS using AFCARS ID.	—Age at entry (for children entering) or age on first day of the 12-month period (for children already in care).

Category	Measure title	Measure description	Denominator	Numerator	Exclusions & notes	Risk adjustment
Safety	Recurrence of Maltreatment.	Of all children who were victims of a substantiated or indicated report of maltreatment during a 12-month period, what percent were victims of another substantiated or indicated report of maltreatment within 12 months of their initial report? *For national standard calculation, uses NCANDS FY 2012 and FY 2013 Child Files.*	Number of children with at least one substantiated or indicated report of maltreatment in a 12-month period.	Number of children in the denominator that had another substantiated or indicated report of maltreatment within 12 months of their initial report.	Relies primarily on the report date to determine whether the maltreatment occurred in the first 12-month period; therefore, if a case does not reach disposition until the following 12-month period but has a report date in the first, we include it. —If subsequent report is within 14 days, we do not count it. —If incident date indicates that two reports refer to the same incident, we do not count it. —If report date is prior to the first 12 months, we exclude it. —Youth age 18 or more are excluded from the measure.	—Age at initial victimization.
Permanency ...	Permanency in 12 Months for Children Entering Foster Care.	Of all children who enter foster care in a 12-month period, what percent discharged to permanency within 12 months of entering foster care? [c] *For national standard calculation, uses AFCARS periods 2011B through 2013A.*	Number of children who enter foster care in a 12-month period.	Number of children in the denominator who discharged to permanency within 12 months of entering foster care and before turning 18.	—Children in foster care <8 days are excluded. —Children who enter foster care at age 18 or more are excluded. —Trial home visit adjustment is applied.	—Age at entry. —State's foster care entry rate.

Category	Measure title	Measure description	Denominator	Numerator	Exclusions & notes	Risk adjustment
Permanency ...	Permanency in 12 Months for Children in Foster Care 12–23 Months.	Of all children in foster care on the first day of a 12-month period who had been in foster care (in that episode) between 12 and 23 months, what percent discharged from foster care to permanency within 12 months of the first day of the 12-month period? *For national standard calculation, uses AFCARS periods 2013B and 2014A.*	Number of children in foster care on the first day of a 12-month period, who had been in foster care (in that episode) between 12 and 23 months.	Number of children in the denominator who discharged from foster care to permanency within 12 months of the first day of the 12-month period and before turning 18.	—Children age 18 or more on the first day of the 12-month period are excluded. —Trial home visit adjustment is applied.	—Age on first day.
Permanency ...	Permanency in 12 Months for Children in Foster Care 24 Months or More.	Of all children in foster care on the first day of a 12-month period, who had been in foster care (in that episode) for 24 months or more, what percent discharged to permanency within 12 months of the first day of the 12-month period? *For national standard calculation, uses AFCARS periods 2013B and 2014A.*	Number of children in foster care on the first day of a 12-month period, who had been in foster care (in that episode) for 24 months or more.	Number of children in the denominator who discharged from foster care to permanency within 12 months of the first day of the 12-month period and before turning 18.	—Children age 18 or more on the first day of the 12-month period are excluded. —Trial home visit adjustment is applied.	—Age on first day.
Permanency ...	Re-Entry to Foster Care in 12 Months.	Of all children who enter foster care in a 12-month period, who discharged within 12 months to reunification, live with relative, or guardianship, what percent re-enter foster care within 12 months of their discharge? [a] *For national standard calculation, uses AFCARS periods 2011B through 2014A.*	Number of children who enter foster care in a 12-month period and discharged within 12 months to reunification, live with relative(s), or guardianship.	Number of children in the denominator who re-enter foster care within 12 months of their discharge.	—Children in foster care <8 days are excluded. —Children who enter or exit foster care at age 18 or more are excluded, —If a child has multiple re-entries within 12 months of their discharge, only his first re-entry is selected.	—Age at exit. —State's foster care entry rate.

Category	Measure title	Measure description	Denominator	Numerator	Exclusions & notes	Risk adjustment
Permanency ...	Placement Stability	Of all children who enter foster care in a 12-month period, what is the rate of placement moves per day of foster care? *For national standard calculation, uses AFCARS periods 2013B and 2014A.*	Of children who enter foster care in a 12-month period, the total number of days these children were in foster care as of the end of the 12-month period [d].	Of children in the denominator, the total number of placement moves during the 12-month period [e].	—Children in foster care <8 days are excluded. —Children who enter foster care at age 18 or more are excluded. For youth who enter at 17 years of age and turn 18 during the period, any time in foster care beyond his/her 18th birthday or placement changes after that date are not counted. —The initial removal from home (and into care) is not counted as a placement move.	—Age at entry.

Notes: The letters 'A' and 'B' are shorthand for the six-month AFCARS reporting periods. The 'A' period spans October 1st–March 31st, and the 'B' period spans April 1st–September 30th of any given year. The year always refers to the year in which the six-month period ends. For example, 2014A refers to the six month period of 10/1/2013 through 3/31/2014.

[a] For example, if during the 12-month period there were two children in foster care, one child for 10 days (1st episode), the same child for 40 days (2nd episode), and the other child for 100 days (his only episode), the denominator would = 150 days (10+40+100).

[b] For example, if during the 12-month period there were two children in foster care, and one child had 3 substantiated or indicated reports and the other had 1 such report, the numerator would = 4 reports (3+1).

[c] If a child has multiple entries during the 12-month period, only the first entry in the 12-month period is selected.

[d] For example, if during the 12-month period two children entered care, one child for 10 days and the other child for 100 days, the denominator would be 110 days (10+100).

[e] For example, if during the 12-month period two children entered care, and one child had 3 moves and the other had 1 move, the numerator would = 4 moves (3+1).

Attachment B: Comparison of Data Measures—CFSR Round 2 and Round 3

Category	Measure title	CFSR round 3 indicator	Comparable CFSR round 2 measure	How and why it's changed
Safety	Maltreatment in foster care	Of all children in foster care during a 12-month period, what is the rate of victimization per day [a] of foster care?	Of all children in foster care during the reporting period, what percent were not victims of substantiated or indicated maltreatment by a foster parent or facility staff member?	In the CFSR 2 measure, counts of children not maltreated in foster care are derived by subtracting the NCANDS count of children maltreated by foster care providers from the total count of all children placed in foster care, as reported in AFCARS. Because of improved reporting by states, we now link AFCARS and NCANDS data using the child ID and determine if maltreatment occurred *during* a foster care episode, improving accuracy on the indicator.

Category	Measure title	CFSR round 3 indicator	Comparable CFSR round 2 measure	How and why it's changed
				This also allows us to expand the measure to include all types of perpetrators (including, for example, parents) under the assumption that states should be held accountable for keeping children safe from harm while in the care of the state, no matter who the perpetrator is.
Safety	Recurrence of maltreatment ...	Of all children who were victims of substantiated or indicated maltreatment allegation during a 12 month period, what percent were victims of another substantiated or indicated maltreatment allegation within the next 12 months?	Of all children who were victims of substantiated or indicated maltreatment allegation during the first 6 months of the reporting period, what percent were not victims of another substantiated or indicated maltreatment allegation within a 6-month period?	We will use a full 12-month period rather than only 6 months to capture the denominator, to create more stable estimates. We will also track them for another full 12 month to see if there is a recurring maltreatment. The indicator also includes these changes: If the subsequent report is within 14 days, we will not count it. While the measure relies on report date, we will also make use of the incident data, when available. If the incident date indicates that two reports refer to the same incident, we will not count it. Finally, youth age 18 or more are excluded from the measure.
Permanency.	Permanency in 12 months for children entering foster care.	Of all children who enter foster care in a 12-month period, what percent discharged to permanency within 12 months of entering foster care?	Composite 1.3: Of all children entering foster care for the first time in a 6-month period, what percent discharged to reunification (or live with relative) within 12 months of entering foster care or by the time they reached 18?	We now count all types of permanency (reunification, live with relative, adoption or guardianship) as having 'met' the indicator. We also expanded the measure to include all children who entered foster care that year; not just those on their first removal episode. We also expanded the window of time for the entry cohort to a full year instead of 6 months; this will yield more stable estimates.
Permanency.	Permanency in 12 months for children in foster care between 12 and 23 months.	Of all children in foster care on the first day of a 12-month period who had been in foster care (in that episode) between 12 and 23 months, what percent discharged to permanency within 12 months of the first day?	In CFSR Round 2, we looked at reunifications within 12 months as part of a measure within Composite 1, and we looked at adoptions in 24 months as part of Composite 2.	We add this cohort to allow for children and youth in foster care who have already been in foster care between 1 and 2 years to be a focus for permanency, as well. We expect this population to have a higher percentage of exits to adoption or guardianship than those entering care during the year.

Category	Measure title	CFSR round 3 indicator	Comparable CFSR round 2 measure	How and why it's changed
Permanency.	Permanency in 12 months for children in foster care for 24 months or longer.	Of all children in foster care on the first day of a 12-month period who had been in foster care (in that episode) for 24 months or longer, what percent discharged to permanency within 12 months of the first day?	Composite 3.1: Of all children in foster care on the first day of a 12-month period who had been in foster care (in that episode) for 2 or more years, what percent discharged to permanency within 12 months of the first day or by the time they reached 18?	Same measure; no change. The difference is that it is now evaluated on its own, rather than as just one part of a composite measure. We believe it is important to hold states accountable for getting those children and youth who have been in foster care for long periods of time to permanent homes.
Permanency.	Re-entry in 12 months	Of all children who enter foster care in a 12-month period and discharged within 12 months to reunification, live with relative, or guardianship, what percent re-entered foster care within 12 months of their date of discharge?	Composite 1.4: Of all children discharged from foster care to reunification or live with a relative in a 12-month period, what percent re-entered foster care in less than 12 months from the date of discharge?	The new indicator is limited to those children who entered foster care during the year, whereas the CFSR Round 2 measure counted all children who discharged to reunification or live with relative, regardless of when they entered foster care. The purpose of this focus is in keeping with the rationale that new interventions may best be monitored in an entry cohort. This indicator will also be used as a companion measure with permanency in 12 months, to ensure that states working to improve permanency rates in their entry cohort do not see worsening performance on rates of re-entry to foster care. We also expanded the denominator to allow discharges to guardianship, in an effort to capture more discharges to permanency. Exits to adoption are not included because they cannot be tracked reliably, as some states issue new child identifiers if a child who was previously adopted enters foster care.
Permanency.	Placement stability	Of all children who enter foster care in a 12-month period, what is the rate of placement moves per day [b] of foster care?	Composite 4.1: Of all children served in foster care during the 12-month period, what percent had two or fewer placement settings?	The proposed indicator controls for length of time in foster care, so we are looking at moves per day of foster care, rather than children as the unit of analysis. The rationale for using an entry cohort rather than all children served is that our analysis shows children entering foster care tend to move much more than those children/youth in foster care for longer periods of time, whose placements may have stabilized. In CFSR Round 2 measure, moves that took place prior to the monitoring period were counted. Now we only count those moves that occur during the monitoring period. The initial placement is not counted.

Category	Measure title	CFSR round 3 indicator	Comparable CFSR round 2 measure	How and why it's changed
				The CFSR Round 2 measure treated children who moved 2 times in an episode the same as children who moved 15 times; both were a failure to meet the measure. The new indicator counts each move, so it continues to hold states accountable for those children/youth who have already moved several times.

[a] The rate may be expressed per 100,000 days because it is such a rare event. Using this metric gives us larger numbers that are easier to communicate.
[b] The rate is expressed per 1,000 days to convert the rate to a metric that gives us larger numbers.

Attachment C: Data Elements Used for Statewide Data Indicators

For information regarding AFCARS data elements, refer to *http://www.acf.hhs.gov/programs/cb/resource/afcars-tb1.*

For information regarding NCANDS data elements, refer to *http://www.ndacan.cornell.edu/datasets/pdfs_user_guides/178-NCANDS-child2012v1-User-Guide-and-Codebook.pdf.*

Primary data elements required for calculation	Permanency in 12 months (all 3 indicators)	Re-entry to foster care in 12 months	Placement stability	Recurrence of maltreatment	Maltreatment in foster care
AFCARS FC Element #1 [1]: Title IV–E Agency	X	X	X	NA	X
AFCARS FC Element #4: Record Number	X	X	X	NA	X
AFCARS FC Element #21: Date of Latest Removal	X	X	X	NA	X
AFCARS FC Element #23: Date of Placement in Current Foster Care Setting	NA	NA	X	NA	NA
AFCARS FC Element #24: Number of Placement Settings during this Removal Episode	NA	NA	X	NA	NA
AFCARS FC Element #56: Date of Discharge from FC	X	X	X	NA	X
AFCARS FC Element #58: Reason for Discharge	X	X	NA	NA	NA
NCANDS CF Element #4: Child ID	NA	NA	NA	X	NA
NCANDS CF Element #6: Report Date	NA	NA	NA	X	X
NCANDS CF Element #27: Child Maltreatment 1—Disposition Level [2]	NA	NA	NA	X	X
NCANDS CF Element #29: Child Maltreatment 2—Disposition Level	NA	NA	NA	X	X
NCANDS CF Element #31: Child Maltreatment 3—Disposition Level	NA	NA	NA	X	X
NCANDS CF Element #33: Child Maltreatment 4—Disposition Level	NA	NA	NA	X	X
NCANDS CF Element #34: Maltreatment death	NA	NA	NA	X	X
NCANDS CF Element #145: AFCARS ID	NA	NA	NA	NA	X
Optional Data Elements:					
AFCARS FC Element #41: Current Placement Setting	X	NA	NA	NA	NA
NCANDS CF #146 Incident Date	NA	NA	NA	X	X
Additional Data Elements Required for Risk-Adjusted Analysis:					
AFCARS FC Element #6: Child's Date of Birth	X	X	X	NA	X
NCANDS CF Element #14: Child Age	NA	NA	NA	X	NA

Primary data elements required for calculation	Permanency in 12 months (all 3 indicators)	Re-entry to foster care in 12 months	Placement stability	Recurrence of maltreatment	Maltreatment in foster care
U.S. Census Bureau: Child Population, by State (Used to derive state foster care entry rates)	X [3]	X	NA	X	X

[1] The elements are numbered by their position in the flat ASCII files submitted by states to these reporting systems. These numbering schema are specific to the files utilized by ACYF. Files obtained through the National Data Archive on Child Abuse and Neglect (NDACAN) may have a slightly different order.
[2] Definition of 'victim' includes all children with a disposition level (for any of up to four maltreatments per child) of: a) Substantiated, or b) Indicated. These do not propose including differential response victims. Victims also include children who died as a result of maltreatment.
[3] Relevant to Permanency by 12 months for the entry cohort only.

Attachment D: Data Quality Items, Limits, and Applicable Measures

Data quality item	Data quality limit	Maltreatment in foster care	Recurrence of maltreatment	Permanency in 12 months (all 3 indicators) & re-entry to foster care in 12 months	Placement stability
AFCARS—Cross File Checks:					
Dropped cases	>10%	X	n/a	X	X
AFCARS IDs don't match from one period to next	>40%	X	n/a	X	X
AFCARS—Within-file checks:					
Missing date of birth	>5%	X	n/a	X	X
Missing date of latest removal	>5%	X	n/a	X	X
Missing # of placement settings	>5%	n/a	n/a	n/a	X
Date of birth after date of entry	>5%	X	n/a	X	X
Date of birth after date of exit	>5%	X	n/a	X	X
Age at entry greater than 21	>5%	X	n/a	X	X
Age at discharge greater than 21	>5%	X	n/a	X	X
In foster care more than 21 years	>5%	X	n/a	X	X
Enters and exits care the same day	>5%	X	n/a	X	X
Exit date is prior to removal date	>5%	X	n/a	X	X
Missing discharge reason (exit date exists)	>5%	n/a	n/a	X	n/a
Percent of children on 1st removal	<95%	X	n/a	X	X
NCANDS Data—Cross File Checks:					
Child IDs don't match across years	<1%	n/a	X	n/a	n/a
Child IDs match across years, but dates of birth and sex do not match	>5%	X	X	n/a	n/a
Some victims with AFCARS IDs should match IDs in AFCARS files	Y/N	X	n/a	n/a	n/a
Some victims have AFCARS IDs	<1%	X	n/a	n/a	n/a
NCANDS Within file checks:					
Missing age	>5%	X	X	n/a	n/a

Note. If a state exceeds these specified limits, we will not calculate performance for the state on the indicator.

[FR Doc. 2014–24204 Filed 10–9–14; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[Docket No. USCG–2014–0688]

RIN 1625–ZA33

Shipping and Transportation; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Correcting Amendment.

SUMMARY: The Coast Guard published a final rule in the **Federal Register** on September 29, 2014, that made non-substantive corrections throughout Title 46 of the Code of Federal Regulations. In that final rule, the Coast Guard revised a paragraph by substituting an incorrect word with one that was presumed correct. The substitution is actually incorrect, and the original word was correct. This correction resolves that error by replacing the word that we incorrectly removed.

DATES: This correction is effective on October 10, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this correction,

call or email Paul Crissy, Office of Standards Evaluation and Development, Coast Guard; telephone 202–372–1093, email *Paul.H.Crissy@uscg.mil.* If you have questions on viewing material on the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: To view the original final rule document, visit *http://www.gpo.gov/fdsys/granule/FR-2014-09-29/2014-21994.*

Background

On September 29, 2014, the Coast Guard published its annual technical amendment to make non-substantive changes to Title 46 of the Code of Federal Regulations. 79 FR 58270.

Need for Correction

The Coast Guard published a final rule in the **Federal Register** that created the need for this correction. The Coast Guard amended § 67.259(b) by removing the word ''effected,'' and adding in its place the word ''affected.'' This replacement was incorrect, however, as the word ''effected'' was used correctly. This correction amends paragraph (b) by replacing the word ''affected'' with the word ''effected.''

List of Subjects in 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

Accordingly, 46 CFR part 67 is amended by making the following correcting amendment:

PART 67—DOCUMENTATION OF VESSELS

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110, 12106, 12120, 12122; 46 U.S.C. app. 841a, 876; Department of Homeland Security Delegation No. 0170.1.

§ 67.259 [Corrected]

■ 2. In § 67.259(b), remove the word ''affected'' and add, in its place, the word ''effected''.

Dated: October 6, 2014.

Katia Cervoni,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2014–24219 Filed 10–9–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131231999–4319–01]

RIN 0648–BD87

Extension of Temporary Rule That Established Separate Annual Catch Limits and Accountability Measures for Blueline Tilefish in the South Atlantic Region

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS issues this temporary rule to extend the expiration date of emergency measures implemented to reduce the amount of blueline tilefish that may be harvested in the exclusive economic zone (EEZ) of the South Atlantic. NMFS published an emergency rule on April 17, 2014, to remove the blueline tilefish portion from the deep-water complex annual catch limit (ACL) and establish separate commercial and recreational ACLs and accountability measures (AMs) for blueline tilefish. The intent of this rulemaking is to extend the measures implemented in the emergency action to reduce overfishing of blueline tilefish in the South Atlantic while the South Atlantic Fishery Management Council (Council) develops permanent management measures.

DATES: The expiration date for the temporary rule published at 79 FR 21636, April 17, 2014, is extended from October 14, 2014, through April 18, 2015, unless NMFS publishes a superseding document in the **Federal Register**.

ADDRESSES: Electronic copies of the documents in support of this temporary rule may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2014/acl_er/index.html.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *Rick.DeVictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage South Atlantic snapper-grouper species, including blueline tilefish, under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

At its December 2013 meeting, the Council requested that NMFS promulgate emergency regulations to reduce overfishing of blueline tilefish and rebuild the blueline tilefish stock, based on the most recent stock assessment conducted for blueline tilefish in 2013, while permanent management measures and regulations are being developed through Amendment 32 to the FMP. The need for this emergency action is to minimize adverse biological effects to the blueline tilefish stock and adverse socio-economic effects to fishermen and fishing communities that utilize the blueline tilefish portion of the snapper-grouper fishery. The Council and NMFS determined that any short-term adverse socio-economic effects of the temporary measures would be justified to minimize long-term reductions in harvest that may be required if levels of unsustainable harvest continued to reduce the biomass of the blueline tilefish stock. Accordingly, on April 17, 2014, NMFS published a temporary rule under the Magnuson-Stevens Act to implement emergency regulations for the blueline tilefish stock in the South Atlantic (74 FR 21636) and requested public comment. That temporary rule is effective through October 14, 2014.

The measures contained in the temporary rule and this extension, remove blueline tilefish from the deep-water complex and establish separate commercial and recreational ACLs and AMs for blueline tilefish in the EEZ of the South Atlantic. The temporary rule and this extension implement a blueline tilefish total (commercial and recreational) ACL of 224,100 lb (101,650 kg), round weight. The commercial ACL for blueline tilefish is set at 112,207 lb (50,896 kg), round weight, and the recreational ACL is set at 111,893 lb (50,754 kg), round weight. The deep-water complex (composed of yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper) ACL remains at current levels, except with the blueline tilefish portion of the complex ACL of 631,341 lb (286,371 kg), round weight, removed from the complex. Thus, for the deep-water complex without blueline tilefish, the

commercial ACL is 60,371 lb (27,384 kg), round weight, and the recreational ACL is 19,313 lb (8,760 kg), round weight.

The temporary rule and this extension also establish in-season AMs for blueline tilefish to prevent these catch limits from being exceeded. If commercial landings for blueline tilefish reach or are projected to reach the commercial ACL, NMFS will file a notification with the Office of the Federal Register to close the commercial sector for blueline tilefish for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blueline tilefish is prohibited and harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. During the 2014 commercial fishing season, through AMs implemented in the emergency rule, NMFS closed the commercial sector for blueline tilefish on June 23, 2014, when NMFS determined the commercial ACL for blueline tilefish was projected to be met (79 FR 35292, June 20, 2014). The commercial sector will reopen on January 1, 2015.

If recreational landings for blueline tilefish reach or are projected to reach the recreational ACL, NMFS will file a notification with the Office of the Federal Register to close the recreational sector for blueline tilefish for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of blueline tilefish in or from the South Atlantic EEZ would be zero. This bag and possession limit would also apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

The Council requested an extension of the temporary rule at its September 2014 meeting, and via an October 2, 2014, letter to NMFS, to ensure that management measures remain in effect for blueline tilefish to reduce overfishing while more permanent measures are developed through Amendment 32 to the FMP. Section 305(c)(3)(B) of the Magnuson-Stevens Act allows for emergency regulations to be extended for one additional period of 186 days provided that the public has had an opportunity to comment on the emergency measures and the Council is actively preparing a plan amendment to address the overfishing on a permanent basis. If approved, Amendment 32 is scheduled to be implemented early in the 2015 fishing year.

Comments and Responses

Section 305(c)(3)(B) of the Magnuson-Stevens Act requires that the public has an opportunity to comment on emergency measures after the regulation is published and the Council is actively preparing a plan amendment to address overfishing on a permanent basis. NMFS solicited public comments in the April 17, 2014, temporary rule but received no comments on the temporary rule or the emergency measures.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that the emergency measures this temporary rule extends are based upon the best scientific information available, are necessary for the conservation and management of the blueline tilefish component of the snapper-grouper fishery and are consistent with the Magnuson-Stevens Act and other applicable laws. The Council is developing Amendment 32 to establish long-term measures to end overfishing of South Atlantic blueline tilefish. Amendment 32, if approved, is not expected to become effective until the 2015 fishing year.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B). Providing prior notice and opportunity for public comment on this action would be contrary to the public interest. This rule would continue emergency measures implemented by the April 17, 2014, temporary rule, for not more than an additional 186 days beyond the current expiration date of October 14, 2014. The conditions prompting the initial temporary rule still remain, and more permanent measures to be completed through Amendment 32 have not yet been approved or implemented. Failure to extend these temporary measures, would result in additional overfishing of the South Atlantic blueline tilefish stock, which is contrary to the public interest and in violation of National Standard 1 of the Magnuson-Stevens Act.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

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

Dated: October 6, 2014.

Samuel D. Rauch III,

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

[FR Doc. 2014–24220 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD537

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' in the Aleutian Island Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of ''other rockfish'' in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2014 total allowable catch (TAC) of ''other rockfish'' in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 6, 2014, through 2400 hrs, A.l.t., December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery

Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2014 TAC of ''other rockfish'' in the Aleutian Islands subarea of the BSAI is 473 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish of the BSAI (79 FR 12108, March 4, 2014).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2014 TAC of ''other rockfish'' in the Aleutian Islands subarea of the BSAI has been reached. Therefore, NMFS is requiring that ''other rockfish'' caught in the Aleutian Islands subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of ''other rockfish'' in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 3, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–24159 Filed 10–6–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD542

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of the 2014 Atka mackerel incidental catch allowance (ICA) for the Bering Sea subarea and Eastern Aleutian district (BS/EAI) to the Amendment 80 cooperatives in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2014 total allowable catch of Atka mackerel in the BSAI to be fully harvested.

DATES: Effective October 9, 2014, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2014 Atka mackerel ICA for the BS/EAI is 1,000 metric tons (mt) and 2014 Atka mackerel total allowable catch allocated to the Amendment 80 cooperative is 16,419 mt as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014).

The Administrator, Alaska Region, NMFS, has determined that 750 mt of the Atka mackerel ICA for the BS/EAI will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 750 mt of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Atka mackerel following the procedures set forth in § 679.91(f)(3).

The harvest specifications for Atka mackerel included in the harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) are revised as follows: 250 mt of Atka mackerel for the BS/EAI ICA and 17,169 mt of Atka mackerel for the Amendment 80 cooperatives in the BS/EAI. Table 4 is correctly revised and republished in its entirety as follows:

TABLE 4—FINAL 2014 AND 2015 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2014 Allocation by area			2015 Allocation by area		
		Eastern Aleutian District/ Bering Sea	Central [5] Aleutian District	Western Aleutian District	Eastern Aleutian District/ Bering Sea	Central [5] Aleutian District	Western Aleutian District
TAC	n/a	21,652	9,670	1,000	21,769	9,722	1,000
CDQ reserve	Total	2,317	1,035	107	2,329	1,040	107
	A	1,158	517	54	1,165	520	54
	Critical Habitat [5]	n/a	52	n/a	n/a	52	n/a
	B	1,158	517	54	1,165	520	54
	Critical Habitat [5]	n/a	52	n/a	n/a	52	n/a
ICA	Total	250	75	40	1,000	75	40
Jig [6]	Total	92	0	0	92	0	0

TABLE 4—FINAL 2014 AND 2015 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2014 Allocation by area			2015 Allocation by area		
		Eastern Aleutian District/ Bering Sea	Central [5] Aleutian District	Western Aleutian District	Eastern Aleutian District/ Bering Sea	Central [5] Aleutian District	Western Aleutian District
BSAI trawl limited access.	Total	1,824	856	0	1,835	861	0
	A	912	428	0	917	430	0
	B	912	428	0	917	430	0
Amendment 80 sectors.	Total	17,169	7,704	853	16,513	7,746	853
	A	8,585	3,852	427	8,256	3,873	427
	B	8,585	3,852	427	8,256	3,873	427
Alaska Groundfish Cooperative [7].	Total [7]	9,931	4,592	499	n/a	n/a	n/a
	A	4,966	2,296	250	n/a	n/a	n/a
	Critical Habitat [5]	n/a	230	n/a	n/a	n/a	n/a
	B	4,966	2,296	250	n/a	n/a	n/a
	Critical Habitat [5]	n/a	230	n/a	n/a	n/a	n/a
Alaska Seafood Cooperative [7].	Total [7]	7,238	3,112	354	n/a	n/a	n/a
	A	3,619	1,556	177	n/a	n/a	n/a
	Critical Habitat [5]	n/a	156	n/a	n/a	n/a	n/a
	B	3,619	1,556	177	n/a	n/a	n/a
	Critical Habitat [5]	n/a	156	n/a	n/a	n/a	n/a

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

[5] Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

[7] The 2015 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2014. NMFS will post 2015 Amendment 80 allocations when they become available in December 2014.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon Atka mackerel in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Atka mackerel ICA in the BS/EAI, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperatives that participate in this BS/EAI fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–24160 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 197
Friday, October 10, 2014

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 337, 576, 792, 831, and 842

RIN 3206–AM69

Human Resources Management Reporting Requirements

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations that would remove regulatory requirements for Federal agencies to submit reports to OPM relating to their implementation of certain human resources management programs and authorities.

DATES: Comments must be received on or before December 9, 2014.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AM69,'' using any of the following methods:

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

Mail: Sydney Smith-Heimbrock, Deputy Associate Director for Strategic Workforce Planning, Employee Services, U.S. Office of Personnel Management, Room 7460, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jan Chisolm-King, by telephone at (202) 606–1958 or by email at *janet.chisolm-king@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to eliminate several reporting requirements for Federal agencies, in accordance with Executive Order 13583 of August 18, 2011, entitled ''Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce.'' This Executive order includes a requirement that OPM review applicable human capital directives and reports that are related to recruitment, hiring, promotion, retention, professional development, and training policies and practices, and to also develop strategies for consolidating such plans and reports where appropriate.

This direction is similar in nature to a separate requirement set forth in the GPRA Modernization Act of 2010, Public Law 111–352, to identify at least 10 percent of agency reports to Congress as duplicative or outdated in FY 2013, which is consistent with the requirement to eliminate unnecessary reporting.

This proposed rule would remove or amend the provisions of title 5, Code of Federal Regulations, listed below, which require agency reports to OPM that we have determined are no longer necessary.

- Section 337.305 requires agencies to send OPM a copy of the annual reports they are required by 5 U.S.C. 3319(d) to send to Congress in each of the first 3 years after establishing a category rating system. By a memorandum to agencies dated May 11, 2010, the President implemented certain items related to Federal hiring reform. In his memorandum, the President required agencies use a category rating system for evaluating and referring applicants by November 1, 2010. Because agencies not having a category system in place had to implement a system by November 1, 2010, the reporting requirement set forth at 5 U.S.C. 3319(d) was met by November 1, 2013, for many if not all of the agencies covered by the regulation. Therefore, because agencies have met their reporting requirement to Congress, the regulatory requirement to provide a copy of the report to OPM is no longer applicable.
- Section 576.104 concerns reports on agencies' use of voluntary separation incentive payments (VSIPs). Because OPM plans to obtain this data, when needed, from its central Enterprise Human Resources Integration (EHRI) database and also to ask agencies to address the effectiveness of VSIPs in their annual performance reports, we are proposing to remove paragraph (b). Currently, agencies are required to report on a quarterly basis, within 30 days of the end of each quarter, and a final report due within 60 days of the authority's expiration. This delay results in data that is 3 to 4 months after actual separation dates. It is clear that reporting to EHRI would be on the same or similar schedule to the reporting required by this regulation. Deleting the regulatory reporting requirement should not have an adverse effect on OPM's ability to monitory agencies' compliance with their approved plans.
- Section 792.204 requires agencies providing child care subsidies to report utilization data to OPM annually. As we have not discerned a sufficient level of interest in this information to justify requiring it on an annual basis, we are proposing to remove this requirement and require agencies to track the utilization of their funds and report the results to OPM as needed.

Sections 831.114 and 842.213 concern reports on agencies' use of voluntary early retirement authority (VERAs). Because OPM plans to obtain this data, when needed, from its central Enterprise Human Resources Integration (EHRI) database and also to ask agencies to address the effectiveness of VERAs in their annual performance reports, we are proposing to remove paragraph (p) from each of these provisions. Currently, agencies are required to report on a quarterly basis, within 30 days of the end of each quarter, and a final report due within 60 days of the authority's expiration. This delay results in data that is 3 to 4 months after actual separation dates. It is clear that reporting to EHRI would be on the same or similar schedule to the reporting required by this regulation. Deleting the regulatory reporting requirement should not have an adverse effect on OPM's ability to monitory agencies' compliance with their approved plans.

Executive Order 13563 and Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 337, 576, 792, 831, and 842

Administrative practice and procedure, Government employees, Government publications, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, OPM is proposing to amend title 5, parts 337,576, 792, 831 and 842, Code of Federal Regulations, as follows:

PART 337—EXAMINING SYSTEM

■ 1. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; 116 Stat. 2290, sec. 1413 of Public Law 108–136 (117 Stat. 1665), as amended by sec. 853 of Public Law 110–181 (122 Stat. 250).

Subpart C—Alternative Rating and Selection Procedures

§ 337.305 [Removed.]

■ 2. Remove § 337.305.

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

■ 3. The authority citation for part 576 is amended to read as follows:

Authority: Sections 3521 through 3525 of title 5, United States Code.

■ 4. Revise § 576.104 to read as follows:

§ 576.104 Additional agency requirements.

After OPM approves an agency plan for Voluntary Separation Incentive Payments, the agency must immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the Voluntary Separation Incentive Payment authority.

PART 792—FEDERAL EMPLOYEES' HEALTH, COUNSELING, AND WORK/LIFE PROGRAMS

■ 5. The authority citation for part 792 continues to read as follows:

Authority: 5 U.S.C. 7361–7363; Sec. 643, Pub. L. 106–58, 113 Stat. 477; 40 U.S.C. 590(g).

■ 6. In § 792.204, remove paragraph (d) and revise paragraph (c) to read as follows:

§ 792.204 Agency responsibilities; reporting requirement.

* * * * *

(c) Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM at such time and in such manner as OPM prescribes.

PART 831—RETIREMENT

■ 7. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Sec. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–261, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

§ 831.114 [Amended]

■ 8. In § 831.114, remove paragraph (p).

PART 842—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—BASIC ANNUITY

■ 9. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

§ 842.213 [Amended]

■ 10. In § 842.213, remove paragraph (p).

[FR Doc. 2014–23295 Filed 10–9–14; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL TRADE COMMISSION

16 CFR Part 306

Telemarketing Sales Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Extension of comment period.

SUMMARY: In an August 11, 2014, **Federal Register** Notice, as part of its systematic review of all current Commission regulations and guides, the Federal Trade Commission (''Commission'') sought public comment on the efficacy, costs, and benefits of the Telemarketing Sales Rule (''TSR''), and whether the Commission should retain, modify, or rescind it. The Notice stated that comments must be received on or before October 14, 2014. In response to a request received on September 29, 2014, the Commission has decided to extend the comment period, which will now close on November 13, 2014.

DATES: Comments addressing the regulatory review of the TSR must be received on or before November 13, 2014.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, (202) 326–2970, or Karen S. Hobbs (202) 326–3587, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue NW.—Rm. CC–8528, Washington, DC 20580.

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 ''Telemarketing Sales Rule Regulatory Review, 16 CFR Part 310, Project No. R411001'' on your comment. File your comment online at *https://ftcpublic.commentworks.com/ftc/telemarketingsalesnprm* 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 B), 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 B), Washington, DC 20024.

SUPPLEMENTARY INFORMATION: The Commission is extending the comment period for its rule review of the TSR to November 13, 2014. The Commission's Notice requesting public comment posed an extensive list of questions on the costs, benefits and efficacy of the TSR in the marketplace, and whether the Commission should retain, modify, or rescind it.[1] The Commission also specifically requested comment on three issues: (1) Whether the preaquired account information provisions of the TSR should be modified in view of current credit card association rules and the Restore Online Shoppers Confidence Act, 15 U.S.C. 8401 (2010); (2) what impact, if any, the increasing use of general media to solicit inbound calls from consumers to purchase a variety of goods or services, including those involving a negative option or free trial, is having; and (3) the costs and burdens of modifying the recordkeeping requirements of the TSR to require telemarketers to retain their own call records. The regulatory review comment period was to end on October 14, 2014.

In a letter dated September 25, 2014, which the Commission received on September 29, 2014, the Professional Association for Customer Engagement (''PACE'') requested that the Commission extend the comment period for an additional two months. The Commission recognizes that the extensive list of questions on which it has requested public comment raise significant issues and believes that extending the comment period for 30 days will be sufficient to facilitate a more complete record.

[1] *Federal Trade Commission: Telemarketing Sales Rule, Rule Review,* 79 FR 46732 (Aug. 11, 2014).

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 13, 2014. Write ''Telemarketing Sales Rule Regulatory Review, 16 CFR Part 310, Project No. R411001'' 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 doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information . . . which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names. If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/telemarketingsalesnprm,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you prefer to file your comment on paper, write ''Telemarketing Sales Rule Regulatory Review, 16 CFR Part 310, Project No. R411001'' 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 B), 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 B), 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 the August 11, 2014 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 November 13, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Janice Podoll Frankle,

Acting Secretary.

[FR Doc. 2014–24247 Filed 10–9–14; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 191 and 194

[EPA–HQ–OAR–2014–0609; FRL–9917–73–OAR]

Review Process To Determine Whether the Waste Isolation Pilot Plant Continues To Comply With the Disposal Regulations and Compliance Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; official opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or the Agency) intends to evaluate whether or not the Waste Isolation Pilot Plant (WIPP) continues to comply with the Agency's environmental radiation protection standards for the disposal of radioactive waste. Pursuant to the 1992 WIPP Land Withdrawal Act (LWA), as amended, the

U.S. Department of Energy (DOE, or the Department) must submit documentation of continued compliance with the EPA's standards for disposal and other statutory requirements every five years after the initial receipt of transuranic waste at WIPP.

The DOE's 2014 Compliance Recertification Application (CRA) was received by the EPA on March 26, 2014, and a copy may be found on the EPA's WIPP Web site (*http://www.epa.gov/radiation/wipp/2014application.html*) and in the public dockets (see **ADDRESSES** Section). The EPA will determine when the DOE has provided a complete application; the Agency's completeness determination will be conveyed to the DOE and published in the **Federal Register**. The EPA will evaluate the ''complete'' application in determining whether the WIPP facility continues to comply with the radiation protection standards for disposal. The Agency requests public comment on all aspects of the DOE's application.

DATES: Comments in response to DOE's 2014 recertification application must be received by the end of the comment period. The comment period will extend beyond the time when the EPA notifies the DOE that the recertification application is complete. The ending date of the public comment period will be specified in a subsequent **Federal Register** document. Announcements will be published in the **Federal Register** to provide information on the Agency's completeness determination and final recertification decision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0609, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* to *a-and-r-docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2014–0609. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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 *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 or 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 *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 at *www.regulations.gov* or in hard copy at the Air and Radiation Docket, the EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. As provided in the EPA's regulations at 40 CFR part 2, and in accordance with normal the EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

These documents are also available for review in electronic (CD/DVD) format at the WIPP Information Center in DOE's Carlsbad Field Office (Skeen-Whitlock Building). The Carlsbad WIPP Information Center is open from 8:00 a.m. to 3:00 p.m., Monday through Friday, excluding legal holidays. The telephone number for the WIPP Information Center is 1–800–336–WIPP.

FOR FURTHER INFORMATION CONTACT: Ray Lee, Office of Radiation and Indoor Air, Radiation Protection Division, Center for Radiation Information and Outreach, Mail Code 6608T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9463; fax number: 202–343–2305; email address: *lee.raymond@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.

II. Background

The WIPP was authorized in 1980, under section 213 of the DOE National

Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96–164, 93 Stat. 1259, 1265), ''for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.'' The WIPP is a disposal system for transuranic (TRU) radioactive waste. Developed by the DOE, the facility is located near Carlsbad in southeastern New Mexico. TRU waste is emplaced 2,150 feet underground in an ancient layer of salt that will eventually ''creep'' and encapsulate the waste containers. The WIPP has a total capacity of 6.2 million cubic feet of TRU waste.

The 1992 WIPP LWA (Pub. L. 102–579) [1] limits radioactive waste disposal in the WIPP to TRU radioactive wastes generated by defense-related activities. TRU waste is defined as waste containing more than 100 nano-curies per gram of alpha-emitting radioactive isotopes, with half-lives greater than twenty years and atomic numbers greater than 92. The Act further stipulates that radioactive waste shall not be TRU waste if such waste also meets the definition of high-level radioactive waste, has been specifically exempted from regulation with the concurrence of the Administrator, or has been approved for an alternate method of disposal by the Nuclear Regulatory Commission. The TRU radioactive waste proposed for disposal in the WIPP consists of materials such as rags, equipment, tools, protective gear and sludges that have become contaminated during atomic energy defense activities. The radioactive component of TRU waste consists of man-made elements created during the process of nuclear fission, chiefly isotopes of plutonium. Some TRU waste is contaminated with hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901–6992k). The waste proposed for disposal at the WIPP derives from Federal facilities across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

The WIPP must meet the EPA's generic disposal standards at 40 CFR Part 191, Subparts B and C, for high-level and TRU radioactive waste. These standards limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water. To determine whether the WIPP facility meets these disposal standards, the Agency issued the 1997 WIPP Compliance Criteria (40 CFR part 194), which interprets and implement the disposal standards specifically for the WIPP site. The Compliance Criteria—along with its accompanying preamble and supporting documents—describe what information the DOE must provide and how the EPA evaluates WIPP's performance and provides ongoing independent oversight. Thus, the Agency implemented its environmental radiation protection standards, 40 CFR part 191, by applying the WIPP Compliance Criteria, 40 CFR part 194, to the disposal of TRU radioactive waste at the WIPP. For more information about 40 CFR part 191, refer to **Federal Register** notices published in 1985 (50 FR 38066–38089, September 19, 1985) and 1993 (58 FR 66398–66416, December 20, 1993). For more information about 40 CFR part 194, refer to **Federal Register** notices published in 1996 (61 FR 5224–5245, February 9, 1996) and 1995 (60 FR 5766–5791, January 30, 1995).

Using the process outlined in the WIPP Compliance Criteria, the EPA determined on May 18, 1998 (63 FR 27354), that DOE had demonstrated that the WIPP complied with Agency's radioactive waste disposal regulations at subparts B and C of 40 CFR part 191. The EPA's certification determination permitted the WIPP to begin accepting TRU waste for disposal, provided that other applicable conditions and environmental regulations were met.

Since the 1998 certification decision, the EPA has conducted ongoing independent technical review and inspections of all WIPP activities related to compliance with the EPA's disposal regulations. The initial certification decision identified the starting (baseline) conditions for the WIPP site and established the waste and facility characteristics necessary to ensure proper disposal in accordance with the regulations. At that time, the EPA and the DOE understood that future information and knowledge gained from the actual operations of the WIPP would result in changes to best practices and procedures for the facility.

In recognition of this, section 8(f) of the amended WIPP LWA requires the EPA to evaluate all changes in conditions or activities at the WIPP every five years to determine if the facility continues to comply with the Agency's disposal regulations. This determination is not subject to standard rulemaking procedures or judicial review, as stated in the aforementioned section of the WIPP LWA.

The first recertification process began with the DOE's submittal of the initial CRA, which was received by the Agency on March 26, 2004. The EPA deemed the CRA–2004 to be complete on September 29, 2005, and published its first WIPP recertification decision on March 29, 2006 (71 FR 18010).

The EPA received the Department's second CRA on March 24, 2009. The Agency deemed the CRA–2009 to be complete on June 29, 2010, and published the second WIPP recertification decision on November 18, 2010 (75 FR 70584).

The EPA received the Department's third CRA on March 26, 2014. After EPA has determined that the application is complete, the Agency will review the CRA–2014 to ensure that all of the changes made at the WIPP since the second recertification process have been accurately reflected and that the facility will continue to safely contain TRU radioactive waste. If the EPA approves the CRA–2014, it will set the parameters for how the WIPP will be operated by the DOE over the next five years. This approved CRA–2014 (along with any supplemental completeness information submitted by the DOE) will then serve as the baseline for the next recertification that will occur starting in 2019.

An important consideration in the EPA's review of the DOE's CRA–2014 is the radiation release that took place in the WIPP's underground disposal area in February 2014. Recovery activities are currently ongoing. EPA conducted oversight activities in response to the incident and these activities are discussed on EPA's Web site (*http://www.epa.gov/radiation/news/wipp-news.html#wippradevent*). EPA's review confirmed that DOE remains in compliance with EPA's standards; however, EPA identified several areas where improvements would enhance DOE's ability to provide the best possible information to the public and its partner agencies during a release. Although the incident took place after the preparation of the CRA–2014, the Department has indicated that changes will need to be made to the WIPP disposal system in order to reopen the facility and that the DOE will provide supplemental information to the Agency on the incident and potential ramifications on compliance. This

[1] The 1992 WIPP Land Withdrawal Act was amended by the ''Waste Isolation Pilot Plant Land Withdrawal Act Amendments,'' which were part of the National Defense Authorization Act for Fiscal Year 1997.

information will be made available in the Agency's public dockets and posted on EPA's WIPP Web site. The EPA is currently considering how anticipated changes in the facility design will impact the recertification process.

With today's notice, the Agency solicits public comment on the DOE's documentation of whether the WIPP facility continues to comply with the disposal regulations. A copy of the application is available for inspection on the EPA's WIPP Web site (*http://www.epa.gov/radiation/wipp/2014application.html*) and in the public dockets described in the **ADDRESSES** section. Other background information related to the Agency's recertification activities are also available in our public dockets and on our WIPP Web site. The EPA will evaluate the complete application in determining whether the WIPP continues to comply with the radiation protection standards for disposal. In addition, the EPA will consider public comment and other information relevant to the WIPP's compliance. The Agency is most interested in public comment on issues where changes have occurred that may potentially impact the WIPP's ability to remain in compliance with the requirements in the EPA's disposal regulations, as well as any areas where the public believes that changes have occurred and have not been identified by the DOE. Additionally the Agency expects to provide public meetings in New Mexico during the review process to encourage and facilitate participation by interested stakeholders.

The first step in the recertification process is a ''completeness'' determination. The EPA will make this completeness determination as a first step in its more extensive technical review of the application. This determination is based on a number of the Agency's WIPP-specific guidances, most notably, the ''Compliance Application Guidance'' (CAG; EPA Pub. 402–R–95–014) and ''Guidance to the U.S. Department of Energy on Preparation for Recertification of the Waste Isolation Pilot Plant with 40 CFR Parts 191 and 194'' (Docket A–98–49, Item II–B3–14; December 12, 2000). Both guidance documents include guidelines regarding: (1) Content of certification/recertification applications; (2) documentation and format requirements; (3) time frame and evaluation process; and (4) change reporting and modification. The Agency developed these guidance documents to assist the DOE with the preparation of any compliance application for the WIPP. It is the Agency's intent that these guidance documents give the DOE and the public a general understanding of the information that is expected to be included in a complete application of compliance. However, the DOE does not have to resubmit information already supplied to the EPA in prior recertification applications. Thus, the focus of each recertification is on any changes to the disposal system since the previous recertification decision (in this case, 2009–2010). The EPA may request additional information as necessary from the Department to ensure the completeness of the CRA.

Once the 2014 recertification application is deemed complete, the EPA will provide the DOE with written notification of its completeness determination and publish a **Federal Register** notice announcing this determination. All correspondence between the EPA and the DOE regarding the completeness of the CRA–2014, as well as any additional supplemental information submitted by the Department, will be posted on our Web site and placed in the public dockets.

The EPA will make a final decision as to whether the WIPP continues to meet the disposal regulations after each of the aforementioned steps (technical analysis of the application, issuance of a notice on the CRA–2014's completeness in the **Federal Register**, and analyses of public comment) have been completed. As required by the WIPP LWA, the Agency will make a final recertification decision within six months of issuing its completeness determination.

List of Subjects in 40 CFR Part 191 and 194

Environmental protection, Radiation protection, Transuranic radioactive waste, Waste treatment and disposal, Waste Isolation Pilot Plant.

Dated: October 1, 2014.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2014–24260 Filed 10–9–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–51; RM–11692; DA 14–1362]

Radio Broadcasting Services; Ehrenberg, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposal rule; dismissal.

SUMMARY: The Audio Division dismisses as moot the Petition for Rule Making filed by S and H Broadcasting, LLC, proposing the substitution for Channel 228C2 for vacant Channel 286C2 at Ehrenberg, Arizona because the channel substitution was made in another proceeding, MB Docket No. 11–207. The Audio Division also grants the ''hybrid'' application for Station KQCM, North Shore, California, File No. BPH–20120316ABT.

DATES: October 10, 2014.

ADDRESSES: Secretary, Federal Communications Commission, 445 12fth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order,* MB Docket No. 13–51, adopted September 18, 2014, and released September 19, 2014. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. This document is not subject to the Congressional Review Act. (The Commission is not required to submit a copy of this *Report and Order* to Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A) because no rule changes were made).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2014–24113 Filed 10–9–14; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No. NTSB–GC–2012–0002]

RIN 3147–AA01

Investigation Procedures

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: On August 12, 2014, the NTSB published a Notice of Proposed Rulemaking (NPRM) to amend its regulations concerning its investigation procedures. The NTSB is publishing this notice to inform the public that it is extending the comment period for the NPRM to October 31, 2014.

DATES: Submit comments on or before October 31, 2014.

ADDRESSES: A copy of this NPRM, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide Web site on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2012–0002).

You may send comments identified by Docket ID Number NTSB–GC–2012–0002 using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

Mail: Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza East SW., Washington, DC 20594–2003.

Facsimile: Fax comments to 202–314–6090.

Hand Delivery: Bring comments to 490 L'Enfant Plaza East SW., 6th Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: David Tochen, General Counsel, (202) 314–6080.

SUPPLEMENTARY INFORMATION: After issuing the August 12, 2014 Notice of Proposed Rulemaking concerning the NTSB's event investigation procedures (79 FR 47064), representatives from other Federal agencies contacted the NTSB to inform us they would need more time to submit comments. After considering these requests, and in light of the comprehensive nature of the NPRM, we believe it prudent to extend the comment period to October 31, 2014.

In accordance with 49 CFR 800.24(c), the Board has delegated to the General Counsel the authority to ''[a]pprove or disapprove, for good cause shown, requests to extend the time for filing comments on proposed new or amended regulations.'' I find good cause exists to provide the public additional time to submit thorough comments. Based on this authority, I submit this notice to extend the comment period for the NPRM concerning 49 CFR part 831 to October 31, 2014.

David K. Tochen,

General Counsel.

[FR Doc. 2014–24360 Filed 10–9–14; 8:45 am]

BILLING CODE 7533–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140904753–4801–01]

RIN 0648–BE34

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Regulatory Amendment to Pacific Coast Groundfish Fisheries Trawl Rationalization Program for the Start of 2015

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise regulations for the Pacific Coast Groundfish fishery with a target implementation date of January 1, 2015. Final implementation of the 2015–2016 biennial harvest specifications and management measures will likely be delayed beyond January 1, 2015. NMFS has identified two issues that must be addressed prior to January 1, 2015, to prevent interruption of ongoing fisheries and to allow harvest of the total allowable groundfish catch. This action would address those issues by revising groundfish regulations in two ways. First, this action would replace language that was inadvertently deleted after a series of temporary rulemakings. This would reinstate a mechanism whereby NMFS can issue interim groundfish allocations at the beginning of the year, allowing the Pacific coast groundfish fishery to continue in years when annual groundfish harvest specifications are expiring and new ones are not yet finalized, as is likely for January 1, 2015. Second, this action would amend regulations to extend NMFS' authority to issue the full shorebased trawl allocation of groundfish to current quota share holders in the Shorebased Individual Fishing Quota Program. Specifically, the rule would allow NMFS to issue that portion of the allowable catch currently allocated to an Adaptive Management Program (AMP), to quota share holders until final criteria and a process for distribution of the AMP quota shares is developed and implemented.

DATES: Submit comments on or before November 10, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0098, 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-2014-0098,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Miako Ushio.

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: Miako Ushio, phone: 206–526–4644; or email: *Miako.Ushio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the **Federal Register** Web site at *https://*

www.federalregister.gov. Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Council's Web site at *http://www.pcouncil.org.*

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires the Pacific Fishery Management Council (Council) to set harvest specifications and management measures for groundfish at least biennially. Council development of the 2015–2016 harvest specifications and management measures began in summer 2013 and culminated with a June 2014 recommendation for harvest specifications and associated management measures, with a target effective date of January 1, 2015. The effective date of these regulations will likely be delayed beyond January 1, 2015. In the event of a delay, NMFS has identified two issues that must be addressed to prevent interruption of ongoing fisheries and to allow harvest of the total allowable groundfish catch. Those two issues are addressed through this Proposed Rule.

Issuance of Groundfish Quota

In January 2011, NMFS implemented the Trawl Rationalization Program for the Pacific coast groundfish fishery's trawl fleet (75 FR 78344, December 15, 2010). This program included a provision to use a conservative estimate to issue Pacific whiting quota pounds (QP) at the beginning of the year in years when harvest specifications of Pacific whiting are not known by January 1. The remainder of the quota pounds would be issued when the final harvest specifications are established. A similar provision for non-whiting groundfish species was added a year later (76 FR 74725, December 1, 2011).

In response to litigation, these provisions were amended via a temporary rule (77 FR 45508, August 1, 2012, extended via 78 FR 3848 through July 22, 2013). With the expiration of this temporary rule in 2013, the language allowing NMFS to use a conservative estimate for issuance of the non-whiting harvest QPs was inadvertently deleted. That provision is proposed to be reinstated through this proposed rule.

Extension of AMP Quota Pass-Through

As part of the Trawl Rationalization Program, NMFS created an Adaptive Management Program (AMP) (§ 660.140(d)(1)(ii)(A)) to address multiple purposes: community stability, processor stability, conservation, unintended/unforeseen consequences of the Trawl Rationalization Program, or to facilitate new entrants. The program reserved 10 percent of non-whiting quota share (QS) for these purposes. However, because the method for distributing the resulting QP from AMP QS has not yet been established, consistent with the program, NMFS has been issuing the QP to current QS holders in proportion to their non-whiting QS. For the first years of the program, this allocation policy was seen as a means to ease the transition of the QS fisheries into the Trawl Rationalization Program with the expectation that the trawl program would be modified to address changes in the fishery. Both the Council and NMFS have monitored this fishery, and have not identified any concerns related to communities, processors, conservation, or other matters that would need to be addressed now by the AMP quota.

The Pacific Fishery Management Council intends to conduct a formal 5-year review of the Trawl Rationalization program, as required under Magnuson Steven Act 303A(c)(1)(G). The pass-through mechanism is currently set to expire at the end of 2014, and this rule proposes, in accordance with the Council's recommendations from its March, 2014 meeting, to extend the pro rata pass-through until the implementation of appropriate regulations resulting from the 5-year review. NMFS is proposing to extend the pro rata pass-through so that the fish authorized for harvest through the biennial specifications process will continue to be available to benefit the fishing industry, dependent communities, and consumers. Without this rulemaking, 10 percent of the non-whiting QS would not be issued. Based on 2013 non-whiting groundfish revenues of $28.2 million, this would result in a loss of approximately $2.8 million to the shorebased trawl fleet.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act (MSA), the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the PCGFMP, other provisions of the Magnuson-Stevens, Act, and other applicable law, subject to further consideration after public comment.

A draft Environmental Assessment (EA) was prepared for the pass-through of adaptive management quota pounds portion of this proposed action, and can be found on the NOAA Fisheries Groundfish Trawl Catch Share Web site at *www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel 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 rule concerns the allocation of Quota shares via the AMP pass through provisions. Quota share holders are comprised of fishermen, processors, and non-profit organizations. As part of the 2014 QS application renewal process, quota share holders were asked if they considered themselves a ''small'' business based on a review of the Small Business Association (SBA) affiliation size criteria, including the $19.0 million size standard for finfish fishing. The size standard for finfish fishing has recently changed. 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. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. For those finfish companies that reported themselves as ''large'' under the $19.0 million standard, NMFS has reviewed available data on ownership, affiliation, industry Web sites, and recent analysis (NMFS-Alaska Region). NMFS did not find any information that would change their status under the new finfish standard. Based on this analysis, NMFS estimates that the 138 quota share accounts are held by 99 entities, of which 87 are small entities.

This rule would not result in any immediate impacts on revenues or costs for the small entities because it maintains the current AMP pass-through processes used in this fishery since 2011. This rule making does not contain any new management measures that would have specific economic impacts on the fishery. Therefore, this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. NMFS will conduct the appropriate analyses for any subsequent rulemakings stemming from this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: October 2, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.140, revise paragraphs (d)(1)(ii)(A) introductory text, (d)(1)(ii)(A)(*1*) and (*2*), (d)(1)(ii)(B)(*1*) and (*2*), and paragraph (l)(2) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) *Non-whiting QP annual sub-allocations.* NMFS will issue QP for IFQ species other than Pacific whiting and Pacific halibut annually by multiplying the QS permit owner's QS for each such IFQ species by that year's shorebased trawl allocation for that IFQ species. Deposits to QS accounts for IFQ species other than Pacific whiting and Pacific halibut will be made on or about January 1 each year. Until the implementation of any regulatory changes developed pursuant to the first program review for the trawl rationalization program, the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS.

(*1*) In years where the groundfish harvest specifications are known by January 1, deposits to QS accounts for IFQ species will be made on or about January 1.

(*2*) In years where the groundfish harvest specifications are not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for that year. After the final harvest specifications are established later in the year, NMFS will deposit additional QP to the QS account.

* * * * *

(B) * * *

(*1*) In years where the Pacific whiting harvest specification is known by January 1, deposits to QS accounts for Pacific whiting will be made on or about January 1.

(*2*) In years where the Pacific whiting harvest specification is not known by January 1, NMFS will issue Pacific whiting QP in two parts. On or about January 1, NMFS will deposit Pacific whiting QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established later in the year, NMFS will deposit additional QP to QS accounts.

* * * * *

(l) * * *

(2) *AMP QP pass through.* The 10 percent of non-whiting QS will be reserved for the AMP, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS until the implementation of any regulatory changes developed pursuant to the first program review for the trawl rationalization program.

[FR Doc. 2014–24192 Filed 10–9–14; 8:45 am]

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Notices

Federal Register

Vol. 79, No. 197

Friday, October 10, 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

[OES–2014–0001]

Announcement of Requirements and Registration for the U.S. Tall Wood Building Prize Competition

AGENCY: USDA.

ACTION: Notice.

Authority: 15 U.S.C. 3719.

SUMMARY: The U.S. Department of Agriculture in a cooperative partnership with the Softwood Lumber Board and the Binational Softwood Lumber Council is conducting a prize competition funding initiative to support the demonstration of tall wood buildings in the United States. The U.S. Tall Wood Building Prize Competition (the ''Competition'') is being conducted to showcase the architectural and commercial viability of advanced wood products in tall building construction in order to support employment opportunities in rural communities, maintain the health and resiliency of the Nation's forests, and advance sustainability in the built environment.

Using wood obtained through sustainable forestry practices in green building applications promotes a healthy environment and a strong economy. The timber industry is an important job creator and supports hundreds of local communities, many of them rural. A recent life cycle analysis found that harvesting, transporting, manufacturing, and using wood in lumber and panel products in building yields fewer air emissions—including greenhouse gases—than the resource extraction, manufacture, and use of other common building materials.

There are barriers to being the first to adopt new building materials and systems, most notably the costs of analyzing novel design and engineering alternatives and verifying that these solutions comply with applicable code(s). The funds made available for the Competition will support costs associated with pioneering the use of advanced wood products and systems in tall buildings and open the door for more widespread adoption of the innovative materials.

The objective of the Competition is to identify one or more proponents with existing viable projects and capable design and construction teams willing to convert their existing project from a traditionally constructed tall building to a design and construction approach using advanced wood building materials, new composite or hybrid wood methods, and/or existing proven alternative solution techniques.

The Competition prize purse will be awarded to selected proponent(s) to cover the incremental costs of converting from traditional construction to wood construction. The selected proponent(s) will be the team demonstrating the best ability to utilize new scientific data, to develop technical expertise, and to use incremental funding to safely design, specify, and construct a building of a minimum of eighty feet (80') in height (not including a reinforced concrete podium) in the United States of America that can showcase the application, practicality, and sustainability of innovative wood based structural building solutions in tall building construction.

DATES:

Competition Submission Period: October 9, 2014–December 8, 2014.

Evaluation and Judging: December 8, 2014–January 2015.

Verification of Potential Winner(s:) January 2015.

Announcement of Winner(s) & *Signing of Preliminary Funding Agreement(s):* February 2015.

The Competition Submission Period begins October 9 at 10:00 a.m. ET and ends December 8, 2014 at 12:00 a.m. ET. The Competition Sponsor's computer, set to Eastern Time, is the official time-keeping device for this Competition.

Competition dates are subject to change at the discretion of the Competition Sponsor. Entries submitted before or after the Competition Submission Period will not be reviewed or considered for award.

Competition Questions, Changes, and Results

Changes or updates to the Competition rules will be posted and can be viewed at the Competition Web site at: *www.tallwoodbuildingcompetition.org.*

Questions about the Competition can be directed by email to the Competition Sponsor at: Oscar Faoro, Project Manager, U.S. Tall Wood Building Prize Competition, *OscarFaoro@tallwoodbuildingcompetition.org.*

Results of the Competition will be announced on or about February 2015 on the Competition Web site: *www.tallwoodbuildingcompetition.org.*

SUPPLEMENTARY INFORMATION:

Competition Partners and Competition Sponsor

The U.S. Department of Agriculture (''USDA'') is the department of the U.S. Federal government that provides leadership on food, agriculture, natural resources, forestry, rural development, nutrition, and other issues related to agriculture in America. Web site: *www.usda.gov*

The Softwood Lumber Board (''SLB'') is an industry funded Check-off Program established in cooperation with the USDA's Agricultural Marketing Service to promote the benefits and uses of softwood lumber products in outdoor, residential, and non-residential construction. Programs supported by the SLB focus on increasing the demand for softwood lumber products in the United States. Web site: *www.softwoodlumberboard.org*

The Canadian and U.S. Federal governments established the Binational Softwood Lumber Council (''BSLC'') as part of the 2006 Softwood Lumber Agreement ''to promote increased cooperation between the U.S. and Canadian softwood lumber industries and to strengthen and expand the market for softwood lumber products in both countries''. The BSLC is a leading funder of efforts to increase the use of softwood lumber products as part of the shift to green building. Sustainably harvested softwood lumber products from North America create jobs in rural communities, sequester significant amounts of carbon, and help reduce the overall environmental footprint of a home or building. Web site: *www.softwoodlumber.org*

Collectively the USDA, SLB, and BLSC are the ''Competition Partners.'' The SLB is the ''Competition Sponsor.'' The Competition Sponsor, in coordination with the Competition

Partners, will make all decisions related to the development, management, and implementation of the Competition.

The Competition Sponsor and the winning Project Proponent Team(s) will enter into funding agreement(s) after the Competition that will govern the obligations of the Project Proponent Team, the process for submitting Eligible Expenses, and disbursements from and administration of the Prize Purse. A sample Funding Agreement can be found on the Competition Web site: *www.tallwoodbuildingcompetition.org.*

Eligibility Rules for Participating in the Competition

The competition is open to Project Proponent Teams consisting of real estate developers, institutions (e.g., universities), and other corporations or legal organizations (e.g., partnerships or nonprofit organizations), and their design and construction team partners. Each team member must be either:

(1) Individuals that are part of the Project Proponent Team must be residents of the 50 United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa; or

(2) Corporations, institutions, or other legal entities that are part of the Project Proponent Team must be organized in *and* maintain a primary place of business in any jurisdiction specified in (1).

Project Proponent Teams shall identify a single lead applicant individual or entity in their Competition entries (the ''Team Lead''). The Team Lead is responsible for providing and meeting all entry and evaluation requirements.

All proposed projects must be located in one of the 50 United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, or American Samoa.

To be eligible to win the Competition, Project Proponent Team members must not be suspended, debarred, or otherwise excluded from doing business with the U.S. Federal Government.

A Project Proponent Team shall not be deemed ineligible because the Project Proponent Team used Federal facilities or consulted with Federal employees in preparing its submission to the Competition if the facilities and employees are made available to all Project Proponent Teams on an equitable basis.

None of the Competition Partners or any of their respective affiliates, subsidiaries, or any other company or entity involved with the design, production, execution, or distribution of the Competition is eligible. None of the Competition Partners' employees may participate as members of a Project Proponent Team.

Non-USDA Federal employees acting in the capacity of their Federal employment are not eligible members of a Project Proponent Team. Non-USDA Federal employees acting in their personal capacity should consult with their respective office of ethics to determine whether their permission as a member of a Project Proponent Team is permissible.

Registration Process for Participants

Project Proponent Teams may begin submitting Competition entries at 10:00 a.m. EST on October 9, 2014 to the *Submit* page of the Competition Web site at: *www.tallwoodbuildingcompetition.org.*

Competition entries must be submitted no later than 12:00 a.m. on December 7, 2014 to the *Submit* page of the Competition Web site at: *www.tallwoodbuildingcompetition.org.*

Formatting

- Entries must be in pdf format.
- Entries must include a table of contents and be consecutively paginated.
- Entries must include a cover letter containing the information set out in below in the Mandatory Elements section, subsection A.
- Entries must not exceed 30 pages or 20 megabytes including appendices.
- Entries must be in English.
- All accounting figures contained in entries must be in U.S. dollars.

Entries submitted late will not be evaluated or considered for award.

Entries sent to the Competition Sponsor or Competition Partners in any manner other than through the *Submit* page of the Competition Web site will not be evaluated or considered for award.

Entries that do not comply with the formatting requirements will not be evaluated or considered for award.

Competition Award(s)

The Prize Purse is a combined pool from the Competition Partners of $2 million. The Prize Purse may increase, but will not decrease. Any increases in the Prize Purse will be posted on the Competition Web site and published in the **Federal Register**. The Prize Purse will be used to fund one or more awards; the number of awards made will depend on the estimated amount of Eligible Expenses proposed by the winning Project Proponent Team(s). Award(s) will be made to the winning Project Proponent Team(s) to cover incremental costs of transitioning their building from a traditional structure to a wood structure, i.e., those costs incurred only because of the Project Proponent Team's innovative use of wood products in the demonstration structure.

Incremental costs that may be paid for using the award(s) from the Prize Purse are the Eligible Expenses listed below. The winning Project Proponent Team(s) will be required to enter into a post-Competition funding agreement (''Funding Agreement'') with the Competition Sponsor, and to submit incremental costs for approval as Eligible Expenses prior to receiving disbursements of funds from the Prize Purse.

The winning Project Proponent Team(s) is encouraged to seek additional sources of funding beyond the Prize Purse to promote the project's transition from a traditional structure to a wood structure.

All costs incurred in the preparation of Competition entries are to be borne by Project Proponent Teams. Entry preparation costs will not be a Prize Purse Eligible Expense.

Eligible Expenses

The following types of incremental costs of transitioning the winning Project Proponent Team(s) building from a traditional structure to a wood structure will be eligible for reimbursement from the awarded Prize Purse funds.

Schematic Design, Design Development, and Construction Drawings

- Architecture.
  - Concept and design development.
- Engineering.
  - Incremental preliminary evaluation of possible structural solutions and building serviceability related issues.
  - Incremental design expenses related to the design of the wood structure.
  - Integration of novel solutions when detailing structural documents for tendering and construction.
- Fire safety and protection.
  - Fire and building safety strategies, related issues, and possible solutions.
- Building enclosure.
  - Examination of issues and detailing solutions related to the building's exterior facade.
- Mechanical and electrical interfaces.
  - Strategies and issue resolutions related to system integration.
- Secondary impact and preliminary cost analysis related to use of wood products, components and systems, and related construction methodologies.

Research, Testing, and Other Required Support by Third Parties

- Research.
  - Related to acoustic, fire, seismic, vibration, connections, building envelop assembly materials, and construction techniques.
- Modeling and testing.
  - Costs associated with product, component, and/or system modeling and testing.

Building System Code Acceptance, Final Cost Analysis and Approvals

- Architecture and engineering.
  - Comprehensive resolution of design issues.
- Final code review, final cost analysis, and preparation of documents and peer review process costs.
- Additional design modeling or testing requirements.
- Final documents and presentations to the Local Authority(ies) for building permit approvals.
- Other project approval costs.

Construction

- Project construction fees associated with wood construction that would not otherwise be required.
- Quality control, site inspection, and site safety costs.
- Weather protection costs related to protecting materials and constructed assemblies during the building process.
- Fire protection and site security costs.
- Risk management related costs.

Related Activities and Other Costs Not Noted but Directly Attributable to the Development and Construction of a Wood Solutions for the Project

- Incremental supervision and trade training associated with the proposed wood solution(s).
- Instrumentation during construction and ongoing monitoring costs associated with building performance of critical wood components or assemblies.
- Extra-ordinary course of construction insurance premiums and other extra-ordinary insurance costs which can be clearly defined.
- Construction site access requested by the Competition Partners that may cause the proponent to incur additional costs; i.e., construction disruption and additional site safety requirements that may result from visitor tours or promotional events.

Mandatory Entry Elements

All Competition entries *must* include information addressing *all* of the mandatory elements. Any entry that fails to include information addressing all of the mandatory elements will not be considered for award.

A. Each Competition entry must include a cover letter that (1) affirmatively represents that the Project Proponent Team has read and consents to be governed by the Competition rules and meets the eligibility requirements, and (2) clearly lists the following project and Project Proponent Team information:

- A brief description of the project, including location details, proposed occupancy, proposed building height, and proposed construction start date;
- The name of the title holder for the property site being considered for the project;
- The members of the Project Proponent Team, the Team Lead, key contacts and contact details for the Team Lead, and a brief description of the relationship amongst and agreements in place between the Team Lead and members of the Project Proponent Team;
- The estimated amount of Eligible Expenses attributable to transitioning the project from traditional construction to wood construction; and
- A clear statement that the Project Proponent Team commits to have some wood material sourced from and manufactured by domestic Rural Sources.

B. Each Competition entry must include information addressing the following elements:

1. Project Specifics and Details

Competition entries must include the following details about the proposed project:

- The legal description of the parcel of land proposed for use as the project site;
- The name of the title holder for the parcel of land proposed for use as the project site;
  - If the title holder is not a member of the Project Proponent Team, include a description of the agreement(s) entered into with the title holder for use of the parcel of land proposed for use as the project site;
- Current and proposed zoning of the parcel of land proposed for use as the project site;
- Status of required development permit(s) for both the project site and the project itself;
- A project site plan;
- A project rendering; and
- A description of the proposed accessibility and visibility of the project on a national architectural scale.

2. Business Case for Project

Competition entries must include information setting out the Project Proponent Team's business case, specifically:

- Project Proponent Team's experience with building development, tall building design and construction;
- The proposed project financing plan;
- A preliminary project budget;
- The estimated amount of Eligible Expenses attributable to transitioning the project from traditional construction to wood construction;
- A reasonably detailed schedule of when and where Eligible Expenses would be incurred, outlining how the Prize Purse will be utilized. The schedule shall include dates of expected Prize Purse funding requests;
- A planned timeline of project development and construction;
- A narrative describing how the proposed wood solution and project compares with other more commonly used structural solutions and buildings in the market; and
- A summary discussing market research and estimating the regional demand for the residential, commercial, institutional, or industrial spaces included in the proposed project.

Competition entries also must include information about the local authority(ies) having jurisdiction over the project and/or project site (''Local Authority(ies)''):

- Name(s) of and contact information for the Local Authority(ies) having jurisdiction over the project and/or project site;
- A discussion of the previous experience of the Local Authority(ies) approving projects using a code alternate approach;
  - Note that Project Proponent Team experience working with the Local Authority(ies) on a prior successfully completed code alternate project will be evaluated more highly than a general discussion of the code alternate experience of the Local Authority(ies) with other developers; and
- Project Proponent Teams must request from the Local Authority(ies) a letter (letters) indicating a willingness on the part of the Local Authority(ies) to engage with the Project Proponent Team in a cooperative effort to develop a code alternate solution for the proposed project.
  - If the Local Authority(ies) cannot provide the requested letter(s) before the deadline for submission of Competition entries, the Project Proponent Team instead may include a written description detailing the engagement the Project Proponent Team has had to date with the Local Authority(ies) and the nature of the response(s) received from the Local Authority(ies).

▪ *Note:* Competition entries with the requested letter(s) will be evaluated more highly than those without.

▪ *Note:* The Project Proponent Team(s) that is evaluated highest will be required to provide the requested letter(s) prior to being officially selected as the Competition winner(s) and awarded the Prize Purse.

3. Proposed Wood Solution

Competition entries must include information setting out the Project Proponent Team's proposed wood solution, specifically:

• Proposed structural system;

○ Detailed information about the feasibility of the proposed structural solution being proposed for the project; e.g., has it been used commonly elsewhere; has it previously been tested and applied, or is it experimental and still requiring research, analysis, modeling, and testing;

• A preliminary concept of the proposed structural solution with information about available research to support the solution, or the possible breadth of analysis or testing requirements needed to validate the solution; and

4. Sustainability

Competition entries must include information about the project's sustainability, specifically:

• A narrative detailing the project's environmental impact or footprint, and the sustainability elements featured in the project;

• The narrative must address the anticipated levels of impact of the proposed project from a sustainability and performance perspective including references to life cycle assessment, inventory, impact and costing, carbon sequestration, embodied energy and expected energy usage.

5. Rural Economic Ties

Competition entries must include information setting out the project's ties to stimulating the rural economy, specifically:

• An economic narrative describing the potential of the project and/or wood materials used in the project to positively impact the U.S. rural economy;

• A proposed plan for working with Competition Sponsor to develop a post-project Tall Wood Building Demonstration Report, for use within the building industry, that details lessons learned and makes recommendations about building tall wood structures in the United States; and

• A statement detailing the Project Proponent Team's commitment to have some of the wood material used in the proposed wood solution sourced from and manufactured by domestic (U.S.) Rural Sources.

○ *Note:* ''Rural Sources'' are sources in any areas other than: (1) A city or town that has a population of greater than 50,000 inhabitants; and (2) the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the 2010 census of the United States.

▪ The following Web site can be used as a general non-guaranteed guide to assist in determining whether or not a particular area is likely rural: *http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do*.

Optional Entry Elements

Competition entries are not required to include information addressing the optional elements, but including information addressing all of the optional elements will increase chances of winning.

Entries that include information addressing some or all of the optional elements will be evaluated more highly than entries that do not address any of the optional elements.

1. Project Specific Details

Competition entries should include additional detailed project information, specifically:

• The proposed building enclosure, and information about how enclosure issues might be resolved for the specific location, design, and occupancy of the proposed project.

2. Business Case for Project

Competition entries should include additional information setting out the Project Proponent Team's business case, specifically:

• The curricula vitae of the Project Proponent Team design team member(s) and/or key consultants; and

• Examples of past projects designed and completed that are similar to the proposed project in form and scale.

3. Proposed Wood Solution

Competition entries should include additional information about the proposed wood solution, specifically:

• The potential advantages and/or costs savings of the proposed structural system and the overall project from a constructability and competitive perspective over traditional methods of building tall structures including but not limited to; land utilization, integrated and detailed design; prefabrication opportunities, and speed of erection impacting directly or indirectly other inter-related secondary or tertiary aspects of construction.

• A fire protection strategy for the project, and detailed information about the proposed fire protection systems and/or fire resistance applications proposed, and whether the proposed systems/applications have been successfully used in wood structures elsewhere or are experimental.

4. Sustainability

In addition to the information requested with the mandatory elements, competition entries should include information about the project's sustainability, specifically:

• Any sustainable timber harvest practices, certifications, or other land management information pertinent to anticipated product use.

5. Rural Economic Ties

Competition entries should include additional information setting out the project's ties to stimulating the rural economy, specifically:

• Details about where key structural and architectural wood products and related materials or complementary products will be sourced, produced, or fabricated, and the extent to which these materials will come from domestic (U.S.) Rural Sources.

Evaluation, Judging, and Selection of Winner(s)

The Competition Sponsor will screen all entries for eligibility and inclusion of all the mandatory elements. Entries from Project Proponent Teams that do not meet the eligibility requirements set out above in the Eligibility Rules for Participating in the Competition section and/or that fail to include one or more of the mandatory elements set out above in the Mandatory Entry Elements section will not be evaluated or considered for award.

Eligible and complete entries will be judged by a fair and impartial panel of individuals (the ''Judging Panel'') from the Competition Partners and from outside organizations with expertise in tall building design and construction.

Competition entries that include information about only the mandatory elements can earn an evaluated base score of up to 100%. Competition entries that include information about some or all of the optional elements can earn an evaluated base plus bonus score of up to 125%. The Judging Panel will evaluate and score each eligible Competition entry, and will recommend for award to the Competition Partners the entry(ies) with the highest combined base plus bonus score(s). The Competition Partners will, in their sole discretion, make award based on consideration of the Judging Panel's

evaluations and recommendations and the anticipated contribution of the winning entry(ies) to fostering transformative change in building practices through replicable or iconic demonstration and the anticipated unique contributions of the winning entry(ies) to rural economic opportunity. The Competition Partners reserve the right to select other than the highest scoring entry(ies) for award. The Competition Partners, in their sole discretion, may identify competition finalists prior to a final award determination. The Judging Panel will evaluate entries based upon the following mandatory criteria:

1. Project Specifics and Details—Mandatory Element Criteria—15%

• Viability of the proposed project—based on site ownership, site parameters, site zoning, the stage of design development as presented, and the stage of the development permit(s) as described.

• Ability of the project to foster transformative change in the built environment—based on the project's iconic architecture or engineering, or high profile accessibility or visibility.

2. Business Case for Project—Mandatory Element Criteria—30%

• The Project Proponent Team's summary of experience with building development and tall building design and construction

• Viability of the Project Proponent Team's business case—presentation of financial metrics, base assumptions, demand estimation for the project's space, market analysis, budgets, partnership agreements, regional or national socio-economic impact of the project, etc.; and based on an estimated summary of 'Eligible Expenses'.

• Project Timeline—proposed schedules with realistic estimated project completion dates that are nearer in the future will be evaluated more highly than proposed schedules with estimated project completion dates that are further in the future and/or are unrealistic.

• Willingness and ability of the Local Authority(ies) to cooperate with the Project Proponent Team—based on the letter(s) from or descriptions of engagement with the Local Authority(ies).

▪ Competition entries with letter(s) will be evaluated more highly than entries with only descriptions of the engagement between the Project Proponent Team and the Local Authority(ies)

3. Proposed Wood Solution—Mandatory Element Criteria—25%

• Viability of the proposed wood structural solution—based on the system and materials proposed, the level of detail provided about the proposed system, the demonstrated feasibility of the system, and the practicality of the proposed system and its potential for repeat use in the industry.

4. Sustainability—Mandatory Element Criteria—15%

• Amount of reduction in environmental footprint over a similar building constructed using traditional materials.

• Amount and types of sustainability elements featured in the project.

• Feasibility of realizing the estimated levels of impact of the project from a sustainability and performance perspective.

5. Rural Economic Ties—Mandatory Element Criteria—15%

• Feasibility of realizing positive impacts to the U.S. rural economy from the project and/or wood materials used in the project—based on demonstration of the project's potential to be a catalyst for supporting emerging demand for new domestic rural manufacturing and employment opportunities.

• Quality of the plan for development of a Tall Wood Building Demonstration Report (A Case Study).

• Creation of direct rural economic opportunity related to the project—based on documentation of commitment to source wood materials from U.S. Rural Sources.

The Judging Panel will evaluate entries based upon the following optional element criteria:

1. Project Specifics and Details—Optional Element Criteria—Bonus 5%

• A description of the proposed building enclosure solution and its viability.

2. Business Case for Project—Optional Element Criteria—Bonus 5%

• Project Proponent Team's past experience with completed design and construction of projects that are similar to the proposed project in form and scale.

3. Proposed Wood Solution—Optional Element Criteria—Bonus 5%

• A reasonably detailed estimate of construction costs and savings comparing the proposed wood solution to other traditional methods and materials for the proposed project.

• A description of the fire protection strategy being proposed and its viability.

4. Sustainability—Optional Element Criteria—Bonus 5%

• Documentation that links the wood materials and products to be sourced for the proposed project to sustainable timber harvest practices, certifications, or other sustainable land management initiatives.

5. Rural Economic Ties—Optional Element Criteria—Bonus 5%

• Competition entries that go beyond a commitment statement to include details of how and where in rural America wood materials will be sourced will be evaluated more highly than less detailed entries.

Additional Rules and Conditions

A. General Conditions

By entering the Competition, each Project Proponent Team guarantees that its entry complies with all applicable Federal and state laws and regulations.

Each Project Proponent Team warrants that its entry is free of viruses, spyware, malware, or any other malicious, harmful, or destructive device. Project Proponent Teams submitting entries containing any such device will be held liable and may be prosecuted to the fullest extent of the law.

Entries containing any matter which, in the sole discretion of Competition Sponsor, is indecent, defamatory, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, which promotes discrimination in any form, which shows unlawful acts being performed, which is slanderous or libelous, or which adversely affects the reputations of Competition Sponsor or any of the Competition Partners will not be accepted. If the Competition Sponsor, in its sole discretion, finds any entry to be unacceptable then such entry shall be deemed disqualified and will not be evaluated or considered for award.

The winning Project Proponent Team(s) must comply with all applicable laws and regulations regarding Prize Purse receipt and disbursement. The winning Project Proponent Team(s) also must comply with all terms and conditions of the Funding Agreement(s) to be entered into between the winning Project Proponent Team(s) and the Competition Sponsor.

Competition Sponsor's failure to enforce any term of any applicable rule or condition shall not constitute a waiver of that term.

B. Entry Conditions & Release

By entering the Competition, each Project Proponent Team agrees to: (1) Comply with and be bound by all applicable rules and conditions, and the decisions of the Competition Sponsor and Competition Partners, which are binding and final in all matters relating to this Competition; (2) release and hold harmless the Competition Sponsor and the Competition Partners and all their respective past and present officers, directors, employees, agents, and representatives (collectively the ''Released Parties'') from and against any and all claims, expenses, and liability arising out of or relating to the Project Proponent Team's entry or participating in the Competition and/or the Project Proponent Team's acceptance, use, or misuse of the Prize Purse or recognition.

The Released Parties are not responsible for: (1) Any incorrect or inaccurate information, whether caused by Project Proponent Teams, printing errors, or by any of the equipment or programming associated with or used in the Competition; (2) technical failures of any kind, including, but not limited to, malfunctions, interruptions, or disconnections in phone lines or network hardware or software; (3) unauthorized human intervention in any part of the entry process for the Competition; (4) technical or human error that may occur in the administration of the Competition or the processing of entries; or (5) any injury or damage to persons or property that may be caused, directly or indirectly, in whole or in part, from Project Proponent Team's participation in the Competition or receipt or use or misuse of the Prize Purse. If for any reason a Project Proponent Team's entry is confirmed to have been deleted erroneously, lost, or otherwise destroyed or corrupted, Project Proponent Team's sole remedy is to submit another entry in the Competition.

C. Termination and Disqualification

Competition Sponsor reserves the authority to cancel, suspend, and/or modify the Competition, or any part of it, if any fraud, technical failures, or any other factor beyond Competition Sponsor's reasonable control impairs the integrity or proper functioning of the Competition, as determined by Competition Sponsor in its sole discretion.

Competition Sponsor reserves the right to disqualify any Project Proponent Team it believes to be tampering with the entry process or the operation of the Competition or to be acting in violation of any applicable rule or condition.

Any attempt by any person to undermine the legitimate operation of the Competition may be a violation of criminal and civil law, and, should such an attempt be made, Competition Sponsor reserves the authority to seek damages from any such person to the fullest extent permitted by law.

D. Verification of Potential Winner(s)

All potential competition winners are subject to verification by competition sponsor whose decisions are final and binding in all matters related to the competition.

Potential winner(s) must continue to comply with all terms and conditions of the Competition rules, and winning is contingent upon fulfilling all requirements. The potential winner(s) will be notified by email and/or telephone. If a potential winner cannot be contacted, or if the notification is returned as undeliverable, the potential winner forfeits. In the event that a potential winner, or an announced winner, is found to be ineligible or is disqualified for any reason, the Competition Sponsor may make award, instead, to the next runner up, as previously determined by the Judging Panel.

Prior to awarding the Prize Purse, USDA will verify that the potential winner(s) is/are not suspended, debarred, or otherwise excluded from doing business with the U.S. Federal Government. Suspended, debarred, or otherwise excluded parties will not be eligible to win the Competition.

Prior to being awarded the Prize Purse the potential winner(s) must:

1. Provide the letter(s) of cooperation from the Local Authority(ies);

2. Complete a certification of eligibility attesting to the Project Proponent Team's fulfillment of all the eligibility requirements (the certification form will be provided to the potential winner(s) by Competition Sponsor);

3. Enter into a Funding Agreement with Competition Sponsor. The Funding Agreement governs the obligations of the Project Proponent Team, including the addition of the United States of America as a named insured on general liability and umbrella insurance policies; the process for submitting Eligible Expenses; and disbursements from and administration of the Prize Purse. A sample Funding Agreement can be found on the Competition Web site: *www.tallwoodbuildingcompetition.org.*

E. Intellectual Property

By entering the Competition, each Project Proponent Team warrants that it is the author and/or authorized owner of its entry, and that the entry is wholly original with the Project Proponent Team (or is an improved version of an existing project plan that the Project Proponent Team is legally authorized to enter into the Competition), and that the submitted entry does not infringe any copyright, patent, or any other rights of any third party. Each Project Proponent Team agrees to hold the Released Parties harmless for any infringement of copyright, trademark, patent, and/or other real or intellectual property right that may be caused, directly or indirectly, in whole or in part, from Project Proponent Team's participation in the Competition.

All legal rights in any materials produced or submitted in entering the Competition are retained by the Project Proponent Team and/or the legal holder of those rights. Entry into the Competition constitutes express authorization for Competition Sponsor, Competition Sponsor's staff, Competition Partners', Competition Partners' staff, and the Judging Panel to review and analyze any and all aspects of submitted entries, including any trade secret or proprietary information contained in or evident from review of the submitted entries.

Legal rights in materials produced during design and construction of the winning project(s) will be negotiated as part of the Funding Agreement entered into between Competition Sponsor and the winning Project Proponent Team(s).

A sample Funding Agreement, containing draft intellectual property language, can be found on the Competition Web site: *www.tallwoodbuildingcompetition.org.*

F. Publicity & Availability of Project for Demonstration Purposes

By entering the Competition, each Project Proponent Team consents, as applicable, to Competition Sponsor's and Competition Partners' use of the names, likenesses, photographs, voices, and/or opinions of each member of the Project Proponent Team both individually and collectively, and disclosure of their hometowns and States for promotional purposes in any media, worldwide, without further payment or consideration.

During construction of the winning project(s) and for a period of three (3) years after completion, upon advance notice, the Project Proponent Team shall provide the Competition Sponsor or Competition Partners' representatives,

and any representatives' guests, reasonable access to any premises where the project takes place (i) to assess the project's progress or any element thereof; and/or (ii) to showcase the project as a demonstration of the capabilities of wood structural products in tall building construction.

G. Privacy & Disclosure Under FOIA

Personal and contact information is not collected for commercial or marketing purposes. Information submitted throughout the Competition will be used only to communicate with Project Proponent Teams regarding entries and/or the Competition.

Project Proponent Teams entries to the Competition may be subject to disclosure under the Freedom of Information Act (''FOIA''). If a Project Proponent Team believes that all or part of its Competition entry is protected from release under FOIA (e.g., if the information falls under FOIA exemption #4 for ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'') the Project Proponent Team will be responsible for clearly marking the page(s)/section(s) of information it believes are protected.

Dated: October 3, 2014.

Doug O'Brien,

Acting Under Secretary, Rural Development.

[FR Doc. 2014–24198 Filed 10–9–14; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Locatable Minerals

AGENCY: Forest Service, USDA.

ACTION: Notice, request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, 36 CFR part 228, subpart A—Locatable Minerals.

DATES: Comments must be received in writing on or before December 9, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: Forest Service, Director, Minerals and Geology Management Staff, Mail Stop 1140, 1400 Independence Ave. SW., Washington, DC 20250.

Comments also may be submitted via facsimile to 703–605–1575 or by email to: *jdemaagd@fs.fed.us.*

Comments submitted in response to this notice may be made available to the public through relevant Web sites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at 201 14th Street SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to 703–605–4545 to facilitate entry to the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to *jdemaagd@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jim DeMaagd, Assistant Director, Minerals and Geology Management, at 303–275–5473. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: *Title:* 36 CFR Part 228, Subpart A—Locatable Minerals.

OMB Number: 0596–0022

Expiration Date of Approval: January 31, 2015.

Type of Request: Extension without change of a currently approved collection.

Abstract: This collection of information is necessary to ensure that the environmental impacts associated with locatable mineral operations on National Forest System (NFS) lands are minimized to the extent practicable. The Forest Service regulations at 36 CFR 228.5 require mining operators, with some exceptions, to notify the authorized Forest Service officer of their intent to conduct a locatable mineral operation on NFS lands by filing a Notice of Intent or Plan of Operations. 36 CFR 228.10 requires mining operators to submit a Cessation of Operation when mining operations are temporarily ceased, other than for seasonal closure.

There is not a required format for the information collection, but all information identified in 36 CFR part 228 must be included. Form FS–2800–5, Plan of Operations for Mining Activities on National Forest System Lands, is available for use by mining operators to simplify this process. The information required in a Plan of Operations, detailed in 36 CFR 228.4(c), (d), and (e), includes:

1. The name and legal mailing address of operators (and claimants if they are not the same) and their lessees, assigns, or designees.

2. A map or sketch showing information sufficient to locate:

a. The proposed area of operations on the ground.

b. Existing and/or proposed roads or access routes to be used in connection with the operation as set forth in 36 CFR 228.12 on access.

c. The approximate location and size of areas where surface resources will be disturbed.

3. Information sufficient to describe the:

a. Type of operations proposed and how they would be conducted.

b. Type and standard of existing and proposed roads or access routes.

c. Means of transportation used or to be used as set forth in 36 CFR 228.12.

d. Period during which the proposed activity will take place.

e. Measures to be taken to meet the requirements for environmental protection in 36 CFR 228.8.

A Notice of Intent is required, as detailed in 36 CFR 228.4(a)(2), to include information sufficient to identify the area involved, the nature of the proposed operation, the route of access to the area of operations, and the method of transport. A Cessation of Operations is required, as detailed in 36 CFR 228.10, to include verification of intent to maintain structures, equipment, and other facilities; expected reopening date; and an estimate of extended durations of operations.

These collections of information are crucial to protecting surface resources, including plants, animals, and their habitat, as well as public safety on NFS lands. The authorized Forest Service officer will use the collected information to ensure that the exploration, development, and production of mineral resources are conducted in an environmentally sensitive manner; that these mineral operations are integrated with the planning and management of other

resources using the principles of ecosystem management; and that lands disturbed by mineral operations are reclaimed using the best scientific knowledge and returned to other productive uses. If this information was not collected, the Forest Service would not be in compliance with the Federal Regulations and locatable mineral operations could result in undue damage to surface resources.

Estimate of Annual Burden: 12 Hours (10 hours—Plan of Operations; 1 hour—Notice of Intent; 1 hour—Cessation of Operations).

Type of Respondents: Mining operators.

Estimated Annual Number of Respondents: 283 (111—Plans of Operations; 169—Notices of Intent; 3—Cessation of Operations).

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10,005 Hours (12 hours × 111 Plans of Operation = 1,332; 2 hour × 169 Notices of Intent = 338; 1 hour × 3 Cessation of Operations = 3; 1,332 + 338 + 3 = 1,673).

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: October 2, 2014.

Gregory C. Smith,

Acting Deputy Chief, National Forest System.

[FR Doc. 2014–24200 Filed 10–9–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Apalachicola National Forest; Apalachicola Ranger District, Florida; Beasley Pond Analysis Area

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze the impacts of timber harvest and associated activities on approximately 3,800 acres of forestland and savannahs in the Beasley Pond Analysis Area. Based on public scoping, discussion with other federal agencies and initial issues analysis, the responsible official has determined that preparation of an EIS is appropriate for this project. The proposed project is an activity implementing a land management plan and is subject to the pre-decisional objection process at 36 CFR part 218 subparts A and B.

DATES: Comments concerning the scope of the analysis must be received by November 10, 2014. The draft EIS is expected December 2014 and the final EIS is expected March 2015.

ADDRESSES: Send written comments to Marcus Beard, District Ranger, 57 Taff Drive, Crawfordville, FL 32327. Comments may also be sent via email to *comments-southern-florida-apalachicola@fs.fed.us,* or via facsimile to (850) 926–1904.

FOR FURTHER INFORMATION CONTACT: Branden Tolver—phone: (850) 926–3561; email: *btolver02@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Purpose and Need for Action

The National Forests in Florida's Forest Plan outlines several goals for the National Forests of Florida, one of which calls for the conservation and protection of declining natural communities, and uncommon biological, ecological, or geological site. The Beasley Pond Analysis area contains large areas of historical savannah habitat, multiple red-cockaded woodpecker (RCW) clusters, critical habitat for the frosted flatwoods salamander and recent records of three federally listed plant species that occur in open savannah habitats. The primary purpose of this project is to maintain, improve, and restore a healthy forest ecosystem by: Thinning both longleaf and slash pine stands to allow for further tree growth, restoring remnant savannahs to improve habitat for a variety of plant species, and controlling overabundant hardwood trees and brush species to restore herbaceous groundcover. Secondary benefits include maintaining a stable RCW habitat and improving the current transportation system. There is a need to reduce current stocking levels of stands within the project area to open the forest canopy and promote herbaceous groundcover growth and establishment. There also exists a need for rehabilitation and maintenance in declining natural savannah sites in the project area.

Proposed Action

➢ First or intermediate thinning of approximately 1981 acres of slash and longleaf pine stands. Stands range in age from 25 to 141 years old. Younger slash and longleaf pine plantations have a basal area (BA) ranging from 70 to 173 square-feet per acre. Thinning these stands would reduce the BA to an average of 50 square feet per acre thus opening the stands for sunlight penetration needed for continued growth and groundcover establishment.

➢ Conduct uneven-aged management cuts on 978 acres of mature longleaf pine. Openings ranging from ¼–2 acres (average size of ½ acre) in size will be created around existing longleaf seedlings or in areas of the stand that would be suitable for longleaf natural regeneration. The number of openings would be limited to 10% of the stand size. Stand 7 of compartment 28 (91 acres) will be treated with a foliar application of triclopyr (as needed) for hardwood control.

➢ Savannah restoration treatments on approximately 811 acres of savannah sites to remove pine trees and encroaching hardwoods. Girdling will be used in stands that cannot be accessed for traditional logging operations (stands 19 and 41 in compartment 26 and stand 37 in compartment 27). All of these sites have either been planted with slash pine or have been encroached upon by woody brush species and hardwood tree species. To restore these savannah sites a variable residual BA strategy will be implemented with groundcover condition serving as the trigger point for thinning intensity. More herbaceous groundcover is needed when thinning to a lower BA in order to continue the use prescribed fire as a means of maintaining the open park-like structure associated with savannahs. When groundcover conditions are deemed less

than adequate to carry fire the Forest Service proposes to leave a higher residual BA of 40 square feet per acre in order to allow pine needle cast to serve as primary carrier of fire across the stand.

➢ Spot foliar application of the herbicide triclopyr (as needed) on 811 acres of savannah restoration sites for site hardwood control. This is not a broadcast application of herbicide. Spot treatment would occur only where there is a presence of woody vegetation that threatens the re-establishment of savannah plant species. If the savannah restoration areas do not show evidence of woody encroachment after harvest it will not receive herbicide treatment.

➢ Clearcut 16 acres of slash pine plantation for borrow pit excavation to provide surface material for future road work.

➢ Remove six cattle guards from a closed range allotment (two on highway 379, two on FSR 113, and one on FSRs 174 and 109).

Possible Alternatives

Three potential alternatives will be evaluated in the EIS. The first is the No Action alternative which will consist of no treatments in the proposed project area other than those already approved such as prescribed burning or non-native invasive species control. The second alternative addresses the impact to the environment if no herbicides were used and treatments such as hardwood control were done by mechanical means. The third alternative would remove all proposed savannah treatments in the project area. Additional alternatives may also be added as we move through the planning process.

Responsible Official

Marcus Beard, District Ranger for the Apalachicola National Forest

Nature of Decision To Be Made

Based upon the effects of the alternatives, the responsible official will decide whether or not to implement the Proposed Action or one of the possible alternatives.

Preliminary Issues

1. Impact of timber removal on species listed as threatened or endangered under the Endangered Species Act of 1973.
2. Impact of borrow pit excavation on 16 acres of forested land.

Scoping Process

This notice of intent reinitiates the scoping process, which was started with a public scoping notice sent to interested parties in June 2013. Pursuant to 36 CFR part 218 subparts A and B, a draft EIS will be made available for the 45-day notice and comment period. A final EIS and draft Record of Decision will be made available for a 45-day objection period.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, they will not have standing to object.

Dated: October 1, 2014.

Marcus Beard,

District Ranger.

[FR Doc. 2014–24191 Filed 10–9–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shawnee National Forest, Illinois; Cretaceous Hills Ecological Restoration

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service Shawnee National Forest (Forest) intends to prepare an environmental impact statement to disclose the environmental consequences of an ecological restoration project. In the environmental impact statement, the USDA Forest Service will address the potential environmental effects of the restoration of an oak-hickory hardwood forest-type and the increase of wildlife habitat diversity through the removal or thinning of non-native pine trees and small shade-tolerant hardwood trees from about 3,200 acres, the application of prescribed fire on about 15,100 acres, treatment of invasive species, maintenance of barrens habitats, development of vernal ponds, and transportation system maintenance, construction, or reconstruction.

The Cretaceous Hills Ecological Restoration Project (Hills Project) is located in the Bay Creek Ditch, Barren Creek and Sister Islands-Ohio River watersheds between the communities of Metropolis and Bay City, in southern Pope and eastern Massac Counties, Illinois. The 26,102 acres in the project areas include about 15,130 acres of National Forest System land and 10,972 acres of state and private land. All activities are proposed on National Forest System land.

DATES: Comments concerning the scope of the analysis must be received by November 10, 2014 in order to be most useful in the development of the environmental impact statement. The draft environmental impact statement is expected February, 2015 and the final environmental impact statement is expected September, 2015.

ADDRESSES: Comments may be submitted on the Hills Project Web page: *http://tinyurl.com/Cretaceous-Hills-Shawnee-NF.* Written comments may be sent to: Shawnee National Forest, Attn: Hills Project, 602 N. 1st Street, Vienna, IL 62995. Comments may also be sent via facsimile to (618) 658–1300, with ''Hills Project'' on the subject line.

FOR FURTHER INFORMATION CONTACT: Amanda Kunzmann at 602 N. 1st Street, Vienna, (618) 658–2111, or *akunzmann@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The purpose of the Hills Project is to implement land management activities consistent with the Forest Land and Resource Management Plan (Plan) and bring the Forest closer to the desired condition stated therein. The Forest Plan outlines goals, objectives and desired conditions for Forest resources. The Hills Project Area encompasses three Forest Plan management-prescription areas: Even-Aged Hardwood Forest (EH), Mature Hardwood Forest (MH) and Natural Area (NA).

The EH management prescription emphasizes maintenance of the oak-hickory forest-type; ecological restoration to native hardwood of areas planted with non-native pine; wildlife habitat associated with a mix of hardwoods, pine and openland; and the production of high-quality hardwoods in a roaded-natural recreational setting. The desired condition relevant to this project is for a natural-appearing landscape with stands of hardwood trees in various age and size classes. The

oak-hickory community and associated understories dominate. The land supports a variety of wildlife, ranging from species that utilize early-successional stages to those requiring mature-stand characteristics. Some areas are actively managed for forest-interior species. Roads provide access for recreation, administration and management purposes, including transportation of forest products (Forest Plan, page 59).

The MH management prescription provides for recreation, wildlife and soil and water protection, with motorized and non-motorized recreation occurring in a roaded-natural or semi-primitive setting. The prescription provides habitat for wildlife requiring mature-hardwood forest conditions. The desired condition relevant to this project is a landscape of natural ecosystems. Usually dominant, mature, hardwood trees and associated vegetation are interspersed with openland ecosystems; some areas are actively managed for forest-interior species (Forest Plan, page 68).

The NA management prescription provides for the preservation, protection and/or enhancement of the unique natural values found in many natural areas on the Forest. The desired future condition relevant to this project is that the four designated natural areas included in the project, each biologically and geologically unique, contain a variety of wildlife species and diverse vegetation in a natural-appearing condition.

The forest in the EH management area is about 30 percent non-native pine that was planted in the 1930's and 1940's to control erosion on depleted farmland. Forest Plan management goals include the conversion of non-native pine plantations to native hardwoods, emphasizing the removal of pine within or adjacent to natural areas; and the restoration and maintenance of the oak-hickory forest-type for biological diversity and wildlife habitat, utilizing landscape-level prescribed burning, timber harvesting and timber-stand improvement to help create and/or maintain the necessary ecological conditions for regeneration and maintenance (Forest Plan, pages 21–22). The area has also been affected by two major ice storms that damaged many trees, increasing fuel-loading throughout.

The forest in the MH management area was also damaged by the ice storms, with a heavy hazardous fuel load. This area includes the Burke Branch Inventoried Roadless Area, a forest-interior habitat as described in the Forest Plan (page 43). Managed under the NA management prescription, designated natural areas in the project area include Robnett Barrens Ecological Area, Dog Creek Barrens Ecological Area and Dean Cemetery East Barrens Ecological Area, as well as the Burke Branch Research Natural Area Ecological Area, with mesic barrens, mesic floodplain forest and dry mesic upland forest. Among the Forest Plan goals are the restoration and maintenance of barrens through active management and the management of forest-interior habitats for large blocks of oak-hickory forests, with burning conducted frequently to promote oak-hickory generation and to control competition from shade-tolerant and invasive species, and the application of herbicide to control invasive species (Forest Plan, pages 21, 26 and 43).

Proposed Action

The following actions have been identified to address the needs described above. (1) To meet the need to convert about 3,200 acres of non-native pine plantations to the oak-hickory hardwood forest-type, conduct commercial harvest through overstory removal of remnant pine trees on about 490 acres and shelterwood with reserves and thinning on about 2,600 acres. Treatments include two entries for site-preparation for natural regeneration on about 3,200 acres and the application of prescribed fire. Herbicides are proposed for site preparation and control of shade-tolerant species. (2) To reduce the threat of wildfire from the hazardous fuel load in the project area, prescribed fire will be applied to about 15,100 acres throughout the project area. This will not only reduce the fuel load in the area, but also will aid in the restoration and maintenance of designated natural areas and forest-interior habitat. (3) To restore and enhance the barrens natural areas, herbicide treatments and prescribed fire will be applied where necessary, small trees and shrubs will be removed, and non-native pines will be clearcut from about 90 acres within and adjacent to natural areas. (4) To maintain forest-interior habitat to increase wildlife diversity, herbicide treatments and prescribed fire will be applied where necessary. (5) To create additional habitat diversity, twenty small vernal pools will be constructed in the project area. (6) To provide management and possible future recreational access to the project areas, roads will be maintained, constructed or reconstructed.

Responsible Official

The responsible official is the Hidden Springs-Mississippi Bluffs District Ranger.

Nature of Decision To Be Made

Given the purpose and need for the proposal, the responsible official will review the analyses of the proposed action and the alternatives in order to make the following decisions: Whether or not to release shade-intolerant oak, hickory and other hardwoods through removal of overstory pine; whether or not to use site-preparation tools to restore the native, hardwood-forest community; whether or not to utilize a commercial timber sale to remove the pine trees; whether or not to manage the forest-interior habitat and designated natural areas in the project areas; whether or not to apply prescribed fire or herbicides; whether or not to construct vernal ponds; and whether or not to manage the project area transportation system with maintenance, construction, or reconstruction.

Scoping Process

This notice of intent initiates the scoping process that will guide development of the environmental impact statement for a project implementing the Forest Plan; it is subject to the requirements of 36 CFR part 218, Subparts A and B—Project-Level Pre-decisional Admnistrative Review Process. The initiation of the scoping period also opens the ''designated opportunity for public comment'' on this proposal, under 36 CFR part 218.5(a). This designated opportunity will conclude at the end of the comment period for the draft environmental impact statement.

It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Commenters who desire eligibility to object during the pre-decisional administrative review process must submit comments that meet the requirements of 36 CFR part 218.25. To be most helpful to the development of the environmental impact statement, comments should be provided prior to the close of the scoping period and should clearly articulate the reviewer's concerns. Scoping meetings will be scheduled with interested parties and organizations following publication of this notice.

Comments received in response to this solicitation, including names and addresses of those who comment, will

be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the agency with the ability to provide the respondent with subsequent environmental documents.

Dated: October 6, 2014.

Hurston A. Nicholas,

Forest Supervisor.

[FR Doc. 2014–24229 Filed 10–9–14; 8:45 am]

BILLING CODE 3411–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2014–0002]

RIN 3014–0011

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), the Architectural and Transportation Barriers Compliance Board (Access Board) invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew a generic information collection. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 28, 2014 (79 FR 43709). As part of a federal government-wide effort to streamline the process for seeking feedback from the public on service delivery, the Access Board has an approved Generic Information Collection Request entitled ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' A copy of the draft supporting statement is available at *http://www.regulations.gov* (see Docket ID ATBCB–2014–0002).

DATES: Submit comments by November 10, 2014.

ADDRESSES: Submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. *Regulations.gov.* ID for this docket is ATBCB–2014–0002.
- *Email: damiani@access-board.gov.* Include docket number ATBCB–2014–0002 in the subject line of the message.
- *Fax:* (202) 272–0081.
- *Mail or Hand Delivery/Courier:* Office of the General Counsel, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments, including any personal information provided, will be posted without change to *http://www.regulations.gov* and are available for public viewing.

FOR FURTHER INFORMATION CONTACT: Mario Damiani, Office of the General Counsel, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone numbers: (202) 272–0050 (voice); (202) 272–0064 (TTY). These are not toll free numbers. Email address: *damiani@access-board.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3014–0011.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of Review: Renewal of a generic information collection.

Background: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Access Board and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Respondents: Average annual estimate of approximately 1,100 Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Below, we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 7.

Average Number of Respondents per Activity: 157.

Annual Responses: 1,100.

Frequency of Response: Once per request.

Estimated Average Burden per Response: 7.25 minutes.

Estimated Total Annual Burden: 120 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Access Board's performance; (b) the accuracy of the estimated burden; (c) ways for the Access Board to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. We will summarize comments received in the request for OMB's clearance of this information collection.

David M. Capozzi,

Executive Director.

[FR Doc. 2014–24168 Filed 10–9–14; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Billfish Certificate of Eligibility.

OMB Control Number: 0648–0216.

Form Number(s): NA.

Type of Request: Regular (extension of a current information collection).

Number of Respondents: 200.

Average Hours per Response: Initial dealer completion, 20 minutes; subsequent dealer completion, 2 minutes.

Burden Hours: 43.

Needs and Uses: This request is for an extension of a currently approved information collection.

A Certificate of Eligibility (COE) for Billfishes is required under 50 CFR part 635 to accompany all billfish, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation certifies that the accompanying billfish was not harvested from the applicable Atlantic Ocean management unit (described on the NOAA sample certificate), and identifies the vessel landing the billfish, the vessel's homeport, the port of offloading, and the date of offloading. The certificate must accompany the billfish to any dealer or processor who subsequently receives or possesses the billfish. The extension of this collection is necessary to implement the Consolidated Highly Migratory Species Fishery Management Plan, which contains an objective to reserve Atlantic billfish for the recreational fishery.

On October 5, 2012, the President signed Public Law 112–183 entitled the ''Billfish Conservation Act of 2012,'' which prohibits the sale of billfish (or products containing billfish), or the custody, control, or possession of billfish (or products containing billfish) for purposes of sale. The only exemptions to this prohibition include billfish landed by U.S. fishing vessels in Hawaii and Pacific Insular Areas, and billfish landed by foreign fishing vessels in the Pacific Insular Areas when the foreign-caught billfish are exported to non-U.S. markets or retained within Hawaii and the Pacific Insular Areas for local consumption. NOAA is currently developing implementing regulations for the Billfish Conservation Act. If necessary, upon publication of the proposed rule, the information collection associated with the Billfish Certificate of Eligibility (0648–0216) may be revised accordingly.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 6, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–24178 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Halibut Catch Sharing Plan Survey.

OMB Control Number: 0648-*xxxx.*

Form Number(s): NA.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 602.

Average Hours Per Response: Full survey, 30 minutes; follow-up telephone survey, 10 minutes.

Burden Hours: 186.

Needs and Uses: This request is for a new information collection.

Numerous management measures have recently been proposed or implemented that affect recreational charter boat fishing for Pacific halibut off Alaska, including the adoption of a Halibut Catch Sharing Plan (78 FR 75843) in International Pacific Halibut Commission Regulatory Areas 2C and 3A that alters the way Pacific halibut is allocated between the guided sport (i.e., the charter sector) and the commercial halibut fishery. The Catch Sharing Plan (CSP) formalizes the annual process of allocating catch between the commercial sector and charter sector and for determining harvest restrictions in the charter sector (78 FR 75843). In addition, the CSP allows leasing of commercial halibut individual fishing quota (IFQ) by eligible charter businesses holding a charter halibut permit (CHP). The IFQ pounds are leased in terms of number of fish, called guided angler fish (GAF), which are determined based on a conversion rate published by the National Marine Fisheries Service (NMFS). Leased GAF can be used by charter businesses to relax harvest restrictions for their angler clients, since the fish caught under the leased GAF would not be subject to the charter sector-specific size and bag limits that may be imposed—though the non-charter sector size and bag limit restrictions (currently two fish of any size per day) would still apply to charter anglers who are not using GAF.

To help inform potential future policy discussions about the CSP, NMFS Alaska Fisheries Science Center plans to conduct a survey that will collect information on general attitudes toward the CSP and the GAF leasing program from Area 2C and Area 3A charter boat businesses (CHP holders), and ask them to indicate their preferences for hypothetically relaxing specific features of the GAF leasing program that are employed in similar types of programs in both fisheries and non-fisheries contexts. This information could provide valuable information to the North Pacific Fishery Management Council in its evaluation of the current features of the CSP and provide information that may help it evaluate adjustments to the CSP. The survey will also provide a broad gauge of attitudes toward the program and its impacts on the charter sector and anglers.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 7, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–24254 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–44–2014]

Foreign-Trade Zone 20, Authorization of Production Activity, Becker Hydraulics USA, Inc., (Hydraulic Hose Lines) Chesapeake, VA

On June 4, 2014, the Virginia Port Authority, grantee of FTZ 20, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Becker Hydraulics USA, Inc., within FTZ 20, in Chesapeake, Virginia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 36288, 6–26–2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: October 6, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–24268 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1951]

Reorganization of Foreign-Trade Zone 259 Under Alternative Site Framework, Koochiching County, Minnesota

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Koochiching Economic Development Authority, grantee of Foreign-Trade Zone 259, submitted an application to the Board (FTZ Docket B–34–2014, docketed 04–24–2014) for authority to reorganize under the ASF with a service area of Koochiching County, Minnesota, within and adjacent to the International Falls Customs and Border Protection port of entry, and FTZ 259's existing Sites 1, 2 and 3 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (79 FR 24669, 05–01–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 259 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1 and 3 if not activated by October 31, 2019.

Signed at Washington, DC, this 2nd day of October 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–24267 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1953]

Approval of Expansion of Subzone 176E, UniCarriers Americas Corporation, Marengo, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' . . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of subzones for specific uses;

Whereas, the Greater Rockford Airport Authority, grantee of Foreign-Trade Zone 176, has made application to the Board to expand Subzone 176E on behalf of UniCarriers Americas Corporation to include an additional site in Marengo, Illinois, (FTZ Docket B–46–2014, docketed 6–26–2014);

Whereas, notice inviting public comment has been given in the **Federal Register** (79 FR 37281, 7–1–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 176E on behalf of UniCarriers Americas Corporation in Marengo, Illinois, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 2nd day of October 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–24269 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1952]

Expansion of Subzone 124H, Bollinger Shipyards, Inc., Golden Meadow, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' . . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of subzones for specific uses;

Whereas, the Port of South Louisiana, grantee of Foreign-Trade Zone 124, has made application to the Board to expand Subzone 124H–Site 10 on behalf of Bollinger Shipyards, Inc., to include an additional 46.212 acres in Golden Meadow, Louisiana (FTZ Docket B–50–2014, docket 07–17–2014);

Whereas, notice inviting public comment has been given in the **Federal Register** (79 FR 43391, 07–25–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 124H on behalf of Bollinger Shipyards, Inc., as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 2nd day of October 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–24270 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Steel Import License

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 9, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julie Al-Saadawi, Office of Policy, Enforcement and Compliance, 1401 Constitution Ave. NW., Washington, DC 20230 (202) 482–2105, Fax: (202) 501–7952 or via email *julie.al-saadawi@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The President's Proclamation on Steel Safeguards mandated that the Departments of Commerce and Treasury institute an import licensing system to facilitate the monitoring of certain steel imports in 2002.

Regulations were established that implemented the Steel Import Monitoring and Analysis (SIMA) System and expanded on the licensing system in 2006 for steel that was part of those safeguards. The import license information is necessary to assess import trends of steel products.

In order to effectively monitor steel imports, Commerce must collect and provide timely aggregated summaries about the imports. The Steel Import License is the tool used to collect the necessary information. The Census Bureau currently collects import data and disseminates aggregate information about steel imports. However, the time required to collect, process, and disseminate this information through Census can take up to 90 days after importation of the product, giving interested parties and the public far less time to respond to injurious sales.

II. Method of Collection

The license application can be submitted electronically via the Commerce Web site (*http://enforcement.trade.gov/steel/license/*) or completed electronically and emailed or faxed to the Department.

III. Data

OMB Control Number: 0625–0245.

Form Number(s): ITA–4141P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3500.

Estimated Time per Response: 10 minutes.

*Estimated Total Annual Burden Hours: 92,*878.

Estimated Total Annual Cost to Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 6, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–24162 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952]

Narrow Woven Ribbon With Woven Selvedge From the People's Republic of China: Final Results of Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 9, 2014, the Department of Commerce (the ''Department'') published the preliminary results and partial rescission of the 2012–2013 administrative review of the antidumping duty order on narrow woven ribbon with woven selvedge (''NWR'') from the People's Republic of China (''PRC''), in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').[1] The period of review (''POR'') is September 1, 2012, through August 31, 2013. Because the PRC-wide entity failed to cooperate to the best of its ability in complying with our requests for information, we preliminarily determined an estimated weighted-average dumping margin for the PRC-wide entity based on facts available with an adverse inference (''AFA''). The Department invited interested parties to comment on the *Preliminary Results.* No parties commented. Accordingly, our final results remain unchanged from the *Preliminary Results.*

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

[1] *See Narrow Woven Ribbon With Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review; 2012–2013,* 79 FR 32912 (June 9, 2014) (''*Preliminary Results*'').

FOR FURTHER INFORMATION CONTACT:
Drew Jackson, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4406.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2014, the Department published the *Preliminary Results.* The Department explained that it had initiated an administrative review of the company, Yangzhou Bestpak Gifts & Crafts Co., Ltd. (''Bestpak'') and issued questionnaires to Bestpak, which did not respond to those questionnaires. Because Bestpak did not establish that its export activities were separate from that of the PRC-wide entity, in accordance with 19 CFR 351.107(d), the Department preliminarily determined that Bestpak was part of the PRC-wide entity. Further, because the PRC-wide entity failed to provide responses to questionnaires and cooperate to the best of its ability in complying with the information requests, the Department preliminarily determined an estimated weighted-average dumping margin based on AFA, in accordance with sections 776(a) and (b) of the Act, for the PRC-wide entity. We invited interested parties to submit comments on the *Preliminary Results.* No party commented, nor did any party request a hearing.

Scope of the Order

The products covered by the order are narrow woven ribbons with woven selvedge.[2] The merchandise subject to the order is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under HTSUS subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[3]

Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results,* the Department finds that there is no reason to modify its analysis. Thus, we continue to determine that Bestpak is part of the PRC-wide entity for these final results, and that the PRC-wide entity has failed to act to the best of its ability to responding to the Department's requests for information, warranting the application of AFA, in accordance with sections 776(a) and (b) of the Act. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, see the *Preliminary Results* and the accompanying Preliminary Decision Memorandum. The final weighted-average dumping margin for the period September 1, 2012, through August 31, 2013, is as follows:

Exporter	Weighted-average dumping margin (percent)
PRC-wide entity [4]	247.65

Assessment

The Department will determine, and Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[5] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. The Department intends to instruct CBP to liquidate entries of subject merchandise from Bestpak at the PRC-wide rate of 247.65 percent.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 247.65 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to the 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.

[2] *See Notice of Antidumping Duty Orders: Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632 (September 1, 2010), as amended in *Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982 (September 17, 2010).

[3] For a complete description of the scope of the order, please see ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative: Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated June 2, 2014 (''Preliminary Decision Memorandum''), which can be accessed directly at *http://enforcement.trade.gov/frn/.*

[4] The PRC-wide entity includes, among other companies, the following companies that indicated that they did not ship subject merchandise to the United States during the POR: (1) Apex Trimmings Inc. d/b/a Papillon Ribbon & Bow (Canada); (2) Cheng Hsing Ribbon Factory; (3) Hen Hao Trading Co., Ltd. a.k.a. Taiwan Tulip Ribbons and Braid Co. Ltd; (4) Hsien Chan Enterprise Co., Ltd; (5) King Young Enterprises Co., Ltd; (6) Multicolor; (7) Novelty Handicrafts Co., Ltd; (8) Papillon Ribbon & Bow (H.K.) Ltd; (9) Papillon Ribbon & Bow (Shanghai) Ltd; (10) Roung Shu Industry Corporation a.k.a Cheng Hsing Ribbon Factory; (11) Shienq Huong Enterprise Co., Ltd; and (12) Yu Shin Development Co. Ltd.

[5] *See* 19 CFR 351.212(b)(1).

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 3, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–24272 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Premier Marine Products Private Limited (PPL), a producer/exporter of certain frozen warmwater shrimp (shrimp) from India, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216 and 351.221(c)(3)(ii), the Department of Commerce (the Department) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on shrimp from India with regards to PPL. Based on the information received, we preliminarily determine that PPL is the successor-in-interest to Premier Marine Products (PMP) for purposes of determining AD liability. Interested parties are invited to comment on these preliminary results.

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

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Stephen Banea, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** the AD order on shrimp from India.[1] Effective April 8, 2013, PMP, a producer/exporter of Indian shrimp covered by this order, converted from a partnership company to a private limited company, under the definition in Indian law and, as part of this conversion, it changed its name to PPL.[2] On August 22, 2014, PPL requested [3] that the Department conduct an expedited CCR to determine that it is the successor-in-interest to PMP, for the purpose of being assigned PMP's cash deposit rate, as a part of the Liberty Group of companies.[4] We received no comments opposing PPL's request.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), the Department will conduct a CCR upon receipt of a request from an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by PPL supporting its claim that it is the successor-in-interest to PMP

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (Feb. 1, 2005) (*Shrimp Order*).

[2] *See* Letter from Premier Marine Private Limited, dated August 22, 2014 (CCR Request).

[3] *Id.*

[4] PMP received a 2.49 percent dumping margin as part of the Liberty Group in the 2012–2013 administrative review of the AD order on shrimp from India. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 51309 (Aug. 28, 2014) (*Shrimp Review*).

demonstrates changed circumstances sufficient to warrant such a review.[5]

In accordance with the above-referenced regulation, the Department is initiating a CCR to determine whether PPL is the successor-in-interest to PMP. In determining whether one company is the successor-in-interest to another, the Department examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base.[6] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[7] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.[8]

In its August 22, 2014, submission, PPL provided information to demonstrate that it is the successor-in-interest to PMP. PPL states that the company's management, production facilities and customer/supplier relationships have not changed as a result of its conversion to a private limited company. To support its claims, PPL submitted the following documents: (1) PMP's partnership deed from 1986; (2) PPL's new partnership deed from 2013; (3) the particulars of PPL's capital shares and percent of shareholdings for each partner; (4) the certificate of incorporation; (5) the Memorandum of Association and Articles of Association of PPL showing details of the partnership; (6) PMP's and PPL's certificates issued by the Export Inspection Council of India showing the same address for the production facility; (7) a list of the suppliers of PMP before, and PPL after, the conversion to a private limited company; (8) a list of the customers of PMP before, and PPL after, the conversion; and, (9) a list of the employees of PMP before, and PPL after, the conversion.

Based on the evidence on the record, we preliminarily find that PPL is the successor-in-interest to PMP. We find that, while PPL expanded to seven partners from two after its conversion to a private limited company, the original two partners retained a majority stake in PPL and no managers or other employees changed as a result of the conversion.[9] As a result, we find that PPL operates as the same business entity as PMP. Moreover, PPL: (1) Retained the same production facility as PMP; [10] (2) continued to purchase raw shrimp from a majority of the same suppliers as PMP; [11] and (3) continued to supply the same U.S. customers.[12] Therefore, we also find that the production facility, supplier relationships, and customers have not changed as a result of PMP's conversion to PPL. Thus, we preliminarily find that PPL should receive the same AD deposit rate (*i.e.,* 2.49 percent) with respect to the subject merchandise as PMP, its predecessor company.

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a CCR concurrently.[13] We have determined that expedition of this CCR is warranted because we have the information necessary to make a preliminary finding already on the record.[14] Should our final results remain the same as these preliminary results, effective the date of publication of the final results, we will instruct U.S. Customs and Border Protection to suspend entries of subject merchandise produced or exported by PPL at PMP's cash deposit rate (*i.e.,* 2.49 percent), effective on the publication date of our final results.

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice.[15] Parties will be notified of the time and date of any hearing, if requested. Interested parties may submit case briefs and/or written comments not later than 14 days after the publication of this notice. Rebuttal briefs, and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 21 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this changed circumstance review are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument; and (3) a table of authorities. Interested parties who wish to comment on the preliminary results must file briefs electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov.* An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time on the date the document is due.

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this changed circumstance review no later than 270 days after the date on which this review was initiated, or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3)(ii).

Dated: October 6, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–24277 Filed 10–9–14; 8:45 am]

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[5] *See* 19 CFR 351.216(d); *see also Notice and Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod From Mexico,* 75 FR 67685 (Nov. 3, 2010).

[6] *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand,* 75 FR 61702, 61703 (Oct. 6, 2010) (*Shrimp from Thailand*) (unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand,* 75 FR 74684 (Dec. 1, 2010); *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944 (Feb. 14, 1994).

[7] *See Shrimp from Thailand,* 75 FR at 61703.

[8] *Id.; see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan,* 67 FR 58 (Jan. 2, 2002); and *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688 (June 10, 2010).

[9] *See* CCR Request, at 7 and 10.

[10] *Id.*

[11] *Id.* at 9.

[12] *Id.*

[13] *See* 19 CFR 351.221(c)(3)(ii); *see also Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Canned Pineapple Fruit from Thailand,* 69 FR 30878 (June 1, 2004).

[14] *See Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed Circumstances Review,* 71 FR 14679 (Mar. 23, 2006).

[15] *See* 19 CFR 351.303 for general filing requirements.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC''). The period of review (''POR'') is September 1, 2012, through August 31, 2013. The review covers the following exporters of subject merchandise: Mandatory respondents Double Coin Holdings Ltd. (''Double Coin'') [1] and Guizhou Tyre Co., Ltd./Guizhou Tyre Import and Export Co., Ltd. (collectively, ''GTC''), and non-examined respondents Zhongce Rubber Group Company Limited (''Zhongce''),[2] Weihai Zhongwei Rubber Co., Ltd. (''Zhongwei''), and Trelleborg Wheel System (Xingtai) China, Co. Ltd. (''Trelleborg''). We preliminarily find that GTC made sales of subject merchandise at less than normal value, Zhongce and Zhongwei are eligible for a separate rate, Double Coin failed to demonstrate eligibility for separate rate status and thus has been included in the PRC-wide entity, and Trelleborg had no shipments during the POR.

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

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Andrew Medley, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848 or (202) 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order [3]

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

Trelleborg submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.[4] Consistent with its practice, the Department asked U.S. Customs and Border Protection (''CBP'') to conduct a query on potential shipments made by Trelleborg during the POR; CBP did not provide any evidence that contradicts Trelleborg's claim of no shipments.[5] Based on Trelleborg's certification and our analysis of CBP information, we preliminarily determine that Trelleborg did not have any reviewable transactions during the POR. Consistent with a recently announced refinement to its assessment practice in non-market economy (''NME'') cases, the Department is not rescinding this review, in part, but intends to complete the review with respect to Trelleborg.[6]

Preliminary Determination of Affiliation and Collapsing

Based on the evidence presented in Double Coin's questionnaire responses, we preliminarily find that DCH (including Shanghai Heavy Tire), DC Rugao/Jiangsu, and DC Donghai are affiliated, pursuant to section 771(33)(E) of the Act. In addition, based on the evidence presented in the questionnaire responses, we preliminarily find that DCH (including its Shanghai Heavy Tire factory), DC Rugao/Jiangsu, and DC Donghai should be treated as a single entity for the purposes of this review (collectively, the ''DCH Single Entity''). This finding is based on the determination that there is significant potential for manipulation of price between the parties pursuant to the criteria laid out in 19 CFR 351.401(f), due to the high level of common ownership, interlocking boards and managers, and intertwined operations.[7]

Separate Rates

In the *Initiation Notice,*[8] we informed parties of the opportunity to request a separate rate. In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assigned a single weighted-average dumping margin. It is the Department's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to be considered for a separate rate in this review were required to timely file a separate-rate

[1] In *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 67104, 67108 (November 8, 2013) (''*Initiation Notice''*), the review was initiated on Double Coin Group Rugao Tyre Co., Ltd.—renamed Double Coin Group Jiangsu Tyre Co., Ltd.—(''DC Rugao/Jiangsu''), Double Coin Group Shanghai Donghai Tyre Co., Ltd. (''DC Donghai''), and Double Coin Holdings, Ltd. (''DCH'' or ''Double Coin''). The respondent in this review is DCH, which exported all subject merchandise produced by both its wholly-owned and affiliate factories during the POR. DC Donghai is an affiliated producer of subject merchandise that did not produce OTR tires for export in the POR. See, *e.g.,* Letter from Double Coin entitled, ''Section A Response of Double Coin Holdings and China Manufacturers Alliance, LLC,'' dated January 22, 2014 (''Double Coin SAQR''). DC Rugao/Jiangsu is a majority DCH-owned subsidiary factory which, along with the 100 percent DCH-owned production factory (*i.e.,* Double Coin Lorry Tyre Branch, *a.k.a.,* Shanghai Heavy Tire), produced the subject merchandise in question during the POR. *Id.* The International Trade Department of DCH is responsible for all export sales of merchandise under consideration produced by both DCH's Shanghai Heavy Tire factory and the DC Rugao/Jiangsu factory. *Id.* Additionally, the China Manufacturers Alliance (''CMA'') is DCH's U.S. sales affiliate for all POR sales, and has provided and certified to relevant and requested sales-related information on behalf of the respondent. *Id.* Accordingly, for ease of reference we use ''Double Coin'' to collectively refer to each of the above production, export, and sales entities that comprise the respondent in this review, but note that DCH is the actual exporter-respondent. Furthermore, as discussed below, we have collapsed DCH (including Shanghai Heavy Tire), DC Rugao/Jiangsu, and DC Donghai into a single entity for the purposes of this review.

[2] This review was initiated on Hangzhou Zhongce Rubber Co., Ltd.; however, in the final results of a changed circumstances review, which was completed after the instant review initiated, the Department determined that Zhongce was the successor-in-interest to Hangzhou Zhongce Rubber Co., Ltd. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 79 FR 8463 (February 12, 2014).

[3] For a complete description of the scope of the order, *see* the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China,'' dated September 30, 2014 (''Preliminary Decision Memorandum'').

[4] *See* Letter from Trelleborg, entitled, ''Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. Statement of No Shipments during the POR: New Pneumatic Off-The-Road Tires from the People's Republic of China,'' dated November 20, 2013.

[5] *See* CBP Message Number 3352302, dated December 18, 2013.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below.

[7] For further discussion of the Department's affiliation and collapsing decision, *see* Memorandum to the File, entitled, ''2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Double Coin Affiliation and Collapsing Memorandum,'' dated September 30, 2014 (''Double Coin Affiliation and Collapsing Memo'').

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 67104, 61704–05 (November 8, 2013) (''*Initiation Notice''*).

application or a separate-rate certification to demonstrate their eligibility for a separate rate. Separate-rate applications and separate-rate certifications were due to the Department within 60 calendar days of the publication of the *Initiation Notice.*

In this review, all exporters for which a review was requested submitted separate-rate information to rebut the presumption that, like all companies within the PRC, they are subject to government control with respect to export activities. As further discussed in the Preliminarily Decision Memorandum,[9] we determine that the mandatory respondent Double Coin has not demonstrated that it operates free from government control with respect to export activities. Thus, we preliminary determine that Double Coin is part of the PRC-wide entity.

The remaining mandatory respondent (*i.e.,* GTC) and non-examined respondents (*i.e.,* Zhongce and Zhongwei) submitted sufficient information for the Department to preliminarily determine that they are entitled to a separate rate.[10] A full discussion of the basis for granting these companies a separate rate can be found in the Preliminary Decision Memorandum.

Rate for Non-Examined Companies Which Are Eligible for a Separate Rate

Normally, the Department's practice is to look for guidance from section 735(c)(5)(A) of the Tariff Act of 1930, as amended (''the Act''), to assign to separate rate companies that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available.[11] In this case, one mandatory respondent, Double Coin, is preliminarily found to be part of the PRC-wide entity. The other mandatory respondent, GTC, is receiving a separate rate for these preliminary results calculated from its own sales and production data. To determine a rate for the unselected separate rate companies, we find it appropriate to use the margin calculated for GTC, which was also found to be separate from the PRC-wide entity with respect to its export activities, and which rate is not zero or *de minimis* nor based entirely on facts available. Therefore, we are preliminarily assigning GTC's calculated margin as the rate assigned to non-examined entities which have demonstrated their eligibility for a separate rate.

PRC-Wide Entity

Double Coin, one of the companies that the Department selected as a mandatory respondent in this administrative review, failed to demonstrate absence of *de facto* government control over export activities due to the fact that its controlling shareholder is wholly-owned by the State-owned Assets Supervision and Administration Commission of the State Council and the significant level of control this majority shareholder wields over the respondent's Board of Directors.[12] As a result, we preliminarily determine that Double Coin is part of the PRC-wide entity.

Because Double Coin provided the Department with its verified sales and production data, we are able to calculate a margin for an unspecified portion of a single PRC-wide entity, but cannot do so for the remaining unspecified portion of the entity. As the Department must calculate a single margin for the PRC-wide government controlled entity and there is insufficient information on the record with respect to the composition of the PRC-wide entity, we thus preliminarily calculated a simple average of the previously assigned PRC-wide rate (210.48 percent)[13] and Double Coin's calculated margin (0.69 percent) as the rate applicable to the PRC-wide entity. Accordingly, the Department revised the PRC-wide entity rate to 105.59 percent for these preliminary results. For a further discussion of the PRC-wide entity rate, *see* the Preliminary Decision Memorandum.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. Export and constructed export prices were calculated in accordance with sections 772(a) and (b) of the Act. Because the PRC is a NME within the meaning of section 771(18) of the Act, the Department calculated normal value in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our preliminary results, please *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. A list of the topics included in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

[9] *See* Preliminary Decision Memorandum. For further analysis, including business proprietary information details, with respect to the denial of Double Coin's separate rate, *see also* the Department's memorandum to the File, entitled, ''2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Double Coin Holdings, Ltd.,'' dated concurrently with this memorandum.

[10] *See* Preliminary Decision Memorandum. For further analysis, including business proprietary information details, with respect to the approval of GTC's separate rate request, *see also* the Department's memorandum to the File, entitled, ''2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Guizhou Tyre Co., Ltd.,'' dated concurrently with this memorandum.

[11] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[12] *See* ''Separate Rates'' section of the Preliminary Decision Memorandum.

[13] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485, 40489 (July 15, 2008) (''*LTFV Investigation*'').

Exporter	Weighted average dumping margin
Guizhou Tyre Co., Ltd./Guizhou Tyre Import and Export Co., Ltd.[14]	16.18
Zhongce Rubber Group Company Limited	16.18
Weihai Zhongwei Rubber Co., Ltd.	16.18
PRC-Wide Entity (includes the DCH Single Entity[15])	105.59

Disclosure and Public Comment

The Department intends to disclose to the parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[16] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[17]

Any interested party may request a hearing within 30 days of publication of this notice.[18] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[19]

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in the case and rebuttal briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[20] The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of the final results of this review.

For GTC, whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[21] For duty assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. If the weighted-average dumping margin for the exporter is zero or *de minimis,* or if the importer-specific assessment rate is zero or *de minimis,* then the Department will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

On October 24, 2011, the Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[22]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) If the companies preliminarily determined to be eligible for a separate rate receive a separate rate in the final results of this administrative review, their cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review, as adjusted for domestic subsidies (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for any previously investigated or reviewed PRC and non-PRC exporter that is not under review in this segment of the proceeding but that received a separate rate in the most recently completed segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be equal to the cash deposit rate for the PRC-wide entity, which will be equal to the rate assigned to the PRC-wide entity in the final results of this administrative review; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

[14] The review was initiated on Guizhou Advance Rubber Co., Ltd. (''GAR''), Guizhou Tyre Co., Ltd., and Guizhou Tyre Import and Export Co., Ltd. *See Initiation Notice,* 78 FR at 67108. These three companies were collapsed into a collective entity, GTC, in the investigation. *See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 9278, 9283 (February 20, 2008), unchanged in *LTFV Investigation.* GAR does not export subject merchandise; as such, we have only listed GTC in this section of the notice.

[15] As noted above, the review was initiated on DCH, DC Rugao/Jiangsu), and DC Donghai, and each company has been preliminarily collapsed and treated as the DCH Single Entity for the purposes of this review.

[16] *See* 19 CFR 351.309(c).

[17] *See* 19 CFR 351.309(d).

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310(d)(1).

[20] *See* 19 CFR 351.212(b)(1).

[21] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[22] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011).

review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing notice of these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Affiliation and Collapsing
4. Preliminary Determination of No Shipments
5. Non-Market Economy Country
6. Separate Rates
7. Margin for the Separate Rate Companies
8. PRC-Wide Entity
9. Surrogate Country and Surrogate Value Data
10. Surrogate Country
11. Economic Comparability
12. Significant Producers of Identical or Comparable Merchandise
13. Data Availability
14. Date of Sale
15. Comparisons to Normal Value
16. Export Price and Constructed Export Price
17. Value-Added Tax
18. Normal Value
19. Factor Valuations
20. Adjustment Under Section 777A(f) of the Act
21. Currency Conversion

[FR Doc. 2014–24275 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD540

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel on to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, October 28, 2014 at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Courtyard by Marriott, 32 Exchange Terrace, Providence, RI 02903; telephone: (401) 272–1191; fax: (401) 272–1416.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisors will review recommendations from the Scallop Plan Development Team for FY 2015 and FY 2016 (default) fishery specifications (Framework 26). The Advisors will also provide input on other measures under consideration in Framework 26: (1) measures to allow fishing in state waters after federal Northern Gulf of Maine (NGOM) TAC is reached; (2) measures to make turtle regulations consistent in the scallop fishery; (3) measures to modify the existing area closure accountability measures in place for Georges Bank and Southern New England/Mid-Atlantic yellowtail flounder, and develop new accountability measures for northern windowpane flounder; and (4) consider an inshore transit corridor for limited access scallop vessels to declare out of the fishery. Other business may be discussed if time permits.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 7, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–24237 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD541

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee on to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, October 29, 2014 at 9 a.m.

ADDRESSES:

Meeting Address: The meeting will be held at the Courtyard by Marriott, 32 Exchange Terrace, Providence, RI 02903; telephone: (401) 272–1191; fax: (401) 272–1416.

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review recommendations from the Scallop Plan Development Team for FY 2015 and FY 2016 (default) fishery specifications (Framework 26). The Committee will also provide input on other measures under consideration in Framework 26: (1) Measures to allow fishing in state waters after federal Northern Gulf of Maine (NGOM) TAC is reached; (2) measures to make turtle regulations consistent in the scallop fishery; (3) measures to modify the existing area closure accountability measures in place for Georges Bank and Southern New England/Mid-Atlantic yellowtail flounder, and develop new accountability measures for northern windowpane flounder; and (4) consider an inshore transit corridor for limited access scallop vessels to declare out of the fishery. Other business may be discussed if time permits.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 7, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–24238 Filed 10–9–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On Or Before: 11/10/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

For Further Information Or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Rice, Long Grain, Parboiled

NSN: 8920–01–E62–4281—6/10 lb. Pkgs
NSN: 8920–01–E62–4280—2/10 lb. Pkgs
NPA: Vision Corps, Lancaster, PA
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Laminating Pouch, Thermal, 3 Mil Thickness, Letter size

NSN: 9330–00–NIB–0003—100/BX
NSN: 9330–00–NIB–0004—25/BX
NSN: 9330–00–NIB–0005—50/BX
NSN: 9330–00–NIB–0007—100/BX
NPA: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, Fort Worth, TX
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, Fort Worth, TX.

NSN: MR 1070—Brush, Power Scrub
NSN: MR 1071—Brush, Kitchen
NSN: MR 1074—Broom, Corn
NSN: MR 1081—Brush, Toilet Bowl
NSN: MR 1082—Broom, Large, Angle
NPA: Alphapointe, Kansas City, MO
Contracting Activity: NEXCOM-Navy Exchange Service Command, Virginia Beach, VA
Coverage: C-List for the requirements of Navy Exchanges as aggregated by the Navy Exchange Service Command (NEXCOM), Virginia Beach, VA.

NSN: MR 10669—Kit, Party, New Year's
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Commissary Agency, Fort Lee, VA
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency, Fort Lee, VA.

Service

Service Type/Location: Internal Mail and Messenger Service, U.S. Department of State, Harry S. Truman Building, 2201 C Street NW., Washington, DC
NPA: ServiceSource, Inc., Alexandria, VA
Contracting Activity: Department of State, Office of Acquisition Mgmt—MA, Arlington, VA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–24243 Filed 10–9–14; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday October 29, 2014, 10 a.m.–12 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: Decisional Matter: Safety Standard Recreational Off-Highway Vehicles—NPR.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 7, 2014.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2014–24336 Filed 10–8–14; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday October 22, 2014, 10 a.m.–12 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: Briefing Matter: Safety Standard Recreational Off-Highway Vehicles—NPR.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 7, 2014.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2014–24337 Filed 10–8–14; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Revised Notice of Intent To Prepare an Environmental Impact Statement for EA–18G Growler Airfield Operations at Naval Air Station Whidbey Island, WA and Notice of Request for Public Scoping Comments

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the Department of the Navy (DoN) is revising the scope for the Environmental Impact Statement (EIS) for EA–18G Growler airfield operations at Naval Air Station (NAS) Whidbey Island, Washington. This revised Notice of Intent has been published because since the September 5, 2013 publication of the original Notice of Intent in the **Federal Register** (78 FR 54635), the DoN has modified its proposed action to address a potential increase in the number of EA–18G aircraft to be procured and the subsequent changes in the number of aircraft that would be home based at NAS Whidbey Island. The revised scope will evaluate the potential environmental effects of homebasing an additional 13 to 36 EA–18G Growler aircraft at NAS Whidbey Island and the effects of this home basing on EA–18G Growler airfield operations at Ault Field and Outlying Landing Field (OLF) Coupeville. Additional information concerning the proposed scope changes is available on the project Web site at *www.whidbeyeis.com*.

The DoN invites comments on the proposed scope and content of the EIS from all interested parties. Comments on the scope of the EIS may be provided via the U.S. Postal Service or the EIS Web site at: *www.whidbeyeis.com*. In addition, the DoN will conduct open house information sessions to obtain comments on the scope of the EIS and to identify specific environmental concerns or topics for consideration.

Dates and Addresses: Three open house information sessions will be held between 4:00 p.m. and 8:00 p.m. on:

1. Tuesday, October 28, 2014, Coupeville High School, 501 South Main Street, Coupeville, Washington 98239.
2. Wednesday, October 29, 2014, Oak Harbor Elks Lodge, 155 NE Ernst Street, Oak Harbor, Washington 98277.
3. Thursday, October 30, 2014, Anacortes High School Cafeteria, 1600 20th Street, Anacortes, Washington 98221.

Each of the three open house information sessions will be informal and consist of information stations staffed by DoN representatives.

FOR FURTHER INFORMATION CONTACT: EA–18G EIS Project Manager (Code EV21/SS); Naval Facilities Engineering Command (NAVFAC) Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia 23508.

SUPPLEMENTARY INFORMATION: NAS Whidbey Island is the center of excellence for electronic combat warfare training (electronic surveillance and attack) and has supported the Navy's electronic attack (VAQ) community of personnel, aircraft, equipment and mission-related Navy functions since 1971. With the disestablishment of U.S. Marine Corps electronic attack capabilities, the DoD expeditionary electronic attack mission is single-sited at NAS Whidbey Island which maximizes operational capabilities and efficiencies without duplicating facilities and functions at another location.

NAS Whidbey Island provides facilities and support services for nine Carrier Air Wing (CVW) VAQ squadrons, three Expeditionary (EXP) VAQ squadrons, one Reserve squadron, and one Fleet Replacement Squadron (FRS). These squadrons are comprised of EA–6B Prowler and EA–18G Growler aircraft.

In 2005 and 2012, the DoN prepared environmental analyses pursuant to the National Environmental Policy Act (NEPA) of 1969 for the replacement of the EA–6B Prowler aircraft at NAS Whidbey Island with the newer EA–18G Growler aircraft. The 2005 Environmental Assessment (EA) evaluated the environmental consequences of transitioning CVW VAQ squadrons (fleet squadrons) and the FRS (training squadron) from the EA–6B to the EA–18G aircraft and disestablishing three EXP VAQ squadrons. A subsequent EA in 2012 evaluated the environmental consequences of retaining and transitioning the three EXP VAQ squadrons, previously proposed for disestablishment, from EA–6B to EA–18G aircraft and the relocation of a reserve expeditionary VAQ squadron from Joint Base Andrews, Maryland.

On September 5, 2013, the DoN announced the preparation of an EIS for EA–18G Growler airfield operations at NAS Whidbey Island. In this EIS, the DoN proposed to evaluate the potential environmental effects associated with the introduction of two additional EA–18G Growler expeditionary squadrons acquired under the DoD Appropriations Act of 2014. During the public scoping comment period, public meetings were held December 3–5, 2013 in Coupeville, Oak Harbor, and Anacortes, Washington, and over 1,600 comments from the public were collected.

In Spring 2014, the Chief of Naval Operations submitted an Unfunded Requirements List to Congress that identified a need for 22 additional EA–18G aircraft to be included in the President's Budget for Fiscal Year 2015. While it is unclear whether more Growlers will be procured, the DoN has decided to analyze the potential growth to ensure full transparency with the public and to ensure the local community has adequate opportunity to participate in the NEPA process. Accordingly, the DoN will assess the potential environmental impacts of the proposed force structure changes to the electronic attack community and home basing of additional EA–18G aircraft at NAS Whidbey Island by re-scoping the EIS effort currently underway.

To meet current and future requirements, the DoN proposes to: (1) Continue and expand the existing electronic attack operations at NAS Whidbey Island complex, which includes Ault Field and OLF Coupeville (including a range of Field Carrier Landing Practice (FCLP) operations); (2) increase electronic attack capabilities and augment the VAQ FRS (provide for an increase of between 13 and 36 aircraft) to support an expanded DoD mission for identifying, tracking and targeting in a complex electronic warfare environment; (3) construct and renovate facilities at Ault Field to accommodate additional aircraft; and (4) station additional personnel and their family members at NAS Whidbey Island and in the surrounding community.

The revised scope of the EIS will address the No Action Alternative and four action alternatives. Under the No Action Alternative, the DoN would not add VAQ squadrons or aircraft to NAS Whidbey Island to improve the Navy's Electronic Attack capability. Legacy EA–6B Prowlers would continue to gradually transition to next generation EA–18G Growler aircraft (82 aircraft) and annual EA–18G Growler airfield operations would be maintained at levels consistent with those identified in the 2005 and 2012 transition EAs. While the No Action Alternative does not meet the purpose of and need for the proposed action, it serves as a baseline against which impacts of the proposed action can be evaluated.

The DoN will analyze the potential environmental impacts of airfield operations (including FCLP for CVW and FRS squadrons at Ault Field and OLF Coupeville), facilities and functions associated with four force structure alternatives:

1. Alternative 1: Expand EXP electronic attack capabilities by establishing two new EXP VAQ squadrons and augmenting the FRS by three additional aircraft (a net increase of 13 aircraft);
2. Alternative 2: Expand CVW electronic attack capabilities by adding two additional aircraft to each existing CVW VAQ squadron and augmenting the FRS by six additional aircraft (a net increase of 24 aircraft);

3. Alternative 3: Expand CVW capabilities by adding three additional aircraft to each existing CVW VAQ squadron and augmenting the FRS by eight additional aircraft (a net increase of 35 aircraft); and

4. Alternative 4: Expand EXP and CVW capabilities by establishing two new EXP VAQ squadrons, adding two additional aircraft to each existing CVW VAQ squadron, and augmenting the FRS by eight additional aircraft (a net increase of 36 aircraft).

In developing the proposed range of alternatives, the DoN utilized long-established operational considerations which are more fully described in the 2005 and 2012 EAs for the replacement of the EA–6B Prowler aircraft with the newer EA–18G Growler aircraft at NAS Whidbey Island. These considerations include the fact that all of the Navy's electronic attack mission and training facilities are located at NAS Whidbey Island, including the substantial infrastructure and training ranges that have developed in more than 40 years of operation, the location of a suitable airfield that provides for the most realistic training environment, the distance aircraft would have to travel to accomplish training, and the expense of duplicating existing capabilities elsewhere. As a result, the DoN is not considering alternative locations for FCLP training, or squadron relocation. Short-term detachments to meet training requirements would continue, as needed.

The environmental analysis in the EIS will focus on several aspects of the proposed action: aircraft operations at Ault Field and OLF Coupeville; facility construction; and personnel changes. Resource areas to be addressed in the EIS will include, but not be limited to: Air quality, noise, land use, socioeconomics, natural resources, biological resources, cultural resources, and safety and environmental hazards.

The analysis will evaluate direct and indirect impacts, and will account for cumulative impacts from other relevant activities near the installation. Relevant and reasonable measures that could avoid or mitigate environmental effects will also be analyzed. Additionally, the DoN will undertake consultations applicable by law and regulation.

As outlined in 36 CFR Part 800, ''Protection of Historic Properties,'' the DoN plans to comply with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), in conjunction with the NEPA process. The Section 106 process will include consultation with the State Historic Preservation Officer, Native American Tribes and Nations, other parties with a demonstrated interest in cultural resources for the project, and the Advisory Council on Historic Preservation. Pursuant to 36 CFR 800.2(d), the DoN intends to use the public scoping open house meetings to facilitate public involvement pursuant to Section 106 of the NHPA. The DoN will present information about cultural resources and the Section 106 process for the project at the public scoping open house meetings. Comments on cultural resources or Section 106 issues or concerns that are received from the public during the scoping process will be addressed as part of the Section 106 process.

No decision will be made to implement any alternative until the EIS process is completed and a Record of Decision is signed by the Assistant Secretary of the Navy (Energy, Installations and Environment) or designee. The scoping process will be used to identify community concerns and local issues to be addressed in the EIS. Federal agencies, state agencies, local agencies, Native American Indian Tribes and Nations, the public, and interested persons are encouraged to provide comments to the DoN to identify specific issues or topics of environmental concern that the commenter believes the DoN should consider. All comments provided orally or in writing at the scoping meetings or by mail during the scoping period will receive the same consideration during EIS preparation. All comments must be postmarked no later than November 17, 2014.

The DoN will not release the names, street addresses, email addresses and screen names, telephone numbers, or other personally identifiable information of individuals who provide comments during scoping unless required by law. However, the DoN may release the city, state, and 5-digit zip code of individuals who provide comments. Each commenter making oral comments at the a public scoping meetings will be asked by the stenographer if he/she otherwise elects to authorize the release of their personally identifiable information prior to providing their comments. Commenters submitting written comments, either using comment forms or via the project Web site, may elect to authorize release of personally identifiable information by checking a ''release'' box on the comment form.

To be included on the DoN's mailing list for the EIS (or to receive a copy of the Draft EIS, when released), electronic requests can be made on the project Web site at *www.whidbeyeis.com.* Requests via the U.S. Postal Service should be submitted to: EA–18G EIS Project Manager (Code EV21/SS); Naval Facilities Engineering Command (NAVFAC) Atlantic, 6506 Hampton Blvd., Norfolk, VA 23508. The same policy for release of personally identifiable information as identified above for scoping comments will be maintained by DoN for individuals requesting to be included on the EIS mailing list.

Dated: October 6, 2014.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–24223 Filed 10–9–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Final Environmental Impact Statement for U.S. Navy F–35C West Coast Homebasing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy, after carefully weighing the strategic, operational, and environmental consequences of the proposed action, announces its decision to provide facilities and functions to support homebasing of F–35C aircraft at Naval Air Station (NAS) Lemoore, California, by accomplishing the proposed action as set out in Alternative 2 of the Environmental Impact Statement (EIS) for U.S. Navy F–35C West Coast Homebasing. Under Alternative 2, a total of 100 F–35C aircraft in seven Navy Pacific Fleet squadrons (10 aircraft per squadron) and the Fleet Replacement Squadron (30 aircraft) will be homebased at NAS Lemoore beginning in 2016. The proposed action will be completed in the 2028 timeframe. The 100 F–35C aircraft will replace 70 aging FA–18 Hornet aircraft. As a result, aircraft loading at NAS Lemoore will gradually increase by a net of 30 aircraft over the 13-year period. There will be no changes in aircraft loading at Naval Air Facility (NAF) El Centro, California, under Alternative 2. Homebasing the F–35C at NAS Lemoore will result in an increase of approximately 68,400 operations per year at NAS Lemoore and an increase of approximately 800 operations per year at NAF El Centro.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision (ROD) is available on the project Web

site at *www.navyf35cwestcoasteis.com,* along with the Final EIS U.S. Navy F–35C West Coast Homebasing, dated May 2014 and supporting documents. Single copies of the ROD are available upon request by contacting: U.S. Navy F–35C EIS Project Manager, Naval Facilities Engineering Command Southwest, Attn: Code EV21.AK, 1220 Pacific Highway, Building 1, 5th Floor, San Diego, California 92132.

Dated: October 6, 2014.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–24224 Filed 10–9–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for the Disposal and Reuse of Former Naval Weapons Station Seal Beach, Detachment Concord, Concord, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (Pub. L. 91–190, 42 United States Code [U.S.C.] 4321–4347), as implemented by the Council on Environmental Quality Regulations implementing NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508), the Department of the Navy (DoN) has prepared and filed the Draft Environmental Impact Statement (EIS) to evaluate the potential environmental consequences associated with the disposal of the former Naval Weapons Station Seal Beach, Detachment Concord, Concord, California (NWS Concord), and its subsequent reuse by the local community. The DoN is initiating a 45-day public comment period to provide the community an opportunity to comment on the Draft EIS. Federal, state, and local elected officials and agencies and the public are encouraged to provide written comments. A public meeting will also be held to provide information and receive written comments on the Draft EIS.

Dates and Addresses: An open house public meeting will be held at the location listed below and will allow individuals to review and comment on the information presented in the Draft EIS. DoN representatives will be available during the open house to clarify information presented in the Draft EIS as necessary. There will not be a formal presentation.

Thursday, November 13, 2014 (4:00 p.m. to 8:00 p.m.), Concord Senior Citizens Center (Wisteria Room), 2727 Parkside Circle, Concord, California 94519.

FOR FURTHER INFORMATION CONTACT: Director, NAVFAC BRAC PMO West, Attn: Ms. Erica Spinelli, NEPA Project Manager, 1455 Frazee Road, Suite 900, San Diego, California 92108–4310, telephone: 619–532–0980, fax: 619–532–0995; email: *erica.spinelli@navy.mil.*

For more information on the NWS Concord EIS, visit the Navy BRAC PMO Web site (*http://www.bracpmo.navy.mil/*).

SUPPLEMENTARY INFORMATION: The DoN has prepared the Draft EIS for the Disposal and Reuse of the Former NWS Concord in accordance with the requirements of NEPA (42 U.S.C. Sections 4321–4347) and its implementing regulations (40 CFR Parts 1500–1508). A Notice of Intent (NOI) to prepare this Draft EIS was published in the **Federal Register** on March 14, 2013 (**Federal Register**, Vol. 78, No. 50/Friday, March 14, 2013/Notices). The DoN is the lead agency for the proposed action, with the U.S. Army Corps of Engineers serving as a cooperating agency for the preparation of this EIS.

The DoN closed the former NWS Concord on September 30, 2008, in accordance with Public Law (Pub. L.) 101–510, the Defense Base Closure and Realignment Act (DBCRA) of 1990, as amended in 2005. The DBCRA exempts the decision-making process of the Defense Base Closure and Realignment Commission from the requirements of NEPA. The DBCRA also relieves the DoN from the NEPA requirements to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. However, in accordance with NEPA, before disposing of any real property, the DoN must analyze the environmental effects of the disposal.

The purpose of the proposed action is to dispose of surplus property at the former NWS Concord for subsequent reuse in a manner consistent with the policies adopted by the City of Concord during reuse planning that took place between 2008 and 2012. The need for the proposed action is to provide the local community the opportunity for economic development and job creation.

The Draft EIS has considered two redevelopment alternatives for the disposal and reuse of NWS Concord. Both redevelopment alternatives would be generally consistent with the policies developed by the City of Concord during the reuse planning process that took place between 2008 and 2012. Both alternatives focus on the preservation of a significant amount of open space and conservation areas, and sustainable development characterized by walkable neighborhoods, transit-oriented development, and ''complete streets'' that balance multiple types of transportation. Under both alternatives, most installation facilities would be demolished, and the western side of the property would be developed as a series of mixed-use ''development districts,'' with a higher concentration of development at the north end, near State Route 4 and the North Concord/Martinez Bay Area Rapid Transit Station. Redevelopment under either alternative would include parks and open spaces, best management practices for stormwater management, and green and sustainable design and planning principles. Full build-out under either alternative would be implemented over a 25-year period. A No Action alternative was also considered, as required by NEPA and to provide a point of comparison for assessing impacts of the redevelopment alternatives.

Alternative 1 includes the disposal of the former NWS Concord by the DoN and its reuse in a manner consistent with the adopted Concord Reuse Project (CRP) Area Plan. This alternative has been identified as the Preferred Alternative by the DoN. Under this alternative, redevelopment of approximately 2,500 acres of the former installation property would take place and would include a mix of land use types and densities. This alternative would also result in the preservation of a significant area of open space and conservation areas. The redevelopment would include approximately 6.1 million square feet of commercial floor space and up to 12,272 residential housing units.

Alternative 2 provides for the disposal of the former installation property by the DoN and its reuse in a manner similar to the Area Plan but with a higher density of residential development than under Alternative 1 and within a smaller footprint. Under this alternative, redevelopment of approximately 2,200 acres of the former installation property with a mix of land use types and densities would take place. This alternative would also include the preservation of a significant amount of open space and conservation areas. The alternative calls for approximately 6.1 million square feet of

commercial building space and up to 15,872 residential housing units. Alternative 2 as presented in the Draft EIS is different from Alternative 2 as presented in the NOI circulated during the public scoping period in March and April 2013. Alternative 2 was revised by the DoN in response to comments received during the public scoping period to be more consistent with the land use planning policies adopted by the City of Concord as well as known and foreseeable market conditions. Comments on Alternative 2 received during the scoping period addressed the smaller area designated for conservation and open space in this alternative, as well as concerns regarding higher levels of traffic, noise, and air impacts. Accordingly, the revised Alternative 2 is more similar to the adopted policies of the City of Concord as expressed in the CRP Area Plan, reflecting a similar but slightly smaller development footprint and representing a realistic reuse scenario.

The No Action Alternative is also analyzed in the Draft EIS, as required by NEPA. Under this alternative, NWS Concord would be retained by the U.S. government in caretaker status. No reuse or redevelopment would occur.

The Draft EIS addresses potential environmental impacts under each alternative associated with land use and zoning; socioeconomics and environmental justice; air quality and greenhouse gases; biological resources; cultural resources; topography, geology, and soils; hazards and hazardous substances; noise; public services; transportation, traffic, and circulation; utilities and infrastructure; visual resources and aesthetics; and water resources. The analysis addresses direct and indirect impacts, and accounts for cumulative impacts from other foreseeable federal, state, or local activities at and around the former NWS Concord property. The DoN conducted a scoping process to identify community concerns and local issues that should be addressed in the EIS. The DoN considered the comments provided, which identified specific issues or topics of environmental concern, in determining the scope of the EIS. The Draft EIS identifies significant adverse impacts to air quality and traffic, and significant beneficial impacts to socioeconomics and public services. The Draft EIS has been distributed to various federal, state, and local agencies, as well as other interested individuals and organizations.

Federal, state, and local agencies, as well as interested members of the public, are invited and encouraged to review and comment on the Draft EIS. The Draft EIS is available for viewing at the following locations:

Concord Library, 2900 Salvio Street, Concord, CA 94519

Pittsburg Library, 80 Power Avenue, Pittsburg, CA 94565

Pleasant Hill Library, 1750 Oak Park Boulevard, Pleasant Hill, CA 94523

An electronic version of the Draft EIS can be viewed or downloaded at the following Web site: *http://www.bracpmo.navy.mil.* A limited number of hard copies are available by contacting the DoN's Base Realignment and Closure Program Management Office (BRAC PMO) at the address in this notice.

Comments can be made in the following ways: (1) Written statements can be submitted to a DoN representative at the public meeting; (2) written comments can be mailed to Director, NAVFAC BRAC PMO West, Attn: Ms. Erica Spinelli, NEPA Project Manager, 1455 Frazee Road, Suite 900, San Diego, California 92108–4310; (3) written comments can be emailed to *erica.spinelli@navy.mil;* or (4) comments can be faxed to 619–532–0995, Attn: Ms. Erica Spinelli. Comments may be submitted without attending the public meeting. All comments postmarked or emailed no later than midnight, November 25, 2014, will become part of the public record and will be responded to in the Final EIS.

Requests for special assistance, sign language interpretation for the hearing impaired, language interpreters, or other auxiliary aids for the scheduled public meeting must be sent by mail or email to Ms. Jone Guerin, Ecology and Environment, Inc., 368 Pleasant View Drive, Lancaster, NY 14086, telephone: 716–684–8060, email: *jguerin@ene.com* no later than October 30, 2014.

Dated: October 6, 2014.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–24286 Filed 10–9–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[96–77–NG, 14–66–NG, 14–68–LNG, et al.]

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, Vacating Prior Authority and Approving Change in Control of Authorization Allowing Exports of Liquefied Natural Gas During July 2014

	FE Docket Nos.
GAZ METROPOLITAIN AND COMPANY LIMITED PARTNERSHIP	96–77–NG
DEVON CANADA MARKETING CORPORATION	13–143–NG
NEXEN ENERGY MARKETING U.S.A. INC	14–66–NG
CHEVRON U.S.A. INC	14–68–LNG
MARATHON OIL COMPANY	14–69–NG
SEMPRA LNG MARKETING, LLC	14–74–LNG
SUMMITT ENERGY LP	14–75–NG
J. ARON & COMPANY	14–76–NG
UNION GAS LIMITED	14–77–NG
BP ENERGY COMPANY	14–78–LNG
ST. LAWRENCE GAS COMPANY, INC	14–81–NG
BP CANADA ENERGY MARKETING CORP	14–82–NG
STABILIS ENERGY SERVICES LLC	14–84–LNG
ANNOVA LNG COMMON INFRASTRUCTURE, LLC (for 13–140–LNG)	14–004–CIC
LNG DEVELOPMENT COMPANY, LLC (d/b/a OREGON LNG)	12–77–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives

notice that during July 2014, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas, vacating prior authority, and approving change in control of authorization allowing exports of liquefied natural gas. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2014.html.* They are also available for inspection and copying in the Office of Fossil Energy, Office of Oil and Gas Global Security and Supply, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 29, 2014.

John A. Anderson,

Director, Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

1213–A	07/03/14	96–77–NG	Gaz Metropolitain and Company Limited Partnership.	Order vacating authority to import natural gas from Canada.
3375–A	07/03/14	13–143–NG	Devon Canada Marketing Corporation.	Order vacating authority to import natural gas from Canada.
3453	07/03/14	14–66–NG	Nexen Energy Marketing U.S.A. Inc.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3454	07/03/14	14–68–LNG	Chevron U.S.A. Inc	Order granting blanket authority to import LNG from various international sources by vessel.
3455	07/03/14	14–69–NG	Marathon Oil Company	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3456	07/03/14	14–74–LNG	Sempra LNG Marketing, LLC.	Order granting blanket authority to import LNG from various international sources by vessel.
3457	07/03/14	14–75–NG	Summitt Energy LP	Order granting blanket authority to import/export natural gas from/to Canada.
3458	07/03/14	14–76–NG	J. Aron & Company	Order granting blanket authority to import/export natural gas from/to Canada.
3459	07/03/14	14–77–NG	Union Gas Limited	Order granting blanket authority to import/export natural gas from/to Canada.
3460	07/10/14	14–78–LNG	BP Energy Company	Order granting blanket authority to import LNG from various international sources by vessel.
3461	07/10/14	14–81–NG	St. Lawrence Gas Company, Inc.	Order granting blanket authority to import natural gas from Canada.
3462	07/10/14	14–82–NG	BP Canada Energy Marketing Corp.	Order granting blanket authority to import/export natural gas from/to Canada.
3463	07/25/14	14–84–LNG	Stabilis Energy Services LLC.	Order granting blanket authority to import/export LNG from/to Canada/Mexico by truck, rail, barge, and non-barge vessels.
3464	07/17/14	14–004–CIC for 13–140–LNG.	Annova LNG Common Infrastructure, LLC.	Order approving Change in Control to Annova LNG Common Infrastructure, LLC of authorization allowing exports of LNG to Free Trade Agreement nations.
3465	07/31/14	12–77–LNG	LNG Development Company, LLC (d/b/a Oregon LNG).	Order conditionally granting long-term Multi-Contract authority to export LNG by vessel from the Oregon LNG Terminal in Warrenton, Clatsop County, Oregon to Non-free Trade Agreement nations.

[FR Doc. 2014–24131 Filed 10–9–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration; Proposed Revision of BPA's Billing Credits Policy of 1993

AGENCY: Bonneville Power Administration (BPA), Department of Energy.

ACTION: Proposed Revision of BPA's Billing Credits Policy.

SUMMARY: This notice announces BPA's proposal to revise its Billing Credit Policy and to provide Billing Credits for conservation.

DATES: Written comments are due to the address below no later than November 14, 2014.

ADDRESSES: Comments and suggestions on the proposed Billing Credits Policy revision for this project may be mailed by letter to Bonneville Power Administration, Public Affairs—DKE–7, P.O. Box 14428, Portland, OR 97292–4428. Or you may FAX them to 503–230–4019; submit them on-line at *www.bpa.gov/comment;* or email them to *comment@bpa.gov*

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Bonneville Power Administration—PSW–6, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–3242; email *skwilson@bpa.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Proposed Revision of BPA's Billing Credits Policy.

Process to Date: Bonneville Power Administration (BPA) worked with its customers throughout 2014 to explore improvements to its Energy Efficiency (EE) program. Based on the collaborative work with its customers, BPA proposes to revise its Billing Credits Policy to offer a Billing Credit program for conservation pursuant to section 6(h) of the 1980 Pacific Northwest Electric Power Planning and Conservation Act that focuses on the independent conservation activity of BPA's customers and the potential of that activity to reduce the BPA

Administrator's need to acquire resources from conservation. BPA's existing Billing Credits Policy interprets the Billing Credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting Billing Credits. With the proposed revision of BPA's Billing Credits Policy, BPA would consider customer requests for Billing Credits in exchange for a customer's independent acquisition of conservation performed during the FY2016–2017 rate period and throughout the duration of customers' existing Regional Dialogue contracts.

Billing Credit Amount

BPA proposes to develop a formula for determining the Billing Credit amount based on the costs that BPA avoids by not providing the customer Energy Efficiency Incentive (EEI) funding under Energy Conservation Agreements (ECA). The formula would be designed with the intent to reasonably assure rate neutrality for all customers, whether or not they choose to participate in the Billing Credit program.

The formula would be constructed as follows. BPA would determine the average annual incremental cost that BPA would incur by borrowing for, and managing the distribution of, EEI funds for the participating customers. In making that determination, BPA would use a comparable amortization period and interest rates matching those forecast in the rate case for the initial years the Billing Credit would be granted. The average annual incremental cost over the amortization period would represent the annual Billing Credit amount that a participating customer is expected to receive.

BPA's final rates would be updated to account for customer choices to forego the EEI and to include the costs of customer Billing Credits. A participating customer would agree to a Billing Credits special provision in its Regional Dialogue Contract that would define the amount of forecasted conservation savings the customer is obligated to achieve, which is expected to be the same amount that would have been achieved under the ECA.

Public Involvement

BPA has established a 30-day comment period during which customers, stakeholders, and any other interested parties are invited to comment on the proposed policy revision. This comment period will help BPA ensure that a full range of issues related to this proposal is addressed in an Administrator's Record of Decision. BPA will consider and respond to comments received on the proposed policy revision. BPA's subsequent decision will be documented in an Administrator's Record of Decision.

National Environmental Policy Act

BPA is in the process of assessing the potential environmental effects of the proposed billing credits policy revision consistent with the National Environmental Policy Act. Comments regarding the potential environmental effects of the proposal may be submitted to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232. Any such comments received by the comment deadline will be considered by BPA's NEPA compliance staff in the NEPA process that will be conducted for this proposal.

Issued in Portland, Oregon, on October 1, 2014.

Elliot E. Mainzer,

Administrator and Chief Executive Officer.

[FR Doc. 2014–24266 Filed 10–9–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2014–0597; FRL–9917–00]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: PCBs, Consolidated Reporting and Record Keeping Requirements and identified by EPA ICR No. 1446.11 and OMB Control No. 2070–0112, represents the renewal of an existing ICR that is scheduled to expire on August 31, 2015. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before December 9, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0597, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Toiya Goodlow, National Program Chemicals Division (7404–T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–2305; email address: *goodlow.toiya@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: PCBs, Consolidated Reporting and Record Keeping Requirements.

ICR number: EPA ICR No. 1446.11.

OMB control number: OMB Control No. 2070–0112.

ICR status: This ICR is currently scheduled to expire on August 31, 2015. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 USC 2605(e), directs EPA to regulate the marking and disposal of polychlorinated biphenyls (PCBs). Section 6(e)(2) bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping requirements covered by 40 CFR 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste. This collection addresses the several information reporting requirements found in the PCB regulations.

Responses to the collection of information are mandatory (see 40 CFR part 761). Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.36 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are persons who currently possess PCB items, PCB-contaminated equipment, or other PCB waste.

Estimated total number of potential respondents: 548,298.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.0.

Estimated total annual burden hours: 745,926 hours.

Estimated total annual costs: $29,778,544. This includes an estimated burden cost of $29,778,544 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is an increase of 60,591 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's revisions to the estimated total number of respondents, resulting from new data gathered for this ICR effort as well as another recent PCB regulatory analysis, plus updated Agency data regarding total numbers of regulated entities. The ICR supporting statement provides a detailed analysis of the change in burden estimate. This change is an adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et. seq.*

Dated: October 1, 2014.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2014–24149 Filed 10–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9017–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/29/2014 Through 10/03/2014

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140289, Draft EIS, USN, CA, Disposal and Reuse of the Former Naval Weapons Station Seal Beach, Detachment Concord, Comment Period Ends: 11/25/2014, Contact: Erica Spinelli, 619–532–0980.

EIS No. 20140290, Draft EIS, BR, CA, Long-Term Water Transfers, Comment Period Ends: 12/01/2014, Contact: Brad Hubbard, 916–978–5204

EIS No. 20140291, Draft EIS, CALTRANS, CA, High Desert Corridor Project, Comment Period Ends: 12/02/2014, Contact: Ron Kosinski, 213–897–0703.

EIS No. 20140292, Final EIS, NOAA, 00, ADOPTION—Programmatic-Deepwater Horizon Oil Spill: Phase III Early Restoration Plan, Review Contact: David G. Westerholm, 301–713–2989. The U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) has adopted the U.S. Department of the Interior's FEIS # 20140182, filed with the USEPA 06/20/2014. The NOAA was a cooperating agency for this project. Recirculation of the document is not necessary under Section 1306.3(c) of CEQ Regulations.

EIS No. 20140293, Draft EIS, NMFS, 00, Omnibus Essential Fish Habitat Amendment 2, Comment Period Ends: 12/09/2014, Contact: John K. Bullard, 978–281–9315.

EIS No. 20140294, Draft EIS, USACE, SC, Charleston Harbor Post 45, Comment Period Ends: 11/24/2014, Contact: Mark Messersmith, 843–329–8162.

EIS No. 20140295, Final EIS, NPS, VA, Dyke Marsh Wetland Restoration and Long-term Management Plan, Review Period Ends: 11/10/2014, Contact: Brent Steury, 703–289–2500.

EIS No. 20140296, Final EIS, FHWA, IL, 75th Street Corridor Improvement Project, Review Contact: Catherine A. Batey, 217–492–4600. Under MAP–21 section 1319, FTA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20140297, Draft EIS, USFS, OR, Kahler Dry, Forest Restoration Project, Comment Period Ends: 11/24/2014, Contact: John Evans, 541–278–3869.

EIS No. 20140298, Draft EIS, USACE, WA, Puget Sound Nearshore Ecosystem Restoration, Comment Period Ends: 11/24/2014, Contact: Nancy C. Gleason, 206–764–6577.

EIS No. 20140299, Final EIS, DOE, TX, ADOPTION—Freeport LNG Liquefaction Project and Phase II Modification Project, Contact: John Anderson, 202–586–0521. The U.S. Department of Energy has adopted the Federal Energy Regulatory Commission's FEIS #20140178 filed with the USEPA 6/17/2014. DOE was a cooperating agency for this project. Recirculation of the document is not necessary under Section 1306.3(c) of CEQ Regulations.

EIS No. 20140300, Draft EIS, BLM, NV, Las Vegas and Pahrump Field Offices Draft, Resource Management Plan, Comment Period Ends: 01/07/2015, Contact: Lee Kirk, 702–515–5026.

Dated: October 7, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–24255 Filed 10–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0673; FRL–9916–61]

Cancellation of Pesticides for Non-Payment of Year 2014 Registration Maintenance Fees; Summary of Orders Issued

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the payment of an annual maintenance fee is required to keep pesticide registrations in effect. The fee due last January 15, 2014, has gone unpaid for 199 registrations. If the fee is not paid, the EPA Administrator may cancel these registrations by order and without a hearing; orders to cancel these registrations have been issued.

FOR FURTHER INFORMATION CONTACT: Mick Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

Product-specific status inquiries may be made by calling toll-free, 1–800–444–7255.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0673, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Complete lists of registrations canceled for non-payment of the maintenance fee are also available for reference in the OPP Docket.

II. Background

Section 4(i)(5) of FIFRA (7 U.S.C. 136a–1(i)(5)) requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under FIFRA section 3 as well as those granted under FIFRA section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

Under FIFRA, the EPA Administrator may reduce or waive maintenance fees for minor agricultural use pesticides when it is determined that the fee would be likely to cause significant impact on the availability of the pesticide for the use.

In fiscal year 2014, maintenance fees were collected in one billing cycle. In late November of 2013, all holders of either FIFRA section 3 registrations or FIFRA section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in April of 2014 to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices of intent to cancel, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

In fiscal year 2014, the Agency has waived the fee for 266 minor agricultural use registrations at the request of the registrants. Maintenance fees have been paid for about 15,999 FIFRA section 3 registrations, or about

97% of the registrations on file in December 2013. Fees have been paid for about 1,746 FIFRA section 24(c) registrations, or about 88% of the total on file in December 2013. Cancellations for non-payment of the maintenance fee affect about 194 FIFRA section 3 registrations and about 5 FIFRA section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2015, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through special reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-Payment

Table 1 of this unit lists all of the FIFRA section 24(c) registrations, and Table 2 of this unit lists all of the FIFRA section 3 registrations which were canceled for non-payment of the 2014 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1—FIFRA SECTION 24(c) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2014 MAINTENANCE FEE

SLN No.	Product name
CA–08–0018	Beleaf 50 SG Insecticide.
HI–03–0003	Dormex.
NY–12–0003	Tsunami DQ.
OR–10–0007	Bird Shield Bird Repellent Concentrate.
SD–98–0005	Compound Drc–1339 Concentrate-Staging Areas.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2014 MAINTENANCE FEE

Registration No.	Product name
000527–00108	MI-17G.
000527–00129	D.C. San.
000641–00001	Gopher-Go.
000641–00002	Gopher-Go Ag Bait.
000777–00097	Twister 2.
000777–00116	Suzie Q.
001022–00518	Cunapsol-1.
001022–00522	Cunapsol-5.
001022–00536	Pol-Nu Curap 20.
001270–00029	Zep-O-San.
001270–00204	Zep Veto Germicidal Bowl Cleaner.
001769–00266	Al-Chek.
001769–00374	Ancocide 4010.
003546–00041	Shoofly Flying Insect Killer.
003573–00056	Tide With Bleach II.
003573–00058	Gain With Bleach II.
004713–00004	Kenya Pyrethrum Extract Crude Concentrate A.
005073–00021	Tox-O-Wik II.
007627–00021	Stockade Fly Control Mineral Mix.
007627–00022	Stockade Fly Control Block.
007627–00026	Stockade Fly Control For Horses With Rabon Oral Larvicide.
007687–00003	Root Force.
007698–00019	Fly Patrol 19.
007698–00020	Fly Patrol 4.
007698–00021	Rolyx Fescue Mag.
008154–00009	Sanamax Swimming Pool Water Disinfectant.
008668–00001	Dog Shield.
008730–00073	Hercon Disrupt Bio-Flake LBAM.
008730–00076	Hercon Disrupt Bio-Tie LBAM.
009198–00118	The Andersons Dithiopyr Herbicide I.
009198–00157	The Andersons GC Fertilizer Plus 0.029% Bifenthrin.
009198–00159	The Andersons Fertilizer Plus O.029% Bifenthrin.
009198–00196	The Andersons Golf Products Fertilizer Plus Fungicide Vii.
009198–00224	The Andersons GC 0.15% Granular Bifenthrin Insecticide.
009198–00226	The Andersons Insect Killer Granules With 0.15% Bifenthrin.
009198–00229	Andersons Golf Products Fluid Fungicide.
009198–00232	The Andersons Fertilizer Bait Granules Plus 0.058% Bifenthrin.
009198–00243	The Andersons Ferti-Bait FA With Distance.
009215–00008	All Clear Granular Swimming Pool & Spa Sanitizer.
009404–00081	Weed & Feed With 1.28% Atrazine For St. Augustine Lawns.
009404–00093	Sunniland Atra-4 St. Augustine Lawn Weed Killer.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2014 MAINTENANCE FEE—Continued

Registration No.	Product name
009436–00002	Sodium Hypochlorite Solution.
009591–00170	Prokill Choice Insecticide.
009608–00002	Roach Prufe.
009608–00003	Termite Prufe.
009768–00047	Iodine Concentrate 20.
009902–00003	Disposer Care Garbage Disposer Cleaner & Disinfectant (Sanitizer).
010190–00016	Citridyne.
010613–00001	Conclor.
010772–00003	Armicarb Sodium Bicarbonate, F.C.C.
011411–00006	Leslie's Refillable Chlorinator Cartridge.
011411–00007	Leslie's Algi-Kill.
011411–00017	Spa Chlor Brite III.
011623–00046	Multipurpose Insect Spray.
011930–00001	Omego Mist ULV.
011930–00006	Pervade Mosquito Larvicide Petroleum Oil.
011930–00007	Pyrifos Mist ULV 2 E.C.
011930–00010	Pyrifos One Mist ULV E.C.
011930–00014	Opti Mist 31–66 ULV.
011930–00016	Actiperm 10% E.C. Multi-Purpose Insecticide.
021718–20001	Hypochlorite Solution.
033270–00016	Tomahawk.
033871–20001	Sodium Hypochlorite Solution 15.
035896–00019	Copper Sulfate Pentahydrate.
042850–00001	Results Indoor Insect Killer.
042850–00004	Diatect Multipurpose Insecticide II.
042850–00005	Diatect Insecticide V.
044446–00069	Ppp Flea & Tick Cycleblock Total Release Fogger.
045728–00031	Vancide Mz-96.
045849–00001	Chlorine Liquified Gas Under Pressure.
046043–00015	Swimming Pool Chlorinating Shock.
046923–00012	Coppercide 50.
049403–00014	Nipacide X.
049403–00020	Nipa Bit Press Paste.
049403–00026	Nipacide Bit 10.
050675–00002	Pink Boll Worm Pheromone Technical.
051549–20002	SAF–T-Chlor.
051934–00007	Liquid Ant Killer Bait.
052991–00013	Mosquitol-L.
053053–00009	Bioshield 50.
053053–00010	Bioshield 150.
053053–00011	Envirosystems Proshield 3651 I.
053053–00012	Envirosystems Proshield 3651 D.
054382–00003	Taktic E.C.
055195–00003	Coldcide 0.25%.
056362–00004	Sodium Hypochlorite—12.5.
058035–00016	Ceannard Diuron 80DF.
058035–00018	Ceannard Diuron/Bromacil 80DF.
058035–00019	Ceannard Bromacil 80DF.
058185–00005	Koban 30.
058185–00032	Duosan Broad Spectrum Contact Ornamental Fungicide.
058880–00003	12.5% Sodium Hypochlorite Solution.
059074–00005	Superchlor 7.
059807–00007	Marathon 1% Granular.
059807–00008	Marathon 60 WP.
060061–00011	Pettit Marine Paint Premium Line Super Premium Performance Antifouling.
060061–00015	Woolsey/Z*Spar Super Tox Anti-Fouling Finish B–71 Blue.
060061–00030	Wood Treat MB Concentrate.
060061–00044	Pettit Marine Paint Anti-Fouling 1636 Red Yacht Copper.
060061–00081	Acp-60 Ablative Copper Polymer Antifouling Bottom Paint.
060061–00088	Sscc-3359 Sap Stain Control Concentrate.
060061–00093	Double Diamond Sapstain Control Chemical.
060061–00105	Woodlife Ii Stain And Wood Preservative.
060061–00113	LTC–3.
062498–00005	Pool Pride 80z Chlorinating Sticks.
062575–00006	Biestergard Captan 50–WP.
065458–00006	Plato Industries Pest Strip.
065615–00003	Scoot Tm Squirrel.
066338–00001	Sodium Hypochlorite Solution.
067071–00053	Acticide Mkw1.
067470–00006	Ethylene Oxide.
067470–00007	Ethylene Oxide 100 R.
067470–00008	Oxyfume 2000.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2014 MAINTENANCE FEE—Continued

Registration No.	Product name
067470–00009	Oxyfume 2002.
067470–00010	Steriflo.
067517–00054	Permethrin Wettable Powder Packet.
067771–00001	Moss-Kil Roof Strip.
068543–00038	Bengal Insecticide Concentrate 5.
068849–20001	Sodium Hypochlorite Solution.
068868–00003	Surcide ICP–A.
068934–00001	Aqua Select Water Filter.
069361–00028	Topdog 41% Plus.
069361–00029	Pendim Weed And Feed.
069361–00031	Pendim 3.3 EC Herbicide.
069361–00032	Pendim H20 Herbicide.
069361–00034	Triclopyr Butoxyethyl Ester Technical.
069361–00042	Repar Fipronil Technical.
069587–00003	Timbercote 2000a.
070369–00001	Microstat 2.
070567–00002	Sodium Hypochlorite Solution (12.5%).
070585–00002	Larvadex 2sl.
070778–00001	Squirrel Away.
071065–00002	Companion Dry Concentrate Biological Fungicide.
071218–00001	Genesis Xtra.
071771–00001	Messenger.
072159–00002	Imidapro 2SC Systemic Insecticide.
072160–00001	Peroxy-Solv.
072637–00002	Green Screen Powder Animal Repellent.
072790–00001	Pin Nip 2EC.
072852–00003	Electrolite 25.
072852–00004	Electrolite 31.
072897–00001	Triosyn T50.
072897–00002	Triosyn T50 Powder.
073748–00003	Kontrol 2–2.
074843–00004	Insect Shield Concentrate 15D.
074943–00001	Mega-Lure 3000.
075341–00006	Osmose Flurods.
075341–00011	Cop-R-Nap.
075341–00015	Ord-X029.
075512–00001	Ebiox Trukleen Wipes.
075630–00001	Zinc Borate.
079442–00010	Exosex C.
079442–00012	Exosex OF.
079533–00004	Coleman Insect Repellent.
080967–00007	Revolution.
081910–00002	TCMTB.
081910–00003	Casacide T200.
081974–00001	Gasco Sanitizing Solution.
082539–00002	Bug Candle.
083222–00011	Lambda-Cy Ag Gold.
083529–00007	Sharda Imidacloprid 75 WP Ag.
083529–00008	Sharda Imidacloprid 75 WP T&O Insecticide.
083529–00009	Sharda Imidacloprid 75 WP PCO Insecticide.
083529–00029	Tebu 45DF.
083857–00003	Mguard.
084059–00005	Moi-401 EP.
084888–00001	Nivalis Technical.
084888–00002	Nivalis.
085125–00002	Attractive Toxic Sugar Bait.
085724–00002	Aako Chlorpyrifos Technical.
085948–00002	Cb-104.
086461–00001	Glyphosate 41%.
086461–00006	Mepiquat Chloride 4.2%.
086461–00015	Lambda-Cyhalothrin 13% EC Insecticide.
086516–00001	Bug Blockade Insecticide.
086868–00001	Phortress Fungicide.
086871–00001	Kill Fleas Dead.
087134–00003	Sh-12.5.
087273–00003	Tri Pro Tabs.
087290–00006	Willowood Glyphonator 41%.
087290–00014	Willowood Imidacloprid 4SC.
087290–00015	Willowood Glyphosate 4.
087290–00021	Willowood Imidacloprid 2SC.
087290–00023	Willowood Glyphosate 41%.
088211–00001	BC 250.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2014 MAINTENANCE FEE—Continued

Registration No.	Product name
088800–00002	Appox-D 3000.
089016–00002	Lag 2.
089016–00003	Lag 3.
089016–00004	Lag 4.
089016–00005	Lag 5.
089103–00001	Cloractive.
089385–00001	Ryzofuel.
089466–00001	Classic Pools Chlorine Solution.
089557–00001	Green Label.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks until January 15, 2015, 1 year after the date on which the fee was due.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 22, 2014.

Jack Housenger,

Director, Office of Pesticide Programs.

[FR Doc. 2014–24253 Filed 10–9–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 2014.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Sumitomo Mitsui Financial Group, Inc. and Sumitomo Mitsui Banking Corporation,* both in Tokyo, Japan; to acquire at least an additional 10 percent, for a total of 19.9 percent of the voting shares of The Bank of East Asia, Limited, Hong Kong S.A.R., Peoples Republic of China, and thereby indirectly acquire additional voting shares of The Bank of East Asia (U.S.A.), N.A., New York, New York.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Sterling Bancshares, Inc.,* Poplar Bluff, Missouri; to acquire 100 percent of the voting shares of Bootheel Bancorp, Inc., and thereby indirectly acquire voting shares of First Community Bank, both in Poplar Bluff, Missouri.

Board of Governors of the Federal Reserve System, October 7, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–24235 Filed 10–9–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10292, CMS–R–185 and CMS–287–05]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *November 10, 2014.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Medicaid HIT Plan, Planning Advance Planning Document, and Implementation Advance Planning Document for Section 4201 of the Recovery Act; *Use:* To assess the appropriateness of state requests for the administrative Federal financial participation for expenditures under their Medicaid Electronic Health Record Incentive Program related to health information exchange, our staff will review the submitted information and documentation to make an approval determination of the state advance planning document. *Form Number:* CMS–10292 (OMB control number 0938–1088); *Frequency:* Once and occasionally; *Affected Public:* State, Local, and Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 896. (For policy questions regarding this collection contact Thomas Romano at 410–786–0465).

2. *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and of State Exemption Under State Laboratory Programs and Supporting Regulations; *Use:* The information required is necessary to determine whether a private accreditation organization/State licensure program standards and accreditation/licensure process is at least equal to or more stringent than those of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). If an accreditation organization is approved, the laboratories that it accredits are ''deemed'' to meet the CLIA requirements based on this accreditation. Similarly, if a State licensure program is determined to have requirements that are equal to or more stringent than those of CLIA, its laboratories are considered to be exempt from CLIA certification and requirements. The information collected will be used by HHS to: determine comparability/equivalency of the accreditation organization standards and policies or State licensure program standards and policies to those of the CLIA program; to ensure the continued comparability/equivalency of the standards; and to fulfill certain statutory reporting requirements. *Form No.:* CMS–R–185 (OMB control number: 0938–0686); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 12; *Total Annual Responses:* 96; *Total Annual Hours:* 384. (For policy questions regarding this collection contact Arlene Lopez at 410–786–6782.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Home Office Cost Statement Form; *Use:* Providers of services participating in the Medicare program are required under sections 1815(a) and 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. In addition, regulations at 42 CFR 413.17, 413.20 and 413.24 require adequate cost data and cost reports from providers on an annual basis. The home office cost statement form is filed annually by chain organizations to report costs directly related to services furnished to individual providers that are related to patient care plus an appropriate share of indirect costs. *Form Number:* CMS–287–05 (OMB control number: 0938–0202); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 1,686; *Total Annual Responses:* 1,686; *Total Annual Hours:* 785,676. (For policy questions regarding this collection contact Yaakov Feinstein at 410–786–5834.)

Dated: October 7, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–24244 Filed 10–9–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8056–N]

RIN 0938–AR94

Medicare Program; CY 2015 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2015 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2015, the inpatient hospital deductible will be $1,260. The daily coinsurance amounts for CY 2015 will be: (1) $315 for the 61st through 90th day of hospitalization in a benefit

period; (2) $630 for lifetime reserve days; and (3) $157.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: *Effective Date:* This notice is effective on January 1, 2015.

FOR FURTHER INFORMATION: Clare McFarland, (410) 786–6390 for general information; Gregory J. Savord, (410) 786–1521 for case-mix analysis.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

II. Computing the Inpatient Hospital Deductible for CY 2015

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, adjusted by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect changes in real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i)(XX) of the Act, the percentage increase used to update the payment rates for FY 2015 for hospitals paid under the inpatient prospective payment system is the market basket percentage increase, otherwise known as the market basket update, reduced by 0.2 percentage points (see section 1886(b)(3)(B)(xii)(IV) of the Act), and an adjustment based on changes in the economy-wide productivity (the multifactor productivity (MFP) adjustment) (see section 1886(b)(3)(B)(xi)(II) of the Act). Under section 1886(b)(3)(B)(viii) of the Act, beginning with fiscal year 2015, the applicable percentage increase for hospitals that do not submit quality data as specified by the Secretary of the Department of Health and Human Services (the Secretary) is reduced by one quarter of the market basket update. We are estimating that after accounting for those hospitals receiving the lower market basket update in the payment-weighted average update, the calculated deductible will not be affected, since the majority of hospitals submit quality data and receive the full market basket update. Beginning with FY 2015, section 1886(b)(3)(B)(ix) of the Act requires that any hospital that is not a meaningful electronic health record (EHR) user (as defined in section 1886(n)(3) of the Act) will have three-quarters of the market basket update reduced by 33⅓ percent for FY 2015, 66⅔ percent for FY 2016, and 100 percent for FY 2017 and each subsequent fiscal year. We are estimating that after accounting for these hospitals receiving the lower market basket update, the calculated deductible will not be affected, since the majority of hospitals are meaningful EHR users and are expected to receive the full market basket update.

Under section 1886(b)(3)(B)(ii)(VIII) of the Act, the percentage increase used to update the payment rates for FY 2015 for hospitals excluded from the inpatient prospective payment system is as follows:

- The percentage increase for long term care hospitals is the market basket percentage increase reduced by 0.2 percentage points and the MFP adjustment (see sections 1886(m)(3)(A) and 1886(m)(4)(E) of the Act).
- The percentage increase for inpatient rehabilitation facilities is the market basket percentage increase reduced by 0.2 percentage points and the MFP adjustment (see sections 1886(j)(3)(C) and 1886(j)(3)(D)(iv) of the Act).
- The percentage increase used to update the payment rate for psychiatric hospitals is the market basket percentage increase reduced by 0.3 percentage points and the MFP adjustment (see sections 1886(s)(2)(A)(i), 1886(s)(2)(A)(ii), and 1886(s)(3)(C) of the Act).

The Inpatient Prospective Payment System market basket percentage increase for 2015 is 2.9 percent and the MFP adjustment is 0.5 percent, as announced in the final rule that appeared in the **Federal Register** on August 22, 2014 entitled, ''Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2015 Rates; Quality Reporting Requirements for Specific Providers; Reasonable Compensation Equivalents'' (79 FR 49854). Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system that submit quality data and are meaningful EHR users is 2.2 percent (that is, the FY 2015 market basket update of 2.9 percent less the MFP adjustment of 0.5 percentage point and less 0.2 percentage point). The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 2.3 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2015 is 2.22 percent.

To develop the adjustment to reflect changes in real case-mix, we first calculated an average case-mix for each hospital that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare prospective payment system in FY 2014 compared to FY 2013. (We excluded from this calculation hospitals whose payments are not based on the inpatient prospective payment system because their payments are based on alternate prospective payment systems or reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2014. These bills represent a total of about 7.4 million Medicare discharges for FY 2014 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2014 is 1.48 percent. Based on these bills and past experience, we expect the overall case mix change to be 1.5 percent as the year progresses and more FY 2014 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real. Real case-mix is that portion of case-mix that is due to changes in the mix of cases in the hospital and not due to coding optimization. We expect that all of the change in average case-mix will be real and estimate that this change will be 1.5 percent.

Thus as stated above, the estimate of the payment-weighted average of the applicable percentage increases used for

updating the payment rates is 2.22 percent, and the real case-mix adjustment factor for the deductible is 1.5 percent. Therefore, using the statutory formula as stated in section 1813(b) of the Act, we calculate the inpatient hospital deductible for services furnished in CY 2015 to be $1,260. This deductible amount is determined by multiplying $1,216 (the inpatient hospital deductible for CY 2014 (78 FR 64953)) by the payment-weighted average increase in the payment rates of 1.0222 multiplied by the increase in real case-mix of 1.015, which equals $1,261.64 and is rounded to $1,260.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2015

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. The increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2015, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $315 (one-fourth of the inpatient hospital deductible as stated in section 1813(a)(1)(A) of the Act); the daily coinsurance for lifetime reserve days will be $630 (one-half of the inpatient hospital deductible as stated in section 1813(a)(1)(B) of the Act); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $157.50 (one-eighth of the inpatient hospital deductible as stated in section 1813(a)(3) of the Act).

IV. Cost to Medicare Beneficiaries

Table 1 below summarizes the deductible and coinsurance amounts for CYs 2014 and 2015, as well as the number of each that is estimated to be paid.

TABLE 1—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2014 AND 2015 TYPE OF COST SHARING

	Value		Number paid (in millions)	
	2014	2015	2014	2015
Inpatient hospital deductible	$1,216	$1,260	7.23	7.39
Daily coinsurance for 61st–90th Day	304	315	1.87	1.91
Daily coinsurance for lifetime reserve days	608	630	0.93	0.95
SNF coinsurance	152	157.50	41.80	43.73

The estimated total increase in costs to beneficiaries is about $1,120 million (rounded to the nearest $10 million) due to: (1) The increase in the deductible and coinsurance amounts, and (2) the increase in the number of deductibles and daily coinsurance amounts paid. We determine the increase in cost to beneficiaries by calculating the difference between the 2014 and 2015 deductible and coinsurance amounts multiplied by the increase in the number of deductible and coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

Section 1813(b)(2) of the Act requires publication of the inpatient hospital deductible and all coinsurance amounts—the hospital and extended care services coinsurance amounts—between September 1 and September 15 of the year preceding the year to which they will apply. These amounts are determined according to the statute as discussed above. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary here, because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Analysis

A. Statement of Need

Section 1813(b)(2) of the Act requires the Secretary to publish, between September 1 and September 15 of each year, the amounts of the inpatient hospital deductible and hospital and extended care services coinsurance applicable for services furnished in the following calendar year (CY).

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C., Part I, Ch. 8).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notices with economically significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $1,120 million due to: (1) the increase in the deductible and coinsurance amounts, and (2) the increase in the number of deductibles and daily coinsurance amounts paid. As a result, this notice is economically significant under section 3(f)(1) of Executive Order 12866 and thus, is a major action under the Congressional Review Act. In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year (for details, see the Small Business Administration's Web site at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*). Individuals and states are not included in the definition of a small entity. As discussed above, this annual notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in CY 2015 under Medicare's Hospital Insurance Program (Medicare Part A). As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. As discussed above, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. For 2014, that threshold accounting for inflation is approximately $141 million. This notice does not impose mandates that will have a consequential effect of $141 million or more on state, local, or tribal governments or on the private sector.

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. Since this notice does not impose any costs on state or local governments, preempt state law, or have Federalism implications, the requirements of Executive Order 13132 are not applicable.

Dated: September 12, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 26, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–24257 Filed 10–9–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8057–N]

RIN 0938–AR96

Medicare Program; CY 2015 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2015. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the ''uninsured aged'') and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2015, for these individuals will be $407. The premium for certain other individuals as described in this notice will be $224.

DATES: *Effective Date:* This notice is effective on January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance Program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors, and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. These ''uninsured aged'' individuals are uninsured under the OASDI program or the Railroad Retirement Act, because they do not have 40 quarters of coverage under Title II of the Act (or are/were not married to someone who did). (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for Medicare Part A.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium for certain disabled individuals who have exhausted other entitlement. These are individuals who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, but who are no longer entitled to disability benefits and free Medicare Part A coverage because they have gone back to work and their earnings exceed the statutorily defined ''substantial gainful activity'' amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the upcoming calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over

who will be entitled to benefits under Medicare Part A. We must then determine the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A of the Act). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month:

- Had at least 30 quarters of coverage under Title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2015 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for CY 2015

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2015, is $407.

The monthly premium for the individuals eligible under Section 1818(d)(4)(B) of the Act, and therefore, subject to the 45 percent reduction in the monthly premium, is $224.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2015 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2015 on—(1) current historical data; and (2) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2015 Budget.

We estimate that in CY 2015, 45,458,424 people aged 65 years and over will be entitled to benefits (without premium payment) and that they will incur about $221.762 billion in benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $406.53 and the monthly premium is $407. Subsequently, the full monthly premium reduced by 45 percent is $224.

IV. Costs to Beneficiaries

The CY 2015 premium of $407 is approximately 4.46 percent lower than the CY 2014 premium of $426. We estimate that approximately 644,000 enrollees will voluntarily enroll in Medicare Part A, by paying the full premium. Furthermore, the CY 2015 reduced premium of $224 is approximately 4.27 percent lower than the CY 2014 premium of $234. We estimate an additional 58,000 enrollees will pay the reduced premium. Therefore, we estimate that the total aggregate savings to enrollees paying these premiums in CY 2015, compared to the amount that they paid in CY 2014, will be about $154 million.

V. Waiver of Proposed Notice and Comment Period

We use general notices, rather than notice and comment rulemaking procedures, to make announcements such as this premium notice. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. The agency may also waive notice and comment if there is ''good cause,'' as defined by the statute. We considered publishing a proposed notice to provide a period for public comment. However, under the APA, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest.

We are not using notice and comment rulemaking in this notification of Medicare Part A premiums for CY 2015 as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The APA permits agencies to waive notice and comment rulemaking when notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Analysis

A. Statement of Need

Section 1818(d) of the Act requires the Secretary of the Department of Health and Human Services (the Secretary) during September of each year to determine and publish the amount to be paid, on an average per capita basis, from the Federal Hospital Insurance Trust Fund for services incurred in the impending calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C., Part I, Ch. 8).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notices with economically significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the overall effect of the changes in the Part A premium will be a savings to voluntary enrollees (section 1818 and section 1818A of the Act) of about $154 million. As a result, this notice is economically significant under section 3(f)(1) of Executive Order 12866 and thus, a major action under the Congressional Review Act. In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year (for details, see the Small Business Administration's Web site at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*).

Individuals and states are not included in the definition of a small entity. As discussed above, this annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2015. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. As discussed above, we are not preparing an analysis for section 1102(b) of the Act, because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This notice does not impose mandates that will have a consequential effect of $141 million or more on state, local, or tribal governments or on the private sector.

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. Since this notice does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

Dated: September 12, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 26, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–24250 Filed 10–9–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8058–N]

RIN 0938–AS34

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2015. In addition, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2015 are $209.80 for aged enrollees and $254.80 for disabled enrollees. The standard monthly Part B premium rate for all enrollees for 2015 is $104.90, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2014 standard premium rate was $104.90.) The Part B deductible for 2015 is $147.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage.

DATES: *Effective Date:* January 1, 2015.

FOR FURTHER INFORMATION: M. Kent Clemens, (410) 786–6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as described in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met by transfers from the general fund of the Treasury.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half of the expected average monthly cost of Part B for each

aged enrollee (age 65 or over) and one-half of the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110, section 629 of the MMA (amending section 1833(b) of the Act) requires that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2015 Part B deductible is calculated by multiplying the 2014 deductible by the ratio of the 2015 aged actuarial rate to the 2014 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, also known as the Medicare Modernization Act, or MMA), which amended section 1839 of the Act, requires that, starting on January 1, 2007, the Part B premium a beneficiary pays each month be based on their annual income. Specifically, if a beneficiary's ''modified adjusted gross income'' is greater than the legislated threshold amounts (for 2015, $85,000 for a beneficiary filing an individual income tax return, and $170,000 for a beneficiary filing a joint tax return) the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25 percent premium, these beneficiaries now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, depending on income and tax filing status, a beneficiary can now be responsible for 35, 50, 65, or 80 percent of the estimated total cost of Part B coverage, rather than 25 percent. The end result of the higher premium is that the Part B premium subsidy is reduced and less general revenue financing is required for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy continues to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but will be reduced for beneficiaries with income above these thresholds. The MMA specified that there be a 5-year transition to full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) modified the transition to a 3-year period.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2014,

the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates for these years.

Another provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (However, the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 88.) Section 1839(f) of the Act, referred to as the ''hold-harmless'' provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. The ''hold-harmless'' provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December's Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, the reduced premium for the individual for that January and for each of the succeeding 11 months is the greater of either—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2015 are $209.80 for enrollees age 65 and over and $254.80 for disabled enrollees under age 65. In section II.B. of this notice, we present the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for all enrollees for 2015 is $104.90. The Part B annual deductible for 2015 is $147.00. The following are the 2015 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	42.00	146.90
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	104.90	209.80
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	167.80	272.70
Greater than $214,000	Greater than $428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are as follows:

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $129,000	167.80	272.70
Greater than $129,000	230.80	335.70

The Part B annual deductible for 2015 is $147.00 for all beneficiaries.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2015

Except where noted, the actuarial assumptions and bases used to determine the monthly actuarial rates and the monthly premium rates for Part B are established by the Office of the Actuary in the Centers for Medicare & Medicaid Services. The estimates underlying these determinations are prepared by actuaries meeting the qualification standards and following the actuarial standards of practice established by the Actuarial Standards Board.

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the standard monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The premium rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. The three most important of these factors are: (1) the difference from prior years between the actual performance of the program and estimates made at the time financing was established; (2) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the establishment of financing for that year; and (3) the expected relationship between incurred and cash expenditures. These factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2013 and 2014.

TABLE 1—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing period ending	Assets (millions)	Liabilities (millions)	Assets less liabilities (millions)
December 31, 2013	$74,204	$19,656	$54,548
December 31, 2014	70,931	20,376	50,555

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for: (1) The projected cost of benefits, and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2015 is determined by first establishing per-enrollee cost by type of service from program data through 2013 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2012 through December 31, 2015 are shown in Table 2.

As indicated in Table 3, the projected per-enrollee amount required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2015 is $208.61. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level. The monthly actuarial rate of $209.80 provides an adjustment of $3.41 for a contingency margin and −$2.22 for interest earnings.

The size of the contingency margin for 2015 is affected by several factors. The largest factor involves the current law formula for physician fees, which is scheduled to result in a reduction in physician fees of an estimated 21.1 percent in April 2015. For 2003 through March 2015, lawmakers have prevented physician fee reductions from occurring. In recognition of the strong possibility of substantial increase in Part B expenditures that would result from similar legislation to override the decreases in physician fees in 2015, it is appropriate to maintain a significantly larger Part B contingency reserve than would otherwise be necessary. The asset level projected for the end of 2014 is not adequate to accommodate this contingency.

Two other factors affect the contingency margin for 2015. Starting in 2011, manufacturers and importers of brand-name prescription drugs have paid a fee that is allocated to the Part B account of the SMI trust. For 2015, the total of these brand-name drug fees is estimated to be $3.0 billion. The contingency margin has been reduced to account for this additional revenue.

Another factor impacting the contingency margin comes from the requirement that certain payment incentives, to encourage the development and use of health information technology (HIT) by Medicare physicians, are to be excluded from the premium determination. HIT bonuses or penalties will be directly offset through transfers with the general fund of the Treasury. The monthly actuarial rate includes an adjustment of −$0.24 for HIT bonus payments in 2015.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should

represent between 15 and 20 percent of the following year's total incurred expenditures. To accomplish this goal, a 17 percent reserve ratio has been the normal target used to calculate the Part B premium. In view of the strong likelihood of actual expenditures exceeding estimated levels, due to the likelihood of the enactment of legislation after the financing has been set for 2015 as a result of the scheduled 2015 physician update, a contingency reserve ratio in excess of 20 percent of the following year's expenditures would better ensure that the assets of the Part B account can adequately cover the cost of incurred-but-not-reported benefits together with variations between actual and estimated cost levels.

The actuarial rate of $209.80 per month for aged beneficiaries, as announced in this notice for 2015, reflects the combined net effect of the factors previously described and the projection assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected per-enrollee amount required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2015 is $249.95. The monthly actuarial rate of $254.80 also provides an adjustment of −$2.95 for interest earnings and $7.80 for a contingency margin, reflecting the same factors described previously for the aged actuarial rate. Based on current estimates, the assets associated with the disabled Medicare beneficiaries at the end of 2014 are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to an appropriate level.

The actuarial rate of $254.80 per month for disabled beneficiaries, as announced in this notice for 2015, reflects the combined net effect of the factors described previously for aged beneficiaries and the projection assumptions listed in Table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative cost growth rate assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are higher and, therefore, more pessimistic than the current estimate. The other set represents increases that are lower and, therefore, more optimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of $58,887 million by the end of December 2015 under the cost growth rate assumptions used in preparing this report and assuming that the provisions of current law are fully implemented. This amounts to 21.6 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $17,781 million by the end of December 2015 under current law, which amounts to 5.8 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $96,482 million by the end of December 2015, or 40.3 percent of the estimated total incurred expenditures for the following year.

The sensitivity analysis indicates that the premium and general revenue financing established for 2015, together with existing Part B account assets would be adequate to cover estimated Part B costs for 2015 under current law, even if actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined in accordance with section 1839 of the Act, listed are the 2015 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	42.00	146.90
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	104.90	209.80
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	167.80	272.70
Greater than $214,000	Greater than $428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed as follows:

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $129,000	167.80	272.70
Greater than $129,000	230.80	335.70

TABLE 2—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2012–2015

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab [4]	Other carrier services [5]	Outpatient hospital	Home health agency	Hospital lab [6]	Other intermediary services [7]	Managed care
	Fees [2]	Residual [3]								
Aged:										
2012 ..	−1.1	0.9	0.7	6.5	3.2	7.5	−3.4	4.1	4.2	1.9
2013 ..	−0.1	0.3	−10.3	0.2	2.7	7.1	−0.9	−0.6	−1.1	0.7
2014 ..	0.5	0.3	−17.5	2.1	3.3	10.3	−0.2	−26.7	3.6	6.4
2015 ..	−16.6	0.4	1.6	3.7	2.2	6.0	0.3	3.9	−5.5	1.5
Disabled:										
2012 ..	−1.1	2.2	1.0	24.9	2.4	8.6	−0.7	4.6	2.0	1.3
2013 ..	−0.1	2.5	−8.4	11.7	1.7	7.7	−0.2	−0.2	3.2	2.7
2014 ..	0.5	0.6	−15.6	3.0	2.5	11.5	1.1	−30.1	5.4	7.8
2015 ..	−16.6	0.8	1.7	3.9	1.8	6.3	0.5	4.0	−1.5	1.4

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

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TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2012 THROUGH DECEMBER 31, 2015 (IN DOLLARS)

	Financing Periods			
	CY 2012	CY 2013	CY 2014	CY 2015
Covered services (at level recognized):				
Physician fee schedule	$80.02	$78.30	$76.94	$65.05
Durable medical equipment	8.32	7.29	5.84	6.00
Carrier lab[1]	4.31	4.22	4.19	4.39
Other carrier services[2]	22.07	22.13	22.23	22.96
Outpatient hospital	37.14	38.85	41.65	44.64
Home health	10.48	10.14	9.84	9.97
Hospital lab[3]	3.89	3.77	2.69	2.82
Other intermediary services[4]	14.76	14.25	14.35	13.70
Managed care	61.46	65.22	73.45	72.92
Total services	242.46	244.17	251.17	242.46
Cost sharing:				
Deductible	−5.37	−5.63	−5.63	−5.63
Coinsurance	−31.04	−29.06	−28.17	−26.32
Sequestration of benefits	0.00	−3.16	−4.34	−4.21
HIT payment incentives	−1.57	−2.04	−2.87	−0.24
Total benefits	204.48	204.28	210.15	206.07
Administrative expenses	3.45	3.58	3.03	2.55
Incurred expenditures	207.93	207.85	213.18	208.61
Value of interest	−2.21	−1.80	−1.91	−2.22
Contingency margin for projection error and to amortize the surplus or deficit	−5.92	3.75	−1.48	3.41
Monthly actuarial rate	199.80	209.80	209.80	209.80

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2012 THROUGH DECEMBER 31, 2015 (IN DOLLARS)

	Financing Periods			
	CY 2012	CY 2013	CY 2014	CY 2015
Covered services (at level recognized):				
Physician fee schedule	$85.25	$84.62	$83.64	$70.30
Durable medical equipment	15.78	13.96	11.48	11.70
Carrier lab[1]	6.12	6.58	6.58	6.86
Other carrier services[2]	25.81	25.46	25.36	25.92
Outpatient hospital	52.49	54.70	59.55	63.42
Home health	9.29	8.99	8.85	8.92
Hospital lab[3]	5.45	5.29	3.59	3.74
Other intermediary services[4]	41.78	42.43	42.68	42.74
Managed care	48.76	54.92	63.14	63.68
Total services	290.75	296.95	304.88	297.28
Cost sharing:				
Deductible	−5.05	−5.29	−5.30	−5.29
Coinsurance	−46.06	−44.46	−42.64	−39.80
Sequestration of benefits	0.00	−3.73	−5.13	−5.04
HIT payment incentives	−1.60	−2.14	−3.09	−0.25
Total benefits	238.04	241.32	248.71	246.90
Administrative expenses	4.01	4.22	3.59	3.05
Incurred expenditures	242.05	245.54	252.30	249.95
Value of interest	−3.82	−3.49	−2.71	−2.95
Contingency margin for projection error and to amortize the surplus or deficit	−45.72	−6.55	−30.69	7.80
Monthly actuarial rate	192.50	235.50	218.90	254.80

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2015

As of December 31,	2013	2014	2015
This projection:			
Actuarial status (in $ millions):			
Assets	74,204	70,931	78,902
Liabilities	19,656	20,376	20,015
Assets less liabilities	54,548	50,555	58,887
Ratio (in percent)[1]	21.0	19.3	21.6
Low cost projection:			
Actuarial status (in $ millions):			
Assets	74,204	84,921	115,460
Liabilities	19,656	18,825	18,978
Assets less liabilities	54,548	66,095	96,482
Ratio (in percent)[1]	22.3	28.0	40.3
High cost projection:			
Actuarial status (in $ millions):			
Assets	74,204	57,281	38,977
Liabilities	19,656	21,896	21,196
Assets less liabilities	54,548	35,384	17,781
Ratio (in percent)[1]	19.8	12.2	5.8

[1]Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent. These estimates are based on the assumption that all provisions of current law will be implemented in full, including the approximately 21.1-percent reduction in Medicare payment rates to physicians required by the statutory "sustainable growth rate" formula.

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III. Regulatory Impact Analysis

A. Statement of Need

Section 1839 of the Act requires us to annually announce (that is by September 30th of each year) the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. We also announce the Part B annual deductible because its determination is directly linked to the aged actuarial rate.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notices with economically significant effects ($100 million or more in any 1 year). For 2015, the standard Part B premium rate, the Part B income-related premium rates, and the Part B deductible are the same as the respective amounts for 2014. As a result, this notice is not economically significant under section 3(f)(1) of Executive Order 12866 and thus, is not a major action under the Congressional Review Act. In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

As discussed earlier, this notice announces that the monthly actuarial rates applicable for 2015 are $209.80 for enrollees age 65 and over and $254.80 for disabled enrollees under age 65. It also announces the 2015 monthly Part B premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with a dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	42.00	146.90
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	104.90	209.80

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	167.80	272.70
Greater than $214,000	Greater than $428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are also announced and listed in the following chart:

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $129,000	167.80	272.70
Greater than $129,000	230.80	335.70

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. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $38.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under 65) beneficiaries enrolled in Part B of the Medicare SMI program beginning January 1, 2015. Also, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As we discussed previously, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant effect on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This notice does not impose mandates that will have a consequential effect of $141 million or more on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

For 2015, the standard Part B premium rate, the Part B income-related premium rates, and the Part B deductible are the same as the respective amounts for 2014. Therefore, this notice is not a major rule as defined in 5 U.S.C. 804(2) and is not an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. The statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest. Moreover, we find that notice and comment are unnecessary because the formulas used to calculate the Part B premiums are statutorily directed. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: September 12, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 26, 2014.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2014–24248 Filed 10–9–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Runaway and Homeless Youth Management Information System (RHYMIS) Version 3.0.

OMB No.: 0970–0123.

Description: The Runaway and Homeless Youth Act, as amended by Public Law 106–71 (42 U.S.C. 5701 et seq.), mandates that the Department of Health and Human Services (HHS) report regularly to Congress on the status of HHS-funded programs serving runaway and homeless youth. Such reporting is similarly mandated by the Government Performance and Results Act. Organizations funded under the Runaway and Homeless Youth program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2) to meet certain data collection and reporting requirements. These requirements include maintenance of client statistical records on the number and the characteristics of the runaway and homeless youth, and youth at risk of family separation, who participate in the project, and the services provided to such youth by the project.

Respondents: States localities, private entities and coordinated networks of such entities. Typical respondents are non-profit community based organizations who are reporting on the youth that they serve through their Basic Center, Transitional Living and Street Outreach programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents *	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Profile: Basic Center Program (one for each youth)	321	115	0.20	7,383
Youth Profile: Transitional Living Program (one for each youth)	205	19	0.250	974
Youth Profile: Street Outreach Program (one for each youth)	138	524	0.073	5,279
Brief Agency Contacts Report ** (3 data elements per youth)	664	865	0.05	28,718
Data Transfer	664	2	0.50	664

* Number of respondents and response estimates are based on FY 2013 grantee award and annual youth service volumes (the number of grantees awarded and their service volumes change from year to year but not greatly.)

** Brief Agency Contacts Report is a new report that combines the elements of the Street Outreach Contacts, Turn away/Waitlist and Brief Contacts reports that were previously in place.

Estimated Total Annual Burden Hours: 43,018.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*. Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–24222 Filed 10–9–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number 93.570]

Announcement of a Single-Source Grant Award to Lao Family Community Development, Inc., in Oakland, CA

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Announcing the award of a single-source grant to Lao Family Community Development, Inc. (LFCD), in Oakland, CA, to support activities that will enhance the successful renovation of the their Culture, Arts, Recreation and Education Center (CARE Center), creating jobs while increasing the health and well-being of the local community.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS) announces the award of a single-source grant for $686,000 to the Lao Family Community Development, Inc., in Oakland, CA, to support the renovation of a former warehouse, located in the Fruitvale district, into a mixed-use building.

DATES: The period of support is from September 30, 2014 to June 30, 2015.

FOR FURTHER INFORMATION CONTACT: Rafael J. Elizalde, Program Manager Division of Community Discretionary Programs, 370 L' Enfant Promenade SW., Washington, DC 20047. Telephone: 202–401–5115; Email: *rafael.elizalde@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Office of Community Services (OCS) Community Economic Development (CED) program announces the award of $686,000 to Lao Family Community Development, Inc. (LFCD), in Oakland, CA. CED is a federal grant program funding Community Development Corporations (CDCs) that address the

economic needs of low-income individuals and families through the creation of sustainable business development and employment opportunities.

Award funds will support renovation of the Culture, Arts, Recreation and Education Center (CARE Center) building, including architectural and engineer fees, construction permits, construction bonds, legal and accounting contracting services, seismic redesign (related to earthquake protection), heating, ventilating, air condition design and installation, fire sprinklers, and an elevator for handicap accessibility. The renovated facility will be used for culture, arts, and education activities. It will house recreational facilities, a conference training space, an outdoor community garden, and rental space for small businesses that will facilitate economic growth in the district.

Statutory Authority: Section 680(a)(2) of the Community Services Block Grant (CSBG) Act of 1981, as amended by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285), as amended.

Melody Wayland,

Senior Grants Policy Specialist, Office of Administration, Office of Financial Services, Division of Grants Policy.

[FR Doc. 2014–24205 Filed 10–9–14; 8:45 am]

BILLING CODE 4184–26–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Aged Cell Bank.

Date: November 10, 2014.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: October 6, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24183 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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; Cancer Center Support Grant.

Date: December 11, 2014.

Time: 3:50 p.m. to 5:05 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Adriana Stoica, Ph.D. Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W234, Bethesda, MD 20892–9750, 240–276–6368, *stoicaa2@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where 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: October 6, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24187 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Pepper Centers.

Date: October 29, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 6, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24185 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urological and Urogynecological Sciences and Small Business.
Date: October 29, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.
Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Microbiology.
Date: October 30, 2014.
Time: 1:15 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics and Drug Discovery.
Date: November 3, 2014.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery System.
Date: November 6, 2014.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member conflict: Oral Microbiology.
Date: November 6, 2014.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Grants: Experimental and Computational Genetics.
Date: November 6, 2014.
Time: 3:00 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small: Business: Biological Chemistry, Biophysics and Drug Discovery.
Date: November 7, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.
Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell, Computational and Molecular Biology.
Date: November 7, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.
Date: November 7, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal Soft Tissue Biology.
Date: November 7, 2014.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Functional Correlates of Cognitive Impairment and Seizures.
Date: November 7, 2014.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alessandra C Rovescalli, Scientific Review Officer, National Institutes of Health, Center of Scientific Review, 6701 Rockledge Drive, Room 5205, MSC, 7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Child Psychopathology and Departmental Disabilities AREA Review.
Date: November 7, 2014.
Time: 12:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: October 3, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24188 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of U01 Applications: Genomes to Natural Products.

Date: November 5, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Support for Conferences and Scientific Meetings (R13).

Date: November 5, 2014.

Time: 11:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.12, Bethesda, MD 20892–6200, (Telephone Conference Call).

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892–6200, 301–594–3663, *sidorova@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: October 6, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24182 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Sex Difference in Health.

Date: November 4, 2014.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Treatments of Aging Obese Patients.

Date: November 6, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *MIKHAILI@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: October 6, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24186 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Experimental Therapeutics Program (Cycle 18 NExT).

Date: December 11, 2014.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31 Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program,

National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892, (301) 496–4291, *mroczkoskib@mail.nih.gov*.

Joseph Tomaszewski, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892, (301) 496–6711, *tomaszej@mail.nih.gov*.

(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: October 6, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24181 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR13–259:P01 Review Drug Addiction.

Date: October 16–17, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Auditory Neuroscience.

Date: October 29–30, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Integrative Neuroscience.

Date: October 30, 2014.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Research Project Grant.

Date: November 3, 2014.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Muscle and Exercise Physiology.

Date: November 5–6, 2014.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*,

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Dermatology, Rheumatology, and Inflammation.

Date: November 5, 2014.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Biochemistry and Biophysical Chemistry.

Date: November 6–7, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: David R Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301)–437–7927, *jollieda@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurobiology of Sensory and Cognitive Processing.

Date: November 6, 2014.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Endocrinology, Metabolism, Nutrition, and Reproductive Sciences.

Date: November 6, 2014.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AREA: Oncological Sciences Grant Applications.

Date: November 6, 2014.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally A Mulhern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, HIV/AIDS Vaccines Study Section.

Date: November 10, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cancer Diagnostics and Treatments (CDT).

Date: November 10–11, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Riverwalk Marriott, 207 N. St Mary's Street, San Antonio, TX 78205.

Contact Person: Zhang-Zhi Hu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 594–2414, *huzhuang@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

Date: November 10, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: October 6, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24184 Filed 10–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5753–N–10]

60-Day Notice of Proposed Information Collection: Self-Help Homeownership Opportunity Program (SHOP)

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: Comment Due Date: December 9, 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 Seventh Street SW., Room 4176, Washington, DC 20410–4500; 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. Person 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: Martha Murray, SHOP Program Manager, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 7162, Washington, DC 20410–4500; telephone 202–402–4410 (this is not a toll-free number) or by email at *martha.w.murray@hud.gov.*

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: Self-Help Homeownership Opportunity Program (SHOP).

OMB Approval Number: 2506–0157.

Type of Request: Extension of currently approved collection.

Form Number: HUD–424CB, HUD–2880, HUD–2993, HUD–2995, HUD–96011.

Description of the need for the information and proposed use: This is a proposed information collection for submission requirements under the SHOP Notice of Funding Availability (NOFA). HUD requires information in order to ensure the eligibility of SHOP applicants and the compliance of SHOP proposals, to rate and rank SHOP applications, and to select applicants for grant awards. Information is collected on an annual basis from each applicant that responds to the SHOP NOFA. The SHOP NOFA requires applicants to submit specific forms and narrative responses.

Respondents: National and regional non-profit self-help housing organizations (including consortia) that apply for funds in response to the SHOP NOFA.

Frequency of Submission: Annually in response to the issuance of a SHOP NOFA.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, hours per response, frequency of response, and total hours of response for all respondents. The estimates of the average hours needed to prepare the information collection are based on information provided by previous applicants. Actual hours will vary depending on the proposed scope of the applicant's program, the applicant's geographic service area and the number of affiliate organizations. The information burden is generally greater for national organizations with numerous affiliates.

Paperwork requirement	Number of respondents	Frequency	Hours per response	Total annual hours
SF–424	10	1	1	10
HUD–424CB	10	1	10	10
HUD–424 CBW	10	1	30	300
SF–LLL	10	1	.5	5
HUD–2880	10	1	.5	5
HUD–2993	10	1	.5	5
HUD–2995	10	1	.5	5
HUD–96011	10	1	.5	5
Applicant Eligibility	10	1	10	100
SHOP Program Design and Scope of Work	10	1	30	300
Rating Factor 1	10	1	25	250

Paperwork requirement	Number of respondents	Frequency	Hours per response	Total annual hours
Rating Factor 2	10	1	25	250
Rating Factor 3	10	1	55	550
Rating Factor 4	10	1	30	300
Rating Factor 5	10	1	25	250
Total Annual Hour Burden			243.5	2435

B. Solicitation of Public Comments

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 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 2, 2014.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2014–24263 Filed 10–9–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5753–N–09]

60-Day Notice of Proposed Information Collection: Protection and Enhancement of Environmental Quality

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:* December 9, 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: Liz Zepeda, Environmental Specialist, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Liz Zepeda at *elizabeth.g.zepeda@hud.gov* or telephone 202–402–3988. 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. Zepeda.

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: 24 CFR Part 50—Protection and Enhancement of Environmental Quality.

OMB Approval Number: 2506–0177.

Type of Request: Extension of currently approved collection.

Description of the need for the information and proposed use: HUD requests its applicants to supply environmental information that is not otherwise available to HUD staff for the environmental review on an applicant's proposal for HUD financial assistance to develop or improve housing or community facilities. HUD itself must perform an environmental review for the purpose of compliance with its environmental regulations found at 24 CFR Part 50, Protection and Enhancement of Environmental Quality. Part 50 implements the National Environmental Policy Act and implementing procedures of the Council on Environmental Quality, as well as the related federal environmental laws and executive orders. HUD's agency-wide provisions—24 CFR 50.3(h)(1) and 50.32 [copy attached]—regulate how individual HUD program staffs are to utilize such collected data when HUD itself prepares the environmental review and compliance. Separately, individual HUD programs each have their own regulations and guidance implementing environmental and related collection responsibilities. For the next three years, this approved collection will continue unchanged under this OMB control number to assure adequate coverage for all HUD programs subject to Part 50.

Respondents: Businesses, not-for-profit institutions, and local governments receiving HUD funding.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	2,600	1	2,600	2	5,200	$52	$270,400

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: October 2, 2014.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2014–24261 Filed 10–9–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5759–N–13]

60-Day Notice of Proposed Information Collection: Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 9, 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, ODAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–0306 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

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: Housing Choice Voucher (HCV) Program.

OMB Approval Number: 2577–0169.

Type of Request: Revision of currently approved collection with change that eliminates financial forms.

Form Numbers: HUD–52515, HUD–52667, HUD–52580, HUD–52580–A, HUD–52517, HUD–52646, HUD–52665, HUD–52641, HUD–52641–A, HUD 52642, HUD 52649, HUD 52531A and B, HUD 52530A, HUD 52530B, HUD 52530C, HUD 52578B.

Description of the need for the information and proposed use: Public Housing Agencies (PHA) will prepare an application for funding which specifies the number of units requested, as well as the PHA's objectives and plans for administering the HCV program. The application is reviewed by HUD Headquarters and HUD Field Offices and ranked according to the PHA's administrative capability, the need for housing assistance, and other factors specified in a notice of funding availability. The PHAs must establish a utility allowance schedule for all utilities and other services. Units must be inspected using HUD-prescribed forms to determine if the units meet the housing quality standards (HQS) of the HCV program. After the family is issued a HCV to search for a unit, the family must complete and submit to the PHA a Request for Tenancy Approval when it finds a unit which is suitable for its needs. Initial PHAs will use a standardized form to submit portability information to the receiving PHA who will also use the form for monthly portability billing. PHAs and owners will enter into HAP Contracts each providing information on rents, payments, certifications, notifications, and owner agreement in a form acceptable to the PHA. A tenancy addendum is included in the HAP contract as well as incorporated in the lease between the owner and the family. Families that participate in the Homeownership option will execute a statement regarding their responsibilities and execute contracts of sale including an additional contract of sale for new construction units. PHAs participating in the project-based voucher (PBV) program will enter into Agreements with developing owners, HAP contracts with the existing and New Construction/Rehabilitation owners, Statement of Family Responsibility with the family and a lease addendum will be provided for execution between the family and the owner.

Respondents (i.e. affected public): State and Local Governments, businesses or other non-profits.

Estimated Number of Respondents: 2,302 PHAs.

Estimated Number of Responses: 2,843,533.

Frequency of Response: Varies by form.

Average Hours per Response: .44 hours.

Total Estimated Burdens Hours: 1,274,089.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
	2,302	Varies	2,843,533	.44	1,274,089	$20	$25,481,780
Total	2,302	Varies	2,843,533	.44	1,274,089	20	25,481,780

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 30, 2014.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2014–24264 Filed 10–9–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6672 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Connie Lotfi, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210)- 925–3047; COE: Ms. Brenda John-Turner, Army Corps of Engineers, Real Estate, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5222; ENERGY: Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave SW., Washington, DC 20585 (202) 287–1503; GSA: Mr.

Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL. 33021; (443) 223–4639; NASA: Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202)-358–1124; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202)685–9426 (These are not toll-free numbers).

Dated: October 2, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/10/2014

Suitable/Available Properties

Building

Missouri

Masters Campground
16435 E Stockton Lake Dr.
Stockton MO 65785
Landholding Agency: COE
Property Number: 31201430012
Status: Underutilized
Comments: 41+yrs. old; 416 sq. ft.; shower; deteriorated; restricted access; contact COE for more info.

Crabtree Cove Park #28835
16435 E Stockton Lake Dr.
Stockton MO 65785
Landholding Agency: COE
Property Number: 31201430013
Status: Underutilized
Comments: 41+yrs. old; 84 sq. ft.; wood structure; toilet; deterioration; contact COE for more info.

West Virginia

Naval Information Operations Center
133 Hedrick Drive
Sugar Grove WV 26815
Landholding Agency: GSA
Property Number: 54201430015
Status: Excess
GSA Number: 4–N–WV–0560
Directions: Land holding agency—Navy; Disposal Agency GSA
Comments: 118 Buildings; 445,134 sq. ft.; Navy base; until 09/15 military checkpoint; wetlands; contact GSA for more info.

Unsuitable Properties

Building

California

Building 8600, Flight Line Complex
Marine Corps Air Station Miramar
San Diego CA
Landholding Agency: Navy
Property Number: 77201440002
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Building 9403, MACS–1 Administration Bldg.
Marine Corps Air Station Miramar
San Diego CA
Landholding Agency: Navy
Property Number: 77201440003
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Building 6688
null
Marine Corps Air Station Miramar
San Diego CA
Landholding Agency: Navy
Property Number: 77201440005
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Florida

Building 946
946 Tech Road
Patrick AFB FL 32925
Landholding Agency: Air Force
Property Number: 18201430076
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Hawaii

Building 245, Marine Corps Base Hawaii Kaneohe Bay
Intersection of Mokapu Rd. & E Street
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77201440001
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Building 313, Marine Corps Base Hawaii Kaneohe Bay
Bldg. 313 is Located Along B Street
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77201440004
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

New Mexico

11 Buildings; Los Alamos National Lab
Los Alamos
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201430014
Status: Excess
Directions: 46–0420; 46–0058; 16–0380; 15–0198; 15–0189; 15–0185; 15–0184; 48–0129; 54–1004; 39–0010; 39–0002
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Los Alamos National Lab
Los Alamos
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201440001
Status: Excess
Directions: 46–0720; 46–0058; 16–0380; 15–0198; 15–0189; 15–0185; 15–0184; 48–0129; 54–1004; 39–0010; 39–0002
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Pennsylvania

Tract 01–106, Old Headquarters Building
727 Nelson Road
Farmington PA 15437
Landholding Agency: Interior
Property Number: 61201430003
Status: Excess
Comments: property has documented and extensive conditions; lead-based; paint; mold; asbestos; flooding; a client threat to personal safety.
Reasons: Contamination

Virginia

Visual Imaging Studio, Building 1145
3 East Bush Street
Hampton VA 23681–0001
Landholding Agency: NASA
Property Number: 71201440001
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security
Reasons: Secured Area.

Temporary Housing Facility, Building 1130T2
7 East Taylor Street
Hampton VA 23681–0001
Landholding Agency: NASA
Property Number: 71201440002
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security
Reasons: Secured Area.

Child Development Center, Building 1231 & 1231B
8 & 8B Lindbergh Way
Hampton VA 23681–0001
Landholding Agency: NASA
Property Number: 71201440003
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area.

[FR Doc. 2014–24076 Filed 10–9–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–2014–N171; FXES11120800000F2–112–FF08E00000]

Incidental Take Permit Application and Draft Environmental Assessment for the RE Cinco Solar Facility Project Habitat Conservation Plan, Kern County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from RE Barren Ridge 1 LLC, a subsidiary of Recurrent Energy LLC (applicant), for a 40-year incidental take permit (permit). The Service, in cooperation and coordination with the applicant, has prepared a draft Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the applicant's permit application and proposed RE Cinco Solar Facility Habitat Conservation Plan (HCP), as required by the Endangered Species Act of 1973, as amended (Act). If approved, the permit would authorize incidental take for the federally threatened desert tortoise, associated with construction, operation, maintenance, and decommissioning of a photovoltaic solar facility in the County of Kern.

DATES: To ensure consideration, please send your written comments on or before December 9, 2014.

ADDRESSES: *Obtaining Documents:* You may request a copy of the proposed HCP and draft EA by email, telephone, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or comments by any one of the following methods, and specify ''Cinco Solar Facility HCP'' in your request or comment.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods:

- *Email: fw8cfwocomments@fws.gov.* Include ''Cinco Solar Facility'' in the subject line of the message.
- *Telephone:* Raymond Bransfield, U.S. Fish and Wildlife, 805–644–1766.
- *Fax:* Raymond Bransfield, U.S. Fish and Wildlife Service, 805–644–3958, Attn: Cinco Solar Facility HCP.
- *U.S. mail:* Raymond Bransfield, Attn: Cinco Solar Facility HCP, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *In-Person Drop-off, Viewing, or Pickup:* Call 805–644–1766 to make an appointment during regular business hours at the above address.

Hardbound copies of the environmental assessment and habitat conservation plan are available for viewing at the following locations:

1. U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
2. Kern County Library, Boron Branch, 26967 20 Mule Team Road, Boron, CA 93516.

FOR FURTHER INFORMATION CONTACT: Raymond Bransfield, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, at 805–644–1766 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

We announce the availability of our draft EA for the proposed Cinco Solar Facility HCP, in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and NEPA implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as the availability of the applicant's section 10(a)(1)(B) permit application in compliance with section 10(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The draft EA considers the environmental effects associated with issuing the applicant's requested incidental take permit and implementation of the proposed HCP, including impacts to the threatened desert tortoise (*Gopherus agassizii*). Take of desert tortoise would be incidental to the applicant's activities associated with the construction, operation, maintenance, and decommissioning of a photovoltaic solar facility in Kern County, California.

Background

Section 9 of the Act and implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the ''take'' of wildlife species listed as endangered or threatened. The Act defines the term ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). Under limited circumstances we may issue permits to authorize incidental take of listed wildlife species which the Act defines as take that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species are at 50 CFR 17.32 and 50 CFR 17.22, respectively. In addition to meeting other criteria, activities covered by an incidental take permit must not jeopardize the continued existence in the wild of federally listed wildlife.

Applicant's Proposal

The applicant requests a 40-year incidental take permit under section 10(A)(1)(b) of the Act. If we approve the permit, the applicant anticipates taking desert tortoise as a result of construction, operation, maintenance, and decommissioning activities on 500 acres of land the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's routine activities associated with the development and operation of a photovoltaic solar facility. The site is located in unincorporated Kern County, approximately 6.5 miles (10.46 kilometers (km)) north of the community of California City. With the exception of a portion of State Route 14, which traverses diagonally through the southeast corner of the site, and several transmission line right-of-ways that diagonally traverse the northwest corner of the site, the surrounding area is entirely comprised of vacant land with no outbuildings, residences, or similar structures. Desert tortoise protocol surveys were conducted in 2010 and 2011. The Service has determined the proposed project will result in take of desert tortoise. No other federally listed species are known to occur on the site.

To mitigate take of desert tortoise on the project site, the applicant proposes to keep the portion of the project site east of State Route 14 and west of an existing transmission line undeveloped. The applicant would also avoid development on one area that contains wash vegetation and one that contains a desert tortoise burrow; both of these areas are located at the edge of the proposed solar field. The applicant proposes to permanently conserve approximately 500 acres within the western Mojave Desert to mitigate for the loss of desert tortoise habitat within the proposed project site. The draft HCP includes funding for the implementation of measures to protect desert tortoises during construction, operations, maintenance, and

decommissioning of the solar facility, and for enhancement and management of the acquired lands.

The applicant proposes to construct and operate a generation tie-in line from the solar facility to the nearby Barren Ridge Substation. Because this route would cross lands managed by the Bureau of Land Management (BLM), the applicant did not include construction and operation of this proposed generation tie-in line as covered activities under its proposed HCP. The BLM and Service would consult on the effects of the generation tie-in line on the desert tortoise under section 7 of the Act. Although BLM is conducting an analysis under NEPA for the generation tie-in line as part of the applicant's application for a right-of-way to construct and operate the line, the draft EA prepared for the applicant's incidental take permit application also includes an environmental analysis of the generation tie-in line to ensure the Service considers the effects of the applicant's entire proposed project.

National Environmental Policy Act Compliance

We provide this notice under section 10(c) of the Act and Service regulations for implementing NEPA. We have prepared a draft EA for the proposed action and have made it and the applicant's proposed HCP available for public inspection (see **ADDRESSES**). NEPA requires that a range of reasonable alternatives, including the proposed action, be described. The draft EA analyzes three alternatives, described below.

Proposed Action (Preferred Alternative)

Our proposed action is to issue an incidental take permit to the applicant, who would implement the HCP, described above. If we approve the permit, incidental take of desert tortoise would be authorized for the applicant's routine activities associated with the construction, operation, maintenance, and decommissioning of a solar facility in Kern County.

No Action Alternative

The draft EA includes a No Action alternative that would not result in take of desert tortoise. Under this alternative, unless the applicant can determine how to build the project in a way that avoids take of the desert tortoise, the proposed solar facility would not be constructed and the private lands would remain in their current state and be available for other uses in accordance with Kern County's general plan, which classifies them as ''resource management'' lands zoned as ''agriculture-floodplain combining.'' Uses authorized for this designation and zoning include crop production, animal production, livestock grazing, utility and communication facilities, resource extraction, and energy development. If this project is not constructed, Kern County could permit other uses in the future with issuance of a conditional use permit, including solar power generation, single-family residential development, or commercial and institutional uses.

Solar Facility and Gen-Tie Line Alternative

Under this alternative, the solar facility would be constructed in an identical manner as that described above under the Proposed Action; however, the applicant would construct the generation tie-in line entirely on non-Federal land. Therefore, the approved incidental take permit would also provide coverage for the construction and operation of a generation tie-in line to be constructed solely on non-Federal lands. The environmental impacts from the solar plant construction, operations, maintenance, and decommissioning would be identical to those under the Proposed Action; however, the environmental impacts and cost of this alternative would be greater because of the increased length of the electrical line (1.9 miles (3.06 km) vs. 3.6 miles (5.79 km)).

Public Review

The Service invites the public to comment on the permit application, including the proposed HCP and draft EA, during the public comment period (see **DATES**). If you wish to comment, you may submit your comments via one of the means listed in **ADDRESSES**. 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA. We will evaluate the application, associated documents, and any public comments we receive to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the applicant for the incidental take of desert tortoise. We will make our final permit decision no sooner than December 9, 2014.

Dated: October 6, 2014.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–24271 Filed 10–9–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000.L12100000.DC0000 LXSS100F0000 241A; 14–08807; MO# 4500065255]

Notice of Availability Las Vegas and Pahrump Field Offices Draft Resource Management Plan and Draft Environmental Impact Statement, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared the Las Vegas and Pahrump Field Offices Draft Resource Management Plan (RMP)/Draft Environmental Impact Statement (EIS), for the Southern Nevada District Office, Las Vegas and Pahrump Field Offices, and by this notice is announcing the opening of the comment period on the Draft RMP/Draft EIS.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its notice of the Draft RMP/Draft EIS in the **Federal Register**. The BLM will announce any subsequent meetings or hearings and any other public participation activities related to the Draft RMP/Draft EIS at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS by any of the following methods:

- *Web site: https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=2900&dctmId=0b0003e88009debe*

- *Email: sndo_rmp_revision@blm.gov*
- *Fax:* 702–515–5023
- *Mail:* BLM Southern Nevada District Office, Las Vegas/Pahrump Field Offices Draft RMP/Draft EIS, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

Copies of the Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS are available in the Southern Nevada District Office at the above address or on the following Web site *https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=2900&dctmId=0b0003e88009debe*

FOR FURTHER INFORMATION CONTACT: Lee Kirk, RMP Team Lead, telephone: 702–515–5026; address: 4701 N. Torrey Pines Drive, Las Vegas, NV 89130; email: *sndo_rmp_revision@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS would replace the existing 1998 Las Vegas Field Office RMP. The Draft RMP/Draft EIS was developed through a collaborative planning process. The Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS decision area encompasses approximately 3.1 million acres of public land administered by the BLM Southern Nevada District in Clark and Southern Nye counties, Nevada. It does not include private lands, State lands, Indian reservations, Federal lands not administered by BLM or lands addressed in the Red Rock Canyon National Conservation Area RMP (2005) and Sloan Canyon National Conservation Area RMP (2006).

The Las Vegas and Pahrump Field Offices Draft RMP/Draft EIS includes goals, objectives and management actions for protecting and preserving natural resources which includes air quality, soil and water resources, vegetation, fish and wildlife, special status species, wild horses and burros, wildland fire management, cultural and paleontological resources, visual resource values, and lands with wilderness characteristics. Multiple resource uses are addressed which include management and forage allocations for livestock grazing; delineation of lands open, closed, or subject to special stipulations or mitigation measures for minerals development; recreation and travel management designations; management of lands and realty actions, including delineation of avoidance and exclusion areas applicable to rights-of-ways (ROWs), land tenure adjustments, and solar and wind energy development. The planning effort will consider establishment of a national trail management corridor for the congressionally-designated Old Spanish National Historic Trail. Eligible river segments will be evaluated for suitability as components of the National Wild and Scenic River System and 23 new Areas of Critical Environmental Concern (ACECs) are proposed. The ACECs are proposed to protect natural and cultural resource values and traditional Native American use areas.

The Draft RMP/Draft EIS analyzes four management alternatives. Alternative 1 is the No Action Alternative, which is the continuation of current management in the existing 1998 RMP, as amended. This alternative describes the current goals and actions for management of resources and land uses in the planning area. The management direction could also be modified by current laws, regulations, and policies. Alternative 2 emphasizes the protection of the planning area's resource values while allowing commodity uses consistent with current laws, regulations, and policies. Management actions would emphasize resource values such as habitat for wildlife and plant species (including special status species), protection of riparian areas and water quality, preservation of ecologically important areas, maintenance of wilderness characteristics, and protection of scientifically important cultural and paleontological sites. Access to and development of resources within the planning area could occur with intensive management and mitigation of surface-disturbing and disruptive activities. Alternative 3 emphasizes a balance between resource protection and resource use, which provides opportunities to use and develop resources within the planning area while ensuring resource protection. Alternative 4 emphasizes opportunities to use and develop resources within the planning area. It would provide for motorized access and commodity production with minimal restrictions while providing protection of natural and cultural resources to the extent required by law, regulation, and policy. This alternative would largely rely on existing laws, regulations, and policies, rather than special management or special designations, to protect sensitive resources. The BLM Southern Nevada District's Office preferred alternative is Alternative 3.

Pursuant to 43 CFR 1610.7–2(b), this notice announces a concurrent public comment period for potential ACECs. There are 23 new ACECs proposed in Alternative 2, 20 new ACECs proposed in Alternative 3, and 4 new ACECs in Alternative 4. The ACECs are proposed to protect natural and cultural resource values and traditional Native American use areas. Alternatives 2, 3, and 4 all propose to remove the ACEC designations from the current Arden Historic Sites (1,443 Acres) and Crescent Townsite (436 acres) ACECs. Some of the existing ACECs are also proposed to be expanded or reduced in Alternatives 2, 3, and 4.

The new potential ACECs in Alternative 2 include: Bird Spring Valley (78,958 acres), Bitter Springs (61,733 acres), California Wash (11,998 acres), Gale Hills (3,865 acres), Grapevine Spring (85 acres), Hiko Wash (847 acres), Jean Lake (11,606 acres), Lava Dune (437 acres), Logandale (6,073 acres), Lower Mormon Mesa (46,956 acres), Mesa Milkvetch (9,183 acres), Moapa Mesquite (1,214 acres), Mt. Schrader (283 acres), Muddy Mountains (36,189 acres), Old Spanish Trail (49,828 acres), Pahrump Valley (36,823 acres), Perkins Ranch (408 acres), Sandy Valley (210 acres), Specter Hills (5,420 acres), Spirit Mountain (9,488 acres), Stewart Valley (5,204 acres), Stuart Ranch (278 acres), and Upper Las Vegas Wash (12,294 acres). Alternative 2 would also expand the following existing ACECs: Amargosa Mesquite (9,642 acres), Big Dune (2,455 acres), Keyhole Canyon (639 acres), Mormon Mesa (159,940 acres), Piute/Eldorado (347,630 acres), and Virgin River (8,500 acres). Alternative 2 would reduce the size of the following existing ACECs: Ash Meadows (37,273 acres), Gold Butte Part A (184,627 acres), Gold Butte Part B (116,575 acres), Rainbow Gardens (35,355 acres), and River Mountains (6,697 acres).

The new potential ACECs in Alternative 3 include: Bird Spring Valley (26,997 acres), Bitter Springs (61,733 acres), Gale Hills (3,865 acres), Grapevine Spring (85 acres), Hiko Wash (708 acres), Jean Lake (11,606 acres), Lava Dune (437 acres), Lower Mormon Mesa (42,905 acres), Mesa Milkvetch (3,512 acres), Moapa Mesquite (1,304 acres), Mt. Schrader (283 acres), Muddy Mountains (36,189 acres), Old Spanish Trail (33,831 acres), Pahrump Valley (21,232 acres), Perkins Ranch (408 acres), Specter Hills (5,420 acres), Spirit

Mountain (9,488 acres), Stewart Valley (3,248 acres), Stuart Ranch (278 acres), and Upper Las Vegas Wash (12,294 acres). Alternative 3 would also expand the following existing ACECs: Amargosa Mesquite (9,642 acres), Keyhole Canyon (639 acres), Mormon Mesa (167,888 acres), Piute/Eldorado (347,630 acres), and Virgin River (7,493 acres). Alternative 3 would reduce the size of the following existing ACECs: Ash Meadows (37,273 acres), Big Dune (1,589 acres), Gold Butte Part A (183,440 acres), Gold Butte Part B (116,733 acres), Rainbow Gardens (35,355 acres), and River Mountains (6,697 acres).

The new potential ACECs in Alternative 4 include: Grapevine Spring (85 acres), Jean Lake (9,138 acres), Perkins Ranch (408 acres), and Stuart Ranch (278 acres). Alternative 4 would also expand the following existing ACECs: Mormon Mesa (159,940 acres), Piute/Eldorado (338,767 acres), and Virgin River (7,493 acres). Alternative 4 would reduce the size of the following existing ACECs: Big Dune (428 acres), Gold Butte Part A (183,440 acres), Gold Butte Part B (116,733 acres), Rainbow Gardens (35,355 acres), and River Mountains (6,697 acres).

The following management prescriptions may apply to the individual ACECs under consideration, if formally designated: Avoid or exclude linear ROWs; avoid or exclude site-type ROWs; close to material site ROWs or only allow near Federal-aid highways; close to or place use constraints on fluid leasable mineral development; close to solid leasable mineral development; pursue withdrawal of locatable mineral development; close to saleable mineral development; close to livestock grazing; pursue reverting area within ACEC from a herd management area into a herd area; close to camping; exclude speed-based recreation events; exclude non-speed based recreation events; exclude commercial recreation activities; closed or limited to designated routes for motorized travel; place seasonal restrictions of ground disturbing actions; cap the amount of habitat disturbance allowed from Federal actions.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2

Marci Todd,

Associate State Director, Nevada.

[FR Doc. 2014–24135 Filed 10–9–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–SACR–13960; PX.PD108787G.00.1]

Environmental Assessment for the General Management Plan for Sand Creek Massacre National Historic Site, Colorado

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service has determined that an Environmental Assessment, rather than an Environmental Impact Statement, is the appropriate environmental documentation for the general management plan for Sand Creek Massacre National Historic Site. This determination is the result of evaluating public comments and considering the analysis required to adequately address environmental impacts in developing the General Management Plan.

FOR FURTHER INFORMATION CONTACT: Alexa Roberts, Superintendent, Sand Creek Massacre National Historic Site, P.O. Box 249, Eads, CO 81036. Telephone (719) 438–5916.

ADDRESSES: More information about the project can be obtained from the contact listed above or online at *http://parkplanning.nps.gov/sand.*

SUPPLEMENTARY INFORMATION: This general management plan will establish the overall direction for the national historic site, setting broad management goals for managing the area over the next 15 to 20 years. The General Management Plan was originally scoped as an Environmental Impact Statement. However, internal discussions and meetings, and comments received in written correspondence and public scoping sessions held in Colorado, Montana, Oklahoma, and Wyoming in 2008 and again in 2011 did not raise any concerns or issues that have the potential for controversial impacts. Most of the comments received in response to the preliminary alternatives newsletter agreed that the range of alternatives being considered is appropriate and did not identify any substantive issues or concerns.

The planning team has developed six alternatives (no-action and five action alternatives), none of which would result in substantial changes in the operation and management of the national historic site. The five action alternatives primarily focus on maintaining and protecting cultural and natural resources, and expanding interpretation and visitor opportunities where appropriate. Preliminary analysis of the alternatives revealed no major (significant) effects on the human environment or impairment of park resources and values.

For these reasons the National Park Service determined that the requisite conservation planning and environmental impact analysis necessary for updating the general management plan can appropriately be completed through preparation of an EA.

This draft general management plan/EA is expected to be distributed for public comment in the fall 2014. The National Park Service will notify the public about release of the draft general management plan/EA by public meetings, mail, local and regional media, Web site postings, and other means; all announcements will include information on where and how to obtain a copy of the EA, how to comment on the EA, and the length of the public comment period. Following due consideration of public comments and agency consults, at this time a decision is expected to be made in the winter 2014. The official responsible for the final decision on the GMP is the Regional Director; subsequently the responsible official for implementing the approved GMP is the Superintendent, Sand Creek Massacre National Historic Site.

Dated: October 1, 2014.

Sue E. Masica,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2014–24045 Filed 10–9–14; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–GWMP–16260; PX.XGWMP0400.00.1]

Final Environmental Impact Statement for the Dyke Marsh Restoration and Long-term Management Plan, George Washington Memorial Parkway, Virginia

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) for the Dyke Marsh Restoration and Long-term Management Plan at the George Washington Memorial Parkway (GWMP), Virginia. The FEIS provides a systematic analysis of alternatives for the restoration and long-term management of the tidal freshwater marsh and other associated wetland habitats lost or impacted in the Dyke Marsh Preserve on the Potomac River.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days from the date of publication of the Notice of Availability of the FEIS by the Environmental Protection Agency.

ADDRESSES: The FEIS is available in electronic format online at the NPS's PEPC Web site (*http://parkplanning.nps.gov/GWMP*). A limited number of hard copies of the FEIS are available at GWMP Park Headquarters, 700 George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. You may also request a hard copy by contacting Alex Romero, Superintendent of GWMP by telephone at (703) 289–2500.

FOR FURTHER INFORMATION CONTACT: Alex Romero, Superintendent, 700 George Washington Memorial Parkway, Turkey Run Park Headquarters, McLean, Virginia 22101; telephone (703) 289–2500.

SUPPLEMENTARY INFORMATION: The FEIS responds to, and incorporates as appropriate, agency and public comments received on the Draft Plan/Environmental Impact Statement (draft plan/EIS) which was available for public review from January 15, 2014 to March 18, 2014. A public meeting was held on February 26, 2014, to gather input on the draft plan/EIS. Over three hundred pieces of correspondence were received during the public review period. Agency and public comments and NPS responses are provided in Appendix D of the FEIS.

The FEIS analyzes two action alternatives and the no action alternative, as described below.

Alternative A: No Action—under this alternative, there would be no restoration. Current management of the marsh would continue, which includes providing basic maintenance related to the Haul Road, control of nonnative invasive plant species, ongoing interpretive and environmental education activities, scientific research projects, boundary marking, and enforcement of existing regulations. There would be no manipulation of the marsh other than emergency, safety-related, or limited improvements or maintenance actions. The destabilized marsh would continue to erode at an accelerated rate.

Alternative B: Hydrologic Restoration and Minimal Wetland Restoration—under alternative B, the focus is on the most essential actions to reestablish hydrologic conditions that shield the marsh from erosive currents and protect the Hog Island Gut channel and channel wall. A breakwater structure would be constructed on the south end of the marsh, in alignment with the northernmost extent of the historic promontory, and wetlands would be restored to strategic areas where the water is less than 4 feet deep. This alternative also includes fill of some deep channel areas near the breakwater. The final element of this alternative is the reestablishment of hydrologic connections to the inland side of the Haul Road to restore bottomland swamp forest areas that were cut off when the Haul Road was constructed. Approximately 30 acres west of the Haul Road could be influenced by tidal flows as a result. These actions would not necessarily happen in any particular order, and may be dictated by available funds. However, it is assumed that the breakwater would be constructed first. This alternative would create approximately 70 acres of various new wetland habitats and allow the continued natural accretion of soils and establishment of wetlands given the new hydrologic conditions.

Alternative C: Hydrologic Restoration and Fullest Possible Extent of Wetland Restoration (NPS Preferred Alternative)—under alternative C, the marsh would be restored in a phased approach up to the historic boundary of the marsh and other adjacent areas within NPS jurisdictional boundaries. Phased restoration would continue until a sustainable marsh is achieved and the overall goals of the project are met. The historic boundaries lie between the historic promontory and Dyke Island, the triangular island off the end of the Haul Road. The outer edges of the containment cell structures would be placed at the park boundary in the river.

The initial phase of this alternative would first establish a breakwater structure at the southern alignment of the historic promontory to provide immediate protection to Dyke Marsh from erosion. After the breakwater is established, the deep channel areas north of the historic promontory would be filled within the NPS boundary, and the marsh would be restored to the 4-foot contour at strategic locations to further reduce the risk of erosion and storm surges and promote sedimentation within the existing marsh. Afterwards, two cells would be constructed along the northern edge of the breakwater, restoring the original extent of the promontory's land mass.

All subsequent phases would establish containment cells out no further than the historic marsh boundary. The location of these cells would be prioritized based on the most benefits the specific locations could provide to the existing marsh. The timing of these subsequent phases and the size and number of cells built during these phases would be dependent upon available funds and materials.

In addition to the construction of containment cells, tidal guts would be cut into the restored marsh area that would be similar to the historical flow channels of the original marsh. This alternative, like Alternative B, would also introduce breaks in the Haul Road, returning tidal flows to approximately 30 acres west of the Haul Road, which would help to re-establish the historic swamp forest originally found on the site. Additional wetland may be restored south of the new breakwater to fill out the southernmost historic extent of the marsh. This area would not be protected from storms, and would be one of the last features implemented. In total, under this alternative, approximately 180 acres of various wetland habitats could be created.

Dated: July 23, 2014.

Lisa A. Mendelson-Ielmini,

Acting Regional Director, National Park Service, National Capital Region.

[FR Doc. 2014–24021 Filed 10–9–14; 8:45 am]

BILLING CODE 4310–DL–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–932]

Certain Consumer Electronics and Display Devices With Graphics Processing and Graphics Processing Units Therein: Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 4, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of NVIDIA Corporation of Santa Clara, California. A supplement to the complaint was filed on September 22, 2014. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain consumer electronics and display devices with graphics processing and graphics processing units therein by reason of infringement of certain claims of U.S. Patent No. 6,198,488 (''the '488 patent''); U.S. Patent No. 6,992,667 (''the '667 patent''); U.S. Patent No. 7,038,685 (''the '685 patent''); U.S. Patent No. 7,015,913 (''the '913 patent''); U.S. Patent No. 6,697,063 (''the '063 patent''); U.S. Patent No. 7,209,140 (''the '140 patent''); and U.S. Patent No. 6,690,372 (''the '372 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 6, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain consumer electronics and display devices with graphics processing and graphics processing units therein by reason of infringement of one or more of claims 1, 19, and 20 of the '488 patent; claims 1–29 of the '667 patent; claims 1–5, 7–19, 21–23, 25–30, 34–36, 38, 41–43 of the '685 patent; claims 5–8, 10, 12–20 and 24–27 of the '913 patent; claims 7, 8, 11–13, 16–21, 23, 24, 28, and 29 of the '063 patent; claims 1–10, 12, and 14 of the '140 patent; and claims 1–6, 9–16, and 19–25 of the '372 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

NVIDIA Corporation, 2701 San Tomas Expressway, Santa Clara, CA 95050.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., 1320–10 Seocho 2-dong, Seocho-gu, Seoul 137–965, Republic of Korea.

Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660.

Samsung Telecommunications America, LLC, 1301 Lookout Drive, Richardson, TX 75802.

Samsung Semiconductor, Inc., 3655 North First Street, San Jose, CA 95134.

Qualcomm, Inc., 5775 Morehouse Drive, San Diego, CA 92121.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 6, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–24201 Filed 10–9–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–933]

Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 5, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Valbruna Slater Stainless, Inc. of Fort Wayne, Indiana; Valbruna Stainless Inc., of Fort Wayne, Indiana; and Acciaierie Valbruna S.p.A. of Italy. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain stainless steel products, certain processes for manufacturing or relating to same and certain products containing same by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 6, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of, certain stainless steel products, certain processes for manufacturing or relating to same and certain products containing same by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Valbruna Slater Stainless, Inc., 2400 Taylor Street, Fort Wayne, IN 46802.

Valbruna Stainless Inc., 2400 Taylor Street, Fort Wayne, IN 46802.

Acciaierie Valbruna S.p.A., Viale della Scienza 25, Vicenza 36100 Italy.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Viraj Profiles Limited, 10, Imperial Chambers, 1st Floor, Wilson Road, Ballard Estate, Mumbai 400038, India.

Viraj Holdings P. Ltd., 78, Abdul Rehman Street, Chippi Chawl, Kalbadevi, Mumbai 400003, India.

Viraj—U.S.A., Inc., 100 Quentin Roosevelt Boulevard, Suite 505, Garden City, NY 11530.

Flanschenwerk Bebitz GmbH, Lebendorfer Straße 1, Könnern 06420, Germany.

Bebitz Flanges Works Pvt. Ltd., 140/2 Saravalli Village, Palghar Road, Boisar Dist Thane, Maharashtra, India.

Bebitz U.S.A., 100 Quentin Roosevelt Boulevard, Suite 505, Garden City, NY 11530.

Ta Chen Stainless Pipe Co., Ltd., No. 122, Yi-Lin Road, Rende Township, Tainan, 71752, Taiwan.

Ta Chen International, Inc., 5855 Obispo Avenue, Long Beach, CA 90805.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: October 6, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–24196 Filed 10–9–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–034]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 14, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–502 and 731–TA–1227 (Final)(Steel Concrete Reinforcing Bar from Mexico and Turkey). The Commission is currently scheduled to complete and file its

determinations and views of the Commission on October 23, 2014.

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 7, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–24313 Filed 10–8–14; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[Docket No. ODAG 151]

Notice of Federal Advisory Committee Meeting

AGENCY: Department of Justice.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice announces a forthcoming public meeting of the National Commission on Forensic Science.

DATES: The meeting will be held on October 28, 2014, from 12:30 p.m. to 5:30 p.m. and October 29, 2014 from 9:00 a.m. to 5:30 p.m. Online registration for the meeting must be completed on or before 5:00 p.m. (EST) October 24, 2014. Electronic comments on subcommittee draft work products must be submitted on or before October 27, 2014. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

Location: Office of Justice Programs, 3rd floor ballroom, 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Brette Steele, Senior Forensic Science Advisor and Senior Counsel to the Deputy Attorney General, 950 Pennsylvania Avenue NW., Washington, DC 20530, by email at *Brette.L.Steele@usdoj.gov,* or by phone at (202) 305–0180.

SUPPLEMENTARY INFORMATION:

Agenda: On October 28, the Commission will receive a briefing from the Bureau of Justice Statistics regarding a proposal to survey law enforcement forensic science service providers. The Commission will also receive status reports, to include the introduction of any draft work products, from the Subcommittees on Accreditation and Proficiency Testing, Scientific Inquiry and Research, and Medicolegal Death Investigation. On October 29, the Commission will receive an update from the National Institute of Science and Technology (NIST) on the Organization of Scientific Area Committees and explore issues related to latent fingerprint interoperability of Automated Fingerprint Identification Systems (AFIS). The Commission will also receive status reports, to include the introduction of any draft work products, from the Subcommittees on Human Factors, Training on Science and Law, Interim Solutions, and Reporting and Testimony. The oral public comment period at the meeting will be open from 5:00–5:30 p.m. on October 29, 2014. Note: Agenda items, including designation of presentation dates are subject to change. A final agenda will be posted to the Commission's Web site in advance of the meeting.

Procedures: Draft work products to be introduced at the Commission meeting will be made available on the Commission's Web site: *http://www.justice.gov/ncfs.* The meeting will be webcast at: *http://stream.sparkstreetdigital.com/player-ce.html?id=doj-oct28.* The meeting will also be open to the public. Seating in the meeting room is limited and will be available on a first-come, first-served basis. All persons who are interested in being on-site for the meeting must register on-line at *http://conferences.csrincorporated.com* by using conference code: 2014–112P.

Members of the public may present oral comments on issues pending before the Commission. Those individuals interested in making oral comments should indicate their intent through the on-line registration form and time will be allocated on a first-come, first-served basis. Time allotted for an individual's comment period will be limited to no more than 3 minutes. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled public comment periods, written comments will be accepted in lieu of oral comments.

Posting of Public Comments: To ensure proper handling of comments, please reference ''Docket No. ODAG 151'' on all electronic and written correspondence. The Department encourages all comments on subcommittee work products be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record.

In accordance with the Federal Records Act, please note that all comments received are considered part of the public record, and shall be made available for public inspection online at *http://www.regulations.gov.* The comments to be posted may include personally identifiable information (such as your name, address, etc.) and confidential business information voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this meeting. Nevertheless, if you want to submit personally identifiable information (such as your name, address, etc.) as part of your comment, but do not want it to be made available for public inspection and posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment. You must also place all the personally identifiable information you do not want made available for public inspection or posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made available for public inspection and posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made available for public inspection or posted online.

Personally identifiable information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be made available for public inspection and posted on *http://www.regulations.gov.*

The Department of Justice welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations, please indicate your requirements on the online registration form.

Dated: October 7, 2014.

James M. Cole,

Deputy Attorney General.

[FR Doc. 2014–24232 Filed 10–9–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1675]

NIJ STANDARD 0117.01 Public Safety Bomb Suit Standard

AGENCY: National Institute of Justice, OJP, DOJ.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public the draft:

NIJ STANDARD 0117.01 *Public Safety Bomb Suit Standard For Law Enforcement and Public Safety.*

The opportunity to provide comments on these documents is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *https://justnet.org/app/publiccomment/default.aspx?Id=12*

DATES: The comment period will be open until November 24, 2014.

FOR FURTHER INFORMATION CONTACT: David Otterson, by telephone at 301–240–6754, or by email at *David.M.Otterson@lmco.com*

William J. Sabol,

Acting Director, National Institute of Justice.

[FR Doc. 2014–24249 Filed 10–9–14; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–097)]

Notice of Intent To Grant Exclusive Research License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Exclusive Research License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, research only license in the United States to evaluate the invention described and claimed in U.S. Patent Application No. 13/895,717, NASA Case No. KSC–13579, entitled ''Treatment System and Method for Removing Halogenated Compounds from Contaminated Systems,'' to Etana, LLC, having its principal place of business at 424 Copeland Street, Jacksonville, Florida 32235. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive, research only license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive research license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive, research only license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, Florida 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Shelley Ford, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, Florida 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–24221 Filed 10–9–14; 8:45 am]

BILLING CODE 7510–13–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Notice of HIDTA Designations

Heading: Designation of 26 Counties/Cities as High Intensity Drug Trafficking Areas.

SUMMARY: The Director of the Office of National Drug Control Policy designated 26 additional counties/cities as High Intensity Drug Trafficking Areas (HIDTA) pursuant to 21 U.S.C. 1706. The new counties/cities are (1) Madison and Nelson Counties in Kentucky, Tazewell County in Virginia, and Harrison County in West Virginia as part of the Appalachia HIDTA; (2) Pasco County in Florida as part of the Central Florida HIDTA; (3) Trinity and Siskiyou Counties in California as part of the Central Valley California HIDTA; (4) Brazoria County in Texas as part of the Houston HIDTA; (5) Rockingham County in New Hampshire as part of the New England HIDTA; (6) Chautauqua, Dutchess, Putnam, and Rockland Counties in New York as part of the New York/New Jersey HIDTA; (7) Ada and Canyon Counties in Idaho, and Malheur County in Oregon as part of the Oregon HIDTA; (8) Gallatin County in Montana as part of the Rocky Mountain HIDTA; (9) Potter and Randall Counties in Texas as part of the Texoma HIDTA; and (10) Berkeley County in West Virginia and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach in Virginia as part of the Washington/Baltimore HIDTA.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to Michael K. Gottlieb, National HIDTA Program Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 395–4868.

Dated: September 29, 2014.

Submitted October 6, 2014.

Daniel Rader,

Deputy General Counsel.

[FR Doc. 2014–24176 Filed 10–9–14; 8:45 am]

BILLING CODE 3280–F5–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times:

October 22, 2014; 6:00 p.m.–9:00 p.m.
October 23, 2014; 8:00 a.m.–9:30 p.m.
October 24, 2014; 8:00 a.m.–3:30 p.m.

Place: Norfolk State University, Norfolk, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Charles Bouldin, Program Director, Partnership for Research and Education in Materials Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4920.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Partnerships for Research and Education in Materials (PREM).

Agenda

Wednesday, October 22, 2014

6–9 p.m. Executive Session and Dinner for Site Visit Team—(Closed)

Thursday, October 23, 2014

8:00 a.m.–8:30 a.m. Executive session—(Closed)
8:30 a.m.–4:30 p.m. Presentations by PREM Director, co-PIs, Institutional Representatives and program participants (Open)
4:30 p.m.–6:30 p.m. Executive Session for Site Visit Team—(Closed)
6:30 p.m.–9:00 p.m. Dinner for Panel and Faculty—(Open)

Friday, October 24, 2014

8:00 a.m.–3:00 p.m. Executive Session and Director's Response to Feedback, Debriefing with PREM Director and co-PIs—(Closed)

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 6, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–24161 Filed 10–9–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Plan for Generic Information Collection Activity: Submission for OMB Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing it is submitting a plan for an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act.

This ICR Plan describes various evaluation forms the NTSB plans to use to obtain feedback from attendees of various NTSB training programs. Feedback from attendees is important to the NTSB in ensuring the NTSB's training courses and programs are helpful to attendees in their places of employment; and useful to attendees who participate in NTSB investigations and other related agency matters. This ICR Plan is the second notice, as required by OMB regulations concerning approvals of information collections. This notice again describes the nature of the information collection and its expected burden and advises the public it may submit comments on this proposed information collection to the OMB desk officer for the NTSB.

DATES: Submit written comments regarding this proposed plan for the collection of information by November 10, 2014.

ADDRESSES: Interested members of the public may submit written comments on the collection of information to the OMB Desk Officer for the NTSB at Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, or via fax: 202–395–5806, (this is not a toll-free number), or email: *OIRA-submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the National Transportation Safety Board Training Center, 45065 Riverside Parkway, Ashburn, Virginia 20147.

FOR FURTHER INFORMATION CONTACT: James Pritchert, NTSB Training Officer, at (571) 223–3927.

SUPPLEMENTARY INFORMATION: In accordance with OMB regulations that require this Notice for proposed ICRs, as well as OMB guidance concerning generic approval of plans for information collections, the NTSB herein notifies the public that it may submit comments on this proposed ICR Plan to the OMB Desk Officer for the NTSB. 5 CFR 1320.10(a). Section 1320.10(a) requires this ''notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [NTSB].'' Pursuant to § 1320.10(a), the NTSB will provide a copy of this notice to OMB.

On March 13, 2014, the NTSB published a Notice requesting comments for this ICR. 79 FR 14302–02. The NTSB did not receive any comments in response to the request.

A. NTSB Training Center Evaluation Forms Are Appropriate for Generic Approval

On May 28, 2010, Administrator, Office of Information and Regulatory Affairs (OIRA), OMB, issued a memorandum to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, providing instructions concerning how agencies can obtain generic OMB clearances for information collections in certain circumstances. *Paperwork Reduction Act—Generic Clearances, available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5–28–2010.pdf.* The memorandum states as follows concerning the appropriateness of obtaining such clearances:

> A generic ICR is a request for OMB approval of a plan for conducting more than one information collection using very similar methods when (1) the need for and the overall practical utility of the data collection can be evaluated in advance, as part of the review of the proposed plan, but (2) the agency cannot determine the details of the specific individual collections until a later time.

The NTSB's desire to obtain information immediately following a training course will assist the NTSB Training Center in developing courses to achieve the NTSB's objective of improving investigators' and transportation industry peers' practices of accident investigation. The mission of the NTSB Training Center, in accordance with 49 U.S.C. 1113(b)(1)(I), is to promote safe transport by:

- Ensuring and improving the quality of accident investigation through critical thought, instruction, and research;
- Communicating lessons learned, fostering the exchange of new ideas and new experience, and advocating operational excellence;
- Providing a modern platform for accident reconstruction and evaluation; and
- Utilizing its high-quality training resources to facilitate family assistance and first responder programs, sister agency instruction, and other compatible federal activity.

In administering training courses designed to achieve these objectives, the NTSB seeks to maintain a standard of excellence. The NTSB's goal of providing materials, instructors, methods of instruction, and facility arrangements that are a worthy expenditure of Federal funds will

require the NTSB to obtain feedback on the training courses from attendees.

This type of information collection is appropriate for generic approval under the OIRA Administrator's guidance. The NTSB periodically changes the identification numbers and subject matter addressed in NTSB training courses. Such variance renders generic approval appropriate. By distributing evaluation forms, the NTSB will gather feedback concerning whether attendees found the instructor knowledgeable and helpful; whether the course materials were appropriate; the location and course facilities; the ''case studies'' discussed in the course; and other similar topics. Each course evaluation form will include some course-specific questions. Responses to such evaluations will assist the NTSB in ensuring its courses work to fulfill the goals listed above.

Currently, the NTSB offers the following training courses, about which the NTSB seeks approval for evaluation forms: Accident Investigation Orientation (RPH301); Aircraft Accident Investigation (AS101); Aircraft Accident Investigation for Aviation Professionals (AS 301); Cognitive Interviewing Series (IM401S); Family Assistance (TDA301); Investigating Human Fatigue Factors (IM303); Managing Communications During an Aircraft Accident or Incident (PA302); Managing Communications Following a Major Transportation Accident (PA303); Managing Transportation Mass Fatality Incidents (TDA406); Marine Accident Investigation (MS101); Mass Fatality Incidents for Medicolegal Professionals (TDA403); Rotorcraft Accident Investigation (AS102); and Survival Factors in Aviation Accidents (AS302). In response to attendee feedback, requests for training in specific areas, and other considerations, the NTSB will likely add or remove classes from this list in the coming years.

The NTSB will tailor each evaluation form to ensure it requests feedback specific to the particular course of which the NTSB seeks evaluation. Consistent with the OIRA Administrator's guidance concerning generic approvals, the NTSB will not be able to finalize draft evaluations specific to each course until the NTSB offers the course. These types of questions are unique to the specific course, and impossible to know prior to the offering of the course. Overall, the types of information the NTSB will solicit in its Training Center course evaluations is appropriate for a generic approval for the information collection.

B. Supporting Statement

The OIRA Administrator's memorandum instructs agencies to provide specific information in the supporting statements describing the information collections. In particular, the supporting statements should include the following:

- The method of collection and, if statistical methods will be used, a discussion of the statistical methodology;
- The category (or categories) of respondents;
- The estimated ''burden cap,'' i.e., the maximum number of burden hours (per year) for the specific information collections, and against which burden will be charged for each collection actually used;
- The agency's plans for how it will use the information collected;
- The agency's plans to obtain public input regarding the specific information collections (i.e., consultation); and
- The agency's internal procedures to ensure that the specific collections comply with the PRA, applicable regulations, and the terms of the generic clearance.

Id. at 2.

1. Method of Collection

The NTSB will collect the information by transmitting the evaluation form to attendees of each Training Center course. Depending on the circumstances, such transmission may occur via hand delivery, electronic mail, postal mail, or express mail, or a combination of these methods. Respondents will be provided instructions concerning how to return questionnaires to the Training Center.

The NTSB will not use statistical methodology in reaching any conclusions based on the evaluations. Instead, the NTSB merely will note the total number of respondents in any documents in which it discusses the evaluations.

Respondents' completion of the evaluations is voluntary, and the NTSB generally will not contact them more than once to request completion of the evaluation.

2. Category of Respondents

In its evaluation forms, the NTSB will generally seek information only from attendees of each course. The NTSB will have the contact information for each attendee, because such information is required when registering for Training Center courses.

3. Maximum Burden Hours

The NTSB plans to distribute the evaluations to attendees of each Training Center course. The NTSB offers 12 different courses per year and provides a repeated program for those courses with the highest attendance levels. Among all courses, the NTSB estimates a total of 600 non-Government attendees complete courses in any given year. As a result, the NTSB estimates it will distribute approximately 600 Training Center evaluation forms each year. Each evaluation form will take approximately 11 minutes to complete.

The NTSB seeks to emphasize these estimations are approximate, as they are depend on the number of courses the NTSB offers in the Training Center. Some courses may be cancelled due to low registration. In addition, only Government employees may choose to attend other courses. As a result, the NTSB can only provide an approximate estimate of the number of attendees per year.

4. Use of the Information Collected

Feedback from attendees of NTSB Training Center courses is extremely important to the NTSB. The NTSB plans its course offerings based on the level of interest from potential attendees and on the degree to which attendees have found useful the information they learned during such courses. As a result, evaluations of NTSB Training Center courses will influence future course offerings. The NTSB will rely upon the provision of completed course evaluations to assist with the planning of course offerings.

5. Public Input Regarding the Information Collected

The NTSB does not generally obtain public input concerning the scope of, or specific questions on, NTSB Training Center evaluation forms.

6. Internal Procedures

Lastly, the OIRA Administrator's memorandum describing generic clearances recommends agencies describe the procedures it will undertake to ensure information collections to which the generic clearance applies will comply with the Paperwork Reduction Act, applicable regulations, and the terms provided in the generic clearance. The NTSB Office of General Counsel plans to provide internal guidance to agency personnel who offer courses and distribute course evaluations at the NTSB Training Center. Such guidance will include this publication, as well as the OIRA Administrator's memorandum discussing generic clearances, upon OMB approval of the clearance. The internal guidance will include specific instructions concerning use of evaluation forms, and explain the applicable provisions of the Paperwork Reduction Act and its implementing regulations.

C. Description of Burden

The NTSB has carefully reviewed previous questionnaires it has used to obtain information from attendees of courses the NTSB Training Center offers. The NTSB assures the public that these questionnaires have used plain, coherent, and unambiguous terminology in its requests for feedback. In addition, the questionnaires are not duplicative of other agencies' collections of information, because the NTSB maintains unique authority to offer such courses concerning investigations of transportation events. 49 U.S.C. 1113(b)(1)(I).

In general, the NTSB believes the evaluation forms will impose a minimal burden on respondents: As indicated above, the NTSB estimates that each respondent will spend approximately 11 minutes in completing the evaluation. The NTSB estimates that a maximum of 240 respondents per year would complete an evaluation. Although the NTSB may distribute evaluations to perhaps as many as 600 people, historic response rates indicate only 40 percent of the evaluations will be returned completed. However, the NTSB again notes this number will vary, given the changes in course offerings at the NTSB Training Center.

D. Request for Comments

In accordance with 44 U.S.C. 3506(c)(2)(A), the NTSB seeks feedback from the public concerning this proposed plan for information collection. In particular, the NTSB asks the public to evaluate whether the proposed collection of information is necessary; to assess the accuracy of the NTSB's burden estimate; to comment on how to enhance the quality, utility, and clarity of the information to be collected; and to comment on how the NTSB might minimize the burden of the collection of information.

The NTSB will carefully consider all feedback it receives in response to this notice. As described above, obtaining the information the NTSB seeks on these evaluations in a timely manner is important to course offerings at the NTSB Training Center; therefore, obtaining approval from OIRA for these collections of information on a generic basis is a priority for the NTSB.

Dated: October 6, 2014.

Christopher A. Hart,

Acting Chairman.

[FR Doc. 2014–24234 Filed 10–9–14; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0134]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 2, 2014.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 36, ''Licenses and Radiation Safety Requirements for Irradiators.''

3. *Current OMB approval number:* 3150–0158.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

6. *An estimate of the number of annual responses:* 1,911.28 (7.28 for reporting [1.04 NRC licensee and 6.24 Agreement State licensees], 56 for recordkeepers [8 NRC licensees and 48 Agreement State Licensees], and 1,848 for third-party disclosures [264 NRC licensees and 1,584 Agreement State licensees]).

7. *The estimated number of annual respondents:* 56 (8 NRC licensees and 48 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 34,048 hours (4,864 NRC licensee hours + 29,184 Agreement State licensee hours).

9. *Abstract:* Part 36 of Title 10 of the *Code of Federal Regulations* (10 CFR), contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it does not pose any danger to the health and safety of the general public and the irradiator employees.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 10, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Vlad_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 7th day of October, 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24252 Filed 10–9–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. RM2015–1; Order No. 2206]

Semi-Permanent Exception From Periodic Reporting of Service Performance Measurement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a semi-permanent exception from periodic reporting of service performance measurement for Alaska Bypass Service. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 31, 2014. *Reply Comments are due:* November 14, 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

On October 1, 2014, the Postal Service filed a request for a semi-permanent exception from periodic reporting of service performance measurement for Alaska Bypass Service pursuant to 39 CFR 3055.3.[1]

Section 3055.3 provides that the Postal Service may request that a product, or a component of a product, be excluded from service performance measurement reporting upon demonstrating that:

1. The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;
2. The product, or component of a product, defies meaningful measurement; or
3. The product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

The Postal Service contends that the cost of implementing a measurement system would be prohibitive in relation to the revenue generated by Alaska Bypass Service and thus falls within the 39 CFR 3055.3(a)(1) exclusion. Request at 9–11.

II. Notice of Commission Action

The Commission establishes Docket No. RM2015–1 for consideration of matters related to the proposed semi-permanent exception from periodic reporting of service performance measurement of Alaska Bypass Service.

Interested persons may submit comments on whether the Postal Service's Request is consistent with the policies of 39 U.S.C. 3652(a)(2) and 39 CFR 3055.3. Comments are due no later than October 31, 2014. Reply comments are due no later than November 14, 2014. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov).*

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as a Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission established Docket No. RM2015–1 for consideration of matters raised by the Postal Service's Request.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 31, 2014.

4. Reply comments are due no later than November 14, 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. 2014–24189 Filed 10–9–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] United States Postal Service Request for Semi-Permanent Exception from Periodic Reporting of Service Performance Measurement for Alaska Bypass Service, October 1, 2014 (Request).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31276; File No. 812–14177]

DBX ETF Trust, et al.; Notice of Application

October 6, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

Applicants: DBX ETF Trust and db-X Exchange-Traded Funds Inc. (collectively, the ''Trusts''), DBX Advisors LLC and DBX Strategic Advisors LLC (collectively, the ''Initial Advisers''), and ALPS Distributors, Inc. (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on July 17, 2013, and amended on July 25, 2014, September 24, 2014, and October 3, 2014.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests

should be received by the Commission by 5:30 p.m. on October 31, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: the Trusts and the Initial Advisers, 60 Wall Street, New York, New York 10005; the Distributor, 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel at (202) 551–6819, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. DBX ETF Trust is organized as a Delaware statutory trust, and db-X Exchange-Traded Funds Inc. is organized as a Maryland corporation. Each Trust is registered under the Act as an open-end management investment company with multiple series.

2. The Initial Advisers are registered as investment advisers under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will be the investment advisers to the Funds (defined below). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. Each Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. Each Trust will enter into a distribution agreement with the Distributor. The distributor for the Initial Funds will be ALPS Distributors, Inc. The Distributor is a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as distributor and principal underwriter of one or more of the Funds. The distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Fund's Adviser and/or Sub-Advisers. No distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the initial series of the DBX ETF Trust described in the application (''Initial Funds''), as well as any additional series of the Trusts and other open-end management investment companies, or series thereof, that may be created in the future (''Future Funds''), each of which will operate as an exchanged-traded fund (''ETF'') and will track a specified index that includes both long and short positions or uses a 130/30 investment strategy and is comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index'').[1] Any Future Fund will (a) be advised by the Initial Advisers or an entity controlling, controlled by, or under common control with the Initial Advisers (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Initial Fund and Future Funds, together, are the ''Funds.''[2]

5. Applicants state that a Fund may operate as a feeder fund in a master-feeder structure (''Feeder Fund''). Applicants request that the order permit a Feeder Fund to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) of the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act (''Master-Feeder Relief''). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.[3] There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund, or its respective Master Fund, will hold certain securities, currencies, other assets and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes that will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

7. Applicants represent that each Fund, or its respective Master Fund, will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[4] and in the case of Foreign Funds, Component Securities and Depositary Receipts[5] representing

[1] Certain of the applicants received a prior order with respect to the offering of index-based exchange-traded funds. In the Matter of HealthShares, Inc., et al., Investment Company Act Release Nos. 27553 (Nov. 16, 2006) (notice) and 27594 (Dec. 7, 2006) (order); In the Matter of HealthShares, Inc., et al., Investment Company Act Release Nos. 27916 (July 27, 2007) (notice) and 27930 (Aug. 20, 2007) (order); and In the Matter of X Exchange-Traded Funds, Inc., et al., Investment Company Act Release Nos. 28766 (June 11, 2006) (notice) and 28814 (July 7, 2009) (order) (collectively, the ''Prior Order''). The Prior Order does not apply to Long/Short Funds and 130/30 Funds (each as defined herein), and the order requested herein by applicants will only cover Long/Short Funds and 130/30 Funds.

[2] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[3] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

[4] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[5] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds, or their respective Master Funds, may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund, or its respective Master Fund, will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the

Component Securities. Each Fund, or its respective Master Fund, may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the applicable Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

8. Funds will seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[6] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, the Adviser for each Fund will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's, or its respective Master Fund's, Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[7] The information provided on the Web site will be formatted to be reader-friendly.

9. A Fund, or its respective Master Fund, will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund, or its respective Master Fund, using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund, or its respective Master Fund, using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund, or its respective Master Fund, using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

10. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the applicable Adviser, which will have a licensing agreement with such Index Provider.[8] A ''Self-Indexing Fund'' is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trusts or a Fund, of the Advisers, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[9] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of a Trust or a Fund, of an Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

11. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated. Prior orders granted to self-indexing ETFs (''Prior Self-Indexing Orders'') addressed these concerns by creating a framework that required: (i) Transparency of the Underlying Indexes; (ii) the adoption of policies and procedures not otherwise required by the Act designed to mitigate such conflicts of interest; (iii) limitations on the ability to change the rules for index compilation and the component securities of the index; (iv) that the index provider enter into an agreement with an unaffiliated third party to act as ''Calculation Agent''; and (v) certain limitations designed to separate employees of the index provider, adviser and Calculation Agent (clauses (ii) through (v) are hereinafter referred to as ''Policies and Procedures'').[10]

12. Instead of adopting the same or similar Policies and Procedures, Applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds, and their respective Master Funds, to maintain full portfolio transparency will provide an effective alternative mechanism for addressing any such potential conflicts of interest.

13. Applicants represent that each Self-Indexing Fund's Portfolio Holdings will be as transparent as the portfolio holdings of existing actively managed

depositary bank for any Depositary Receipts held by a Fund, or its respective Master Fund.

[6] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[7] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[8] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[9] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser ''Affiliated Accounts'' as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[10] *See, e.g.,* In the Matter of WisdomTree Investments Inc., et al., Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (June 12, 2006) (order); In the Matter of IndexIQ ETF Trust, et al., Investment Company Act Release Nos. 28638 (Feb. 27, 2009) (notice) and 28653 (March 20, 2009) (order); and Van Eck Associates Corporation, et al., et al., Investment Company Act Release Nos. 29455 (Oct. 1, 2010) (notice) and 29490 (Oct. 26, 2010) (order).

ETFs. Applicants observe that the framework set forth in the Prior Self-Indexing Orders was established before the Commission began issuing exemptive relief to allow the offering of actively managed ETFs.[11] Unlike passively managed ETFs, actively managed ETFs do not seek to replicate the performance of a specified index but rather seek to achieve their investment objectives by using an ''active'' management strategy. Applicants contend that the structure of actively managed ETFs presents potential conflicts of interest that are the same as those presented by Self-Indexing Funds because the portfolio managers of an actively managed ETF by definition have advance knowledge of pending portfolio changes. However, rather than requiring Policies and Procedures similar to those required under the Prior Self-Indexing Orders, Applicants believe that actively managed ETFs address these potential conflicts of interest appropriately through full portfolio transparency, as the conditions to their relevant exemptive relief require.

14. In addition, Applicants do not believe the potential for conflicts of interest raised by an Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds, their respective Master Funds, and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[12]

15. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds, their respective Master Funds, and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, each Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person (''Inside Information Policy''). Any Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [13] and Inside Information Policy of each Adviser and Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit [14] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. Each Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

16. To the extent the Self-Indexing Funds or their respective Master Funds transact with an Affiliated Person of an Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, an Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by an Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

17. In light of the foregoing, Applicants believe it is appropriate to allow the Self-Indexing Funds and their respective Master Funds to be fully transparent in lieu of Policies and Procedures from the Prior Self-Indexing Orders discussed above.

18. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[15] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) [16] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that

[11] *See, e.g.,* In the Matter of Huntington Asset Advisors, Inc., et al., Investment Company Act Release Nos. 30032 (April 10, 2012) (notice) and 30061 (May 8, 2012) (order); In the Matter of Russell Investment Management Co., et al., Investment Company Act Release Nos. 29655 (April 20, 2011) (notice) and 29671 (May 16, 2011) (order); In the Matter of Eaton Vance Management, et al., Investment Company Act Release Nos. 29591 (March 11, 2011) (notice) and 29620 (March 30, 2011) (order) and; In the Matter of iShares Trust, et al., Investment Company Act Release Nos. 29543 (Dec. 27, 2010) (notice) and 29571 (Jan. 24, 2011) (order).

[12] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[13] Each Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[14] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

[15] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[16] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

are not tradeable round lots;[17] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[18] will be excluded from the Deposit Instruments and the Redemption Instruments;[19] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[20] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

19. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[21] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[22]

20. Creation Units will consist of specified large aggregations of Shares, e.g., at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' i.e., a broker-dealer or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

21. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

22. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.[23] In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[24] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of

[17] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[18] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[19] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[20] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (as defined below) on a given Business Day.

[21] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[22] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[23] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[24] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

the instructions given to the applicable Fund to implement the delivery of its Shares.

23. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

24. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[25] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

25. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

26. Neither the Trusts nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.[26] Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different

[25] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

[26] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for the underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.[27] Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.[28]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.[29]

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Advisers and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[30] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the

[27] Certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

[28] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[29] In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

[30] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[31]

[31] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund, nor its respective Master Fund, will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by an Adviser or an entity controlling, controlled by or under common control with an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

21. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more

Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

22. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

23. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[32] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[33] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds, and the proposed transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief, other than the section 12(d)(1) Relief and the section 17 relief related to a master-feeder structure, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, Shares of such Fund will be listed on an Exchange.

3. Neither the Trusts nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Fund will post on the Web site on each Business Day, before

[32] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[33] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

commencement of trading of Shares on the Exchange, the Fund's, or its respective Master Fund's, Portfolio Holdings.

6. Neither Adviser nor any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund, or its respective Master Fund, through a transaction in which the Self-Indexing Fund, or its respective Master Fund, could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund, or its respective Master Fund, for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund, or its respective Master Fund, or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund, or its respective Master Fund, or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, or its respective Master Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund, or its respective Master Fund, to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund, or its respective Master Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, or its respective Master Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–1 under the Act) received from a Fund, or its respective Master Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund, or its respective Master Fund, by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, or its respective Master Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund, or its respective Master Fund, in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund, or its respective Master Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund, or its respective Master Fund, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund, or its respective Master Fund, will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in

which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund, or its respective Master Fund, will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent (i) the Fund, or its respective Master Fund, acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24209 Filed 10–9–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73302; File No. SR–NYSEMKT–2014–85]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change That Constitutes a Stated Interpretation With Respect to the Meaning, Administration, and Enforcement of Rule 46—Equities

October 6, 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 October 2, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change that constitutes a stated interpretation with respect to the meaning, administration, and enforcement of Rule 46—Equities. The Exchange is not proposing any changes to the text of the current version of Rule 46– Equities. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE MKT LLC (''NYSE MKT'' or the ''Exchange'') proposes a rule change that constitutes a stated interpretation with respect to the meaning, administration, and enforcement of Rule 46—Equities (''Rule 46'') in connection with the transfer of qualified Intercontinental Exchange, Inc. (''ICE'') staff Floor Governors to NYSE Regulation, Inc. (''NYSE Regulation'').

Rule 46 permits the Exchange to appoint active NYSE MKT members [4] as Floor Officials.[5] Rule 46 also permits the Exchange to appoint ''qualified'' ICE employees to act as Floor Governors, one of the more senior types of Floor Officials.[6] Supplementary Material .10

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 2(a)—Equities states that the term ''member,'' when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Exchange trading Floor or any facility thereof.

[5] Floor Officials are delegated certain authority from the Board of Directors of the Exchange to supervise and regulate active openings and unusual situations that arise in connection with the making of bids, offers or transactions on the trading Floor, and to review and approve certain trading actions, such as trades to be effected at wide variations in price and delayed openings and trading halts.

[6] Pursuant to Rules 46 and 46A—Equities, Floor Governors are one of several ranks of the broader category of Floor Officials, including, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors. *See* Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2008–19) (discussing New York Stock Exchange LLC (''NYSE'') Rules 46 and 46A that NYSE MKT adopted following the NYSE's acquisition of the

Continued

defines ''qualified'' employees as ''employees of ICE or any of its subsidiaries, excluding employees of NYSE Regulation, Inc., who shall have satisfied any applicable testing or qualification required by the Exchange for all Floor Governors.''

The prohibition on appointing NYSE Regulation employees to act as Floor Governors was put in place when the ''qualified Exchange employee'' category of Floor Official was adopted in 2008.[7] The prohibition was necessary to avoid potential conflicts of interest insofar as the process for qualifying Floor Officials, including Floor Governors, was performed by NYSE Regulation.[8] However, while Rule 46 prohibits appointment of NYSE Regulation employees to act as Floor Governors, the Exchange believes that the Rule does not prohibit already qualified Floor Governors from becoming NYSE Regulation employees. The hiring by NYSE Regulation of ICE employees or members who are already qualified to act as Floor Governors would not involve NYSE Regulation in qualifying those individuals to act as Floor Governors under Rule 46 and would therefore not give rise to the real or apparent conflict of interest the prohibition was intended to avoid.

The Exchange believes that the proposed interpretation would facilitate the contemplated transfer of existing ICE staff Floor Governors to NYSE Regulation. The individuals that would transfer to NYSE Regulation are experienced former Floor members who served as senior-level Floor Officials before becoming employees of ICE and are already qualified and have been appointed to act as staff Floor Governors. Because NYSE Regulation is not proposing to qualify additional staff not already approved as Floor Governors, the Exchange believes there would be no violation of Rule 46.

In addition, the interpretation does not in any way affect the role of Floor Officials or alter the safeguards in place to ensure that staff Floor Governors are knowledgeable and able to effectively intervene when needed on the Exchange trading Floor.[9] Finally, NYSE Regulation does not propose to seek to qualify existing NYSE Regulation employees as staff Floor Governors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposed stated interpretation helps prevent fraudulent and manipulative acts and practices by continuing to require high standards for qualified Exchange employees to act as Floor Governors in addition to members. Similarly, the proposed stated interpretation promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by ensuring that qualified Exchange employees are knowledgeable and able to effectively intervene on the Exchange trading Floor as needed. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to effect a change that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and therefore would not impose any burden on competition.

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 has become effective pursuant to Section 19(b)(3)(A) [12] of the Act and Rule 19b–4(f)(1) [13] thereunder. The proposed rule change effects a change that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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–NYSEMKT–2014–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–85. 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

Exchange. *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 46075 (July 30, 2008) (SR–Amex–2008–63)).

[7] *See* Securities Exchange Act Release No. 34–57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2007–2). As noted, NYSE's version of Rule 46 was later adopted by the Exchange.

[8] NYSE Regulation examined the fitness of prospective Floor Officials and administered a mandatory education program, which all candidates for Floor Official, including Floor Governor, had to complete. NYSE Regulation also administered a qualifying examination. *See* Securities Exchange Act Release No. 34–57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2007–2). NYSE Regulation performed these tasks for Exchange Floor Officials following the NYSE's acquisition of NYSE MKT in late 2008. On June 14, 2010, the Exchange, NYSE Regulation and FINRA [sic] retained the Financial Industry Regulatory Authority (''FINRA'') pursuant to a Regulatory Services Agreement (''RSA'') to perform the market surveillance, enforcement and other miscellaneous functions that up to that point had been performed by NYSE Regulation, including all education and testing-related regulatory services on behalf of NYSE Regulation, including the Floor Official mandatory education program and qualification testing. *See* Securities Exchange Act Release No. 62354 (June 22, 2010), 75 FR 36730 (June 28, 2010) (SR–NYSEAmex–2010–57).

[9] *See* Securities Exchange Act Release No. 34–57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2007–2) (discussing NYSE Rule later adopted by the Exchange). These safeguards include, among other things, that qualified Exchange employees, like qualified members, need to be appointed by the Exchange's chairman in consultation with the Executive Floor Governors and NYSE Regulation Board of Directors and approved by the Board of Directors.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

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–NYSEMKT–2014–85, and should be submitted on or before October 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24226 Filed 10–9–14; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73306; File No. SR–C2–2014–025]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

October 6, 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 September 30, 2014, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3] Specifically, the Exchange proposes to increase the Linkage Routing fee from $0.50 per contract to $0.65 per contract in addition to the applicable C2 taker fee. The Linkage Routing fee is assessed to all orders routed pursuant to the Options Order Protection and Locked/Crossed Market Plan, excluding Public Customer orders in equity option classes. The purpose of the proposed change is to cover increased costs associated with routing orders through Linkage and paying the transaction fees for such executions at other exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange's proposal to increase the Linkage Routing fee from $0.50 per contract to $0.65 per contract is reasonable because such increase will help offset the costs associated with routing orders through Linkage and paying the transaction fees for such executions at other exchanges. Additionally, the Exchange notes that if a non-customer market participant wishes to avoid the Linkage fee, it may choose to specify that C2 not route orders away on its behalf or designate the order as Immediate or Cancel, which would prevent the order from linking [sic] away to another Exchange [sic]. Moreover, a non-customer market participant may route directly to exchanges posting the best market if desired to avoid Linkage routing fees.

The Exchange next notes that this fee amount will be assessed to all orders routed via Linkage (excluding Public Customer orders in equity options classes). The Exchange believes that this proposed change is equitable and not unfairly discriminatory because non-customer (e.g., broker-dealer proprietary) orders originate from broker-dealers who are by and large more sophisticated than public customers and can readily control the exchange to which their orders are routed. While there may be some sophisticated customers who are capable of directing the exchange to which their orders are routed, generally, retail customers submit orders to their brokerages but do not or cannot specify the exchange to which a customer order is sent. Therefore, non-customer order flow can, in most cases, more easily route directly to other markets if desired and thus avoid Linkage routing fees. Therefore, it is equitable to assess a reasonable fee to cover the costs incurred for processing non-customer Linkage orders while continuing to exempt such Public Customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or

[3] C2 initially filed the proposed fee change on September 2, 2014 (SR–C2–2014–021). On September 10, 2014, C2 withdrew that filing and submitted filing SR–C2–2014–022. On September 18, 2014, C2 withdrew SR–C2–2014–022 and submitted SR–C2–2014–023. On September 30, 2014, C2 withdrew SR–C2–2014–023 and submitted this filing.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

appropriate in furtherance of the purposes of the Act. In particular, the increase to the Linkage Routing Fee will apply equally to all non-customers. Additionally, although different linkage fees are assessed to different market participants (i.e., non-customers vs public customers), as described above, non-customer order flow can, in most cases, more easily route directly to other markets if desired and thus avoid Linkage fees. Therefore, it is equitable to assess a reasonable fee to cover the costs incurred for processing non-customer Linkage orders while continuing to exempt such public customer orders. The Exchange believes that the proposal to increase the linkage fee amount assessed to non-customers will not cause an unnecessary burden on intermarket competition because although the total fee amount assessed to an order routed via Linkage (i.e., the Linkage Routing fee and applicable C2 taker fee) may not always be lower than assessed at other exchanges, non-customer market participants may, as noted above, choose to specify that C2 not route orders away on its [sic] behalf, designate the order as Immediate or Cancel, or route directly to exchanges posting the best market to avoid Linkage routing fees. To the extent that the proposed changes make C2 a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become C2 market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and paragraph (f) of Rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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–C2–2014–025 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–C2–2014–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–C2–2014–025, and should be submitted on or before October 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24207 Filed 10–9–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73303; File No. SR–NASDAQ–2014–096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Rule 7018 Fees

October 6, 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 September 29, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to modify NASDAQ Rule 7018 fees assessed for execution and routing securities listed on NASDAQ, the New York Stock Exchange (''NYSE'') and on exchanges other than NASDAQ and NYSE.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend Rules 7018(1), (2) and (3) to modify fees assessed for execution and routing securities listed on NASDAQ (''Tape C''), NYSE (''Tape A'') and on exchanges other than NASDAQ and the NYSE (''Tape B''), respectively. Currently under each of the rules noted above, the Exchange provides a credit of $0.0029 per share executed to a member with (i) shares of liquidity provided in all securities during the month representing more than 0.10% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Chapter XV, Section 2 of the Nasdaq Options Market rules, of 100,000 or more contracts per day in a month executed through one or more of its Nasdaq Options Market MPIDs. The Exchange has the same eligibility requirements for this credit tier and provides the same credit to members for each of the securities of the three Tapes under its rules.[3] NASDAQ is proposing to reduce the Consolidated Volume eligibility requirement of the tier from more than 0.10% to more than 0.08% for each type of security. The Exchange believes that the proposed lower Consolidated Volume requirement will encourage market participant activity and will also support price discovery and liquidity provision.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. This proposal is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

NASDAQ believes that the proposed rule changes to the rebate tiers through which members may earn a $0.0029 per share executed rebate are reasonable because they will continue to provide a significant price reduction for members that support liquidity on both NASDAQ and the Nasdaq Options Market, while reducing the Consolidated Volume requirement, which may provide incentive to market participants to increase their [sic] overall liquidity they provide in order to qualify for the credit. In addition, NASDAQ believes that the proposed rule changes are consistent with an equitable allocation of fees because they reflect an allocation of rebates to liquidity providers designed to encourage beneficial market activity, with greater incentives for market participants that provide greater liquidity.

NASDAQ believes that the proposed rule changes are not unfairly discriminatory because they apply uniformly to securities of each of the Tapes and all members that are eligible for the tier will receive the credit. NASDAQ also believes that the changes are not unfairly discriminatory because they increase the availability of higher rebates without eliminating any of the other means by which a member may earn a higher rebate under Rule 7018(a). Lastly, NASDAQ believes that the changes are not unfairly discriminatory because market participants may qualify for a comparable or a higher rebate through alternative means that do not require participation in Nasdaq Options Market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[6] NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the change to the routing credit tier does not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as the ability of members to develop their own routing capabilities. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2014–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–096. This

[3] *See* Rules 7018(a)(1), (2) and (3).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

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–NASDAQ–2014–096, and should be submitted on or before October 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24227 Filed 10–9–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73304; File No. SR–NYSE–2014–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change That Constitutes a Stated Interpretation With Respect to the Meaning, Administration, and Enforcement of Rule 46

October 6, 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 October 2, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change that constitutes a stated interpretation with respect to the meaning, administration, and enforcement of Rule 46. The Exchange is not proposing any changes to the text of the current version of Rule 46. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') proposes a rule change that constitutes a stated interpretation with respect to the meaning, administration, and enforcement of Rule 46 in connection with the transfer of qualified Intercontinental Exchange, Inc. (''ICE'') staff Floor Governors to NYSE Regulation, Inc. (''NYSE Regulation'').

Rule 46 permits the Exchange to appoint active NYSE members[4] as Floor Officials.[5] Rule 46 also permits the Exchange to appoint ''qualified'' ICE employees to act as Floor Governors, one of the more senior types of Floor Officials.[6] Supplementary Material .10 defines ''qualified'' employees as ''employees of ICE or any of its subsidiaries, excluding employees of NYSE Regulation, Inc., who shall have satisfied any applicable testing or qualification required by the NYSE for all Floor Governors.''

The prohibition on appointing NYSE Regulation employees to act as Floor Governors was put in place when the ''qualified Exchange employee'' category of Floor Official was adopted in 2008.[7] The prohibition was necessary to avoid potential conflicts of interest insofar as the process for qualifying Floor Officials, including Floor Governors, was performed by NYSE Regulation.[8] However, while Rule 46 prohibits appointment of NYSE Regulation employees to act as Floor Governors, the Exchange believes that the Rule does not prohibit already qualified Floor Governors from becoming NYSE Regulation employees. The hiring by NYSE Regulation of ICE employees or members who are already

[4] Rule 2(a) states that the term ''member,'' when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Exchange trading Floor or any facility thereof.

[5] Floor Officials are delegated certain authority from the Board of Directors of the Exchange to supervise and regulate active openings and unusual situations that arise in connection with the making of bids, offers or transactions on the trading Floor, and to review and approve certain trading actions, such as trades to be effected at wide variations in price and delayed openings and trading halts.

[6] Pursuant to Rules 46 and 46A, Floor Governors are one of several ranks of the broader category of Floor Officials, including, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors. *See* Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2008–19).

[7] *See* Securities Exchange Act Release No. 34–57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2007–2).

[8] NYSE Regulation examined the fitness of prospective Floor Officials and administered a mandatory education program, which all candidates for Floor Official, including Floor Governor, had to complete. NYSE Regulation also administered a qualifying examination. *See* Securities Exchange Act Release No. 34–57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2007–2). On June 14, 2010, the Exchange, NYSE Regulation and FINRA [sic] retained the Financial Industry Regulatory Authority (''FINRA'') pursuant to a Regulatory Services Agreement (''RSA'') to perform the market surveillance, enforcement and other miscellaneous functions that up to that point had been performed by NYSE Regulation, including all education and testing-related regulatory services on behalf of NYSE Regulation, including the Floor Official mandatory education program and qualification testing. *See* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR–NYSE–2010–46).

qualified to act as Floor Governors would not involve NYSE Regulation in qualifying those individuals to act as Floor Governors under Rule 46 and would therefore not give rise to the real or apparent conflict of interest the prohibition was intended to avoid.

The Exchange believes that the proposed interpretation would facilitate the contemplated transfer of existing ICE staff Floor Governors to NYSE Regulation. The individuals that would transfer to NYSE Regulation are experienced former Floor members who served as senior-level Floor Officials before becoming employees of ICE and are already qualified and have been appointed to act as staff Floor Governors. Because NYSE Regulation is not proposing to qualify additional staff not already approved as Floor Governors, the Exchange believes there would be no violation of Rule 46.

In addition, the interpretation does not in any way affect the role of Floor Officials or alter the safeguards in place to ensure that staff Floor Governors are knowledgeable and able to effectively intervene when needed on the Exchange trading Floor.[9] Finally, NYSE Regulation does not propose to seek to qualify existing NYSE Regulation employees as staff Floor Governors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposed stated interpretation helps prevent fraudulent and manipulative acts and practices by continuing to require high standards for qualified Exchange employees to act as Floor Governors in addition to members. Similarly, the proposed stated interpretation promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by ensuring that qualified Exchange employees are knowledgeable and able to effectively intervene on the Exchange trading Floor as needed. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to effect a change that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and therefore would not impose any burden on competition.

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 has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(1)[13] thereunder. The proposed rule change effects a change that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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–NYSE–2014–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–54. 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–NYSE–2014–54, and should be submitted on or before October 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24228 Filed 10–9–14; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* Securities Exchange Act Release No. 34–57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR–NYSE–2007–2). These safeguards include, among other things, that qualified Exchange employees, like qualified members, need to be appointed by the Exchange's chairman in consultation with the Executive Floor Governors and NYSE Regulation Board of Directors and approved by the Board of Directors.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73305; File No. SR–BX–2014–047]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend Fees for Optional Wireless Connectivity for Co-Located Clients

October 6, 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 September 30, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing a rule change to amend fees assessed to clients for wireless connectivity that enables clients to receive data from BX. Specifically, the Exchange proposes to amend fees assessed for remote multi-cast ITCH (''MITCH'') Wave Ports for clients co-located at other third-party data centers, through which BX TotalView ITCH market data will be distributed after delivery to those data centers via wireless network. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to amend fees assessed under BX Rule 7015 for remote MITCH Wave Ports for clients co-located at other third-party data centers, through which BX TotalView ITCH market data will be distributed after delivery to those data centers via wireless network.

BX offers optional wireless connectivity to clients who had requested such connectivity for other markets' data. BX uses network vendors to supply wireless connectivity from the Carteret, NJ data center to the data centers of other exchanges.[3] The vendor installs, tests and maintains the necessary communication equipment for this wireless network between the data centers. The wireless connectivity is an optional alternative to fiber optic network connectivity, providing lower latency because the wireless signals travel a straight, unimpeded line and because light waves travel faster through air than through glass (fiber optics). Because wireless transmission of such data requires an unimpeded line of sight between Carteret and the data center of the market to which it is connecting, BX and its vendors incur costs associated with maintaining hardware and leasing towers on which its microwave dishes and the associated hardware are mounted, which generally increase as distance between data centers increase.[4]

BX originally planned to create wireless connections to a data center in Newark used by NYSE as a SFTI Network Point of Presence, which is approximately 15 miles from BX's Carteret data center. In 2013, NYSE began to allow wireless vendors and telco vendors to connect directly to its data center in Mahwah, NJ,[5] which is approximately 40 miles from Carteret. Because the wireless data feeds are designed to offer high-speed and low latency,[6] BX determined to direct its wireless vendors to connect to the Mahwah data center instead of the Newark SFTI Point of Presence. As a consequence, BX is proposing to increase the fees assessed under Rule 7015 for MITCH Wave Ports relating to connectivity to data received wirelessly to and from Mahwah, which will help offset greater costs incurred in leasing towers, and purchasing and maintaining wireless equipment to cover the increased distance as well as the higher costs to house equipment and connections within the Mahwah data center.[7]

BX currently assesses an installation charge for the remote port, at each of the data center locations, of $2,500 for installation, and $5,000 as a monthly recurring fee.[8] Each of the data centers that a client may subscribe to is approximately the same distance from the Carteret data center. As discussed above, BX will be providing a direct connection to NYSE's data center in Mahwah, which is significantly farther from Carteret. The Exchange incurs higher costs for housing its equipment at Mahwah, including higher fees for power, cabinets and connections. Moreover and as noted above, the Exchange and its vendors incur higher costs in leasing towers and equipment to connect Carteret to Mahwah. As a consequence, BX is proposing to increase the one-time installation charge to $5,000, and the monthly recurring fee to $7,500.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and with Sections 6(b)(4) and (b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those

[3] NASDAQ OMX acts as re-distributor of these third-party market data feeds, capturing the data at the originating data centers and transporting the data to the Carteret data center.

[4] Because direct line of sight between Carteret and the data centers of other exchanges is not possible, BX's vendors lease as many towers and associated equipment as needed to ensure an unbroken line of sight between individual towers, repeating the signal until it arrives at its destination.

[5] *See http://www1.nyse.com/press/1337855269042.html.*

[6] Wireless connectivity is an optional alternative to higher latency fiber optic network connectivity.

[7] The Exchange notes that The NASDAQ Stock Market LLC recently increased fees assessed for its MITCH Wave Ports that connect to Mahwah. *See* Securities Exchange Act Release No. 73132 (September 17, 2014), 79 FR 56836 (September 23, 2014) (SR–NASDAQ–2014–092).

[8] Clients opting to pay for the remote MITCH Wave Ports will continue to be fee liable for the applicable market data fees as described in BX Rules 7019, 7023, and 7026.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members.

Moreover, the Exchange believes the proposed increased fees are reasonable because they are based on the Exchange's increased costs incurred in connecting to Mahwah. As discussed, the greater distance between Carteret and Mahwah results in greater costs incurred by the Exchange and its vendors, and the Exchange is assessed higher charges for housing its equipment at Mahwah as compared to other exchanges' locations. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing clients the ability to reduce latency in the transmission of data by connecting directly to NYSE's data center wirelessly.

The Exchange believes the proposed increased fees are equitably allocated in that all clients that voluntarily select connectivity to, and to receive data from, BX through this service is [sic] charged the same amount for the same services. Although the proposed fee is higher than the fees charged for connectivity to other exchanges' data centers, they are reflective of the increased costs associated with connecting to the Mahwah data center. Accordingly, the increased fees are allocated equitably on those that receive the benefit of the connectivity.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be designed to promote just and equitable principles of trade [sic] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade [sic], to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between clients, issuers, brokers, or dealers. The proposal is consistent with these requirements because it provides optional connectivity that promotes low-latency transfer of data to market participants. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among clients with regard to the fees charged for the wireless connectivity to, and wirelessly-received data from Mahwah.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, this proposal will promote competition for distribution of market data by offering an optional direct connection to the NYSE data center, which will improve the latency of the connection to BX data that would be available through NYSE's STFI Point of Presence in Newark. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[11] and paragraph (f)[12] of Rule 19b–4, thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2014–047 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–BX–2014–047. 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 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–BX–

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

2014–047 and should be submitted on or before October 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24206 Filed 10–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73308; File No. SR–ISE–2014–45]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Reference to Exchange Act Rule 10C–1 in the Exchange's Rules Concerning Unlisted Trading Privileges

October 6, 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 September 22, 2014 the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE proposes to add language to Rule 2101(a), entitled ''Unlisted Trading Privileges,'' that will make clear that the Exchange will not list equity securities without first ensuring that its rules comply with Rule 10C–1 under the Act (''Rule 10C–1'').[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add language to Rule 2101(a), which will clarify the fact that the Exchange will not list equity securities without first ensuring that Exchange Rules comply with Rule 10C–1, as described below.[4]

On March 30, 2011, to implement Section 10C of the Act,[5] as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[6] the Commission proposed Rule 10C–1 under the Act,[7] which directs each national securities exchange to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C–1.[8] Rule 10C–1 obligates the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the issuer's board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director.[9] Rule 10C–1 also requires the Exchange to establish standards for evaluating the independence of a compensation consultant, legal counsel, or other adviser (''Compensation Consultant'') and requires a Company to provide funding to a compensation committee to retain such Compensation Consultant.[10]

The Exchange does not currently list any equity securities as a primary listing market. Consistent with this fact, Exchange Rule 2101(a) currently states that all equity securities traded on the ISE Stock Exchange[11] are traded pursuant to unlisted trading privileges and that the Exchange will not list any such securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rule 10A–3 under the Act.[12] To make clear the Exchange's intention to comply with the requirements of Rule 10C–1, the Exchange proposes to amend Rule 2101(a) to state that no equity securities will be listed on the ISE Stock Exchange until Exchange Rules have been amended to also comply with Rule 10C–1. Because the Exchange does not presently list any equity securities, the Exchange does not believe it is necessary to make any further amendments in response Section 952 of the Dodd-Frank Act at this time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change fulfills these requirements because it will add language to Rule 2101(a) that clarifies the fact that the Exchange will not list equity securities without first ensuring that its rules comply with Rule 10C–1, which implements Section 10C of the Act.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[16] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10C–1.

[4] *Id.*

[5] 15 U.S.C. 78j–3.

[6] Public Law 111–203, 124 Stat. 1900 (2010).

[7] *See* Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) (''Rule 10C–1 Proposing Release'').

[8] *See* Securities Act Release No. 9330, Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) (''Rule 10C–1 Adopting Release'').

[9] 17 CFR 240.10C–1.

[10] *Id.*

[11] The ISE Stock Exchange is the Exchange's facility for trading equity securities.

[12] 17 CFR 240.10A–3.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78j–3.

[16] 15 U.S.C. 78f(b)(8).

change will merely clarify the fact that Exchange Rules must comply with Rule 10C–1 under the Act before any listing of equity securities on the Exchange becomes effective. Thus, the rule change will not impose any burden on intermarket or intramarket competition.

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 Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section19(b)(3)(A) [17] of the Act and Rule 19b–4(f)(6) thereunder [18] because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2014–45 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–ISE–2014–45. 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–ISE–2014–45, and should be submitted on or before October 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24208 Filed 10–9–14; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 9, 2014.

ADDRESSES: Send all comments to Erin Kelley, Director of Research & Policy, National Women's Business Council, Small Business Administration, 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Erin Kelley, Director of Research & Policy, National Women's Business Council, 202–205–6826, *erin.kelley@nwbc.gov,* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The National Women's Business Council (NWBC) is a non-partisan federal advisory council that serves as an independent source of advice and counsel to the President, Congress, and the Small Business Administration on economic issues of importance to women business owners. Members of the Council are prominent women business owners and leaders of women' business organizations.

As part of NWBC's annual research into issues affecting women business owners, this year NWBC has chosen to examine how women participate in business incubation and acceleration programs. The goal is to understand the characteristics of incubators and accelerators that affect the business outcomes of female entrepreneurs. In addition, NWBC hopes to gain insights into the factors, both structural and individual, that affect women's participation in incubator and accelerator programs. To accomplish this, NWBC has acquired the services of a research firm to conduct a cross-sectional survey of female entrepreneurs and managers of business incubators and accelerators to better understand female participation in, utilization of, and outcomes derived from incubation and acceleration programs. The survey will consist of three separate questionnaires targeting female entrepreneurs who have not participated in business incubation or acceleration programs, female entrepreneurs who have participated in business incubation or acceleration programs, and managers representing business incubators and accelerators. Each questionnaire will take between 12 and 18 minutes to complete (see below for the estimated burden analysis of

each questionnaire). The survey questions will explore a range of issues, including individual strategic choices and motivations; human capital; social capital; financial capital; experiences with incubators and accelerators; selection criteria of incubators and accelerators; institutional culture of incubators and accelerators; business models of incubators and accelerators; and performance outcomes.

The data from the survey will be rigorously analyzed and compared to relevant pre-existing quantitative data on female entrepreneurs and business incubators and accelerators to draw conclusions about current trends and generate leads for further NWBC research. In addition, the results will be interpreted in consultation with subject matter experts and relevant stakeholders to develop best practice policy recommendations to increase female participation in business incubator and accelerator programs and improve the quality of services those programs deliver for women. The recommendations will advise NWBC on how it can support economic growth by promoting and enhancing the contributions of business incubators and accelerators to women business owners.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Participation of Women in Business Incubators and Accelerators.

Description of Respondents: Female entrepreneurs who have not participated in business incubation or acceleration programs (non-participants); female entrepreneurs who have participated in business incubation or acceleration programs (participants); and managers representing business incubators and accelerators.

Form Number: N/A.

Total Estimated Annual Responses: 500 (200 from female entrepreneur non-participants; 150 from female entrepreneurs participants; and 150 from managers representing business incubators and accelerators).

Total Estimated Annual Hour Burden: 122.5 hours total.

	Female entrepreneurs		Managers representing incubators and accelerators	Total
	Non-participants	Participants		
Estimated survey hour burden	12 minutes	18 minutes	15 minutes.	
Sample population hour burden estimate	40 hours	45 hours	37.5 hours	122.5 hours.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2014–24282 Filed 10–9–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14143 and #14144]

Arizona Disaster #AZ–00039

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Arizona dated 10/02/2014.

Incident: Severe Storms and Flooding.

Incident Period: 09/08/2014.

Effective Date: 10/02/2014.

Physical Loan Application Deadline Date: 12/01/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Maricopa.

Contiguous Counties:

Arizona; Gila; La Paz; Pima; Pinal; Yavapai; Yuma.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14143 6 and for economic injury is 14144 0.

The State which received an EIDL Declaration # is Arizona.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 2, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–24195 Filed 10–9–14; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment 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 revisions of OMB-approved information collections.

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.*

I. 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 December 9, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

Statement of Funds You Provided to Another and Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481. SSA uses Forms SSA–2854 (Statement of Funds You Provided to Another) and SSA–2855 (Statement of Funds You Received) to gather information to verify if a loan is bona fide for Supplemental Security Income (SSI) recipients. Form SSA–2854 asks the lender for details on the transaction, and Form SSA–2855 asks the borrower the same basic questions independently. Agency personnel then compare the two statements, gather evidence if needed, and make a decision on the validity of the bona fide status of the loan. For SSI purposes, we consider a loan bona fide if it meets these requirements:

- Must be between a borrower and lender with the understanding that the borrower has an obligation to repay the money;
- Must be in effect at the time the cash goes to the borrower, that is, the agreement cannot come after the cash is paid; and
- Must be enforceable under State law, often there are additional requirements from the State.

SSA collects this information at the time of initial application for SSI or at any point when an individual alleges being party to an informal loan while receiving SSI. SSA collects information on the informal loan through both interviews and mailed forms. The agency's field personnel conduct the interviews and mail the form(s) for completion, as needed. The respondents are SSI recipients and applicants, and individuals who lend money to them.

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)
SSA–2854	20,000	1	10	3,333
SSA–2855	20,000	1	10	3,333
Totals	40,000			6,666

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 10, 2014. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Application for Supplemental Security Income—20 CFR 416.207 and 416.305–416.335, Subpart C—0960–0229. The SSI program provides aged, blind, and disabled individuals who have little or no income, with funds for food, clothing, and shelter. Individuals complete Form SSA–8000 to apply for SSI. SSA uses the information from paper Form SSA–8000 and its electronic intranet counterpart, the Modernized SSI Claims Systems (MSSICS), to determine: (1) Whether SSI claimants meet all statutory and regulatory eligibility requirements; and (2) SSI payment amounts. The respondents are applicants for SSI or their representative payees.

Note: This is a correction notice. SSA published this information collection as an extension on August 8, 2014, at 79 FR 46293. Since we are revising the Paperwork Reduction Act Statement, this is now a revision of an OMB-approved information collection.

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)
SSA–8000, Paper Version	39,295	1	41	26,852
MSSICS Version	211,802	1	36	127,081
MSSICS with Signature Proxy (attestation)	1,713,671	1	35	999,641
Totals	1,964,768			1,153,574

2. General Request for Social Security Records—eFOIA—20 CFR 402.130—0960–0716. Interested members of the public use this electronic request to ask SSA for information under the Freedom of Information Act (FOIA). SSA also uses this information to track the number and type of requests; fees charged; payment amounts; and SSA responds to public requests within the required 20 days. Respondents are members of the public including individuals, institutions, or agencies requesting information or documents under FOIA.

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)
eFOIA	2,500	1	3	125

3. Incoming and Outgoing Intergovernmental Personnel Act Assignment Agreement—5 CFR 334—0960–0792. The Intergovernmental Personnel Act (IPA) mobility program provides for the temporary assignment of civilian personnel between the Federal Government and State and local governments; colleges and universities; Indian tribal governments; federally-funded research and development centers; and other eligible organizations. The Office of Personnel Management (OPM) created a generic form, the OF–69, for agencies to use as a template when collecting information for the IPA assignment. The OF–69 collects specific information about the agreement including: (1) The enrolled employee's name, Social Security number, job title, salary, classification, and address; (2) the type of assignment; (3) the reimbursement arrangement; and (4) an explanation as to how the assignment benefits both SSA and the non-federal organization involved in the exchange. OPM directs agencies to use their own forms for recording these agreements. Accordingly, SSA modified the OF–69 to meet our needs, creating the SSA–187 for incoming employees and the SSA–188 for outgoing employees. Respondents are the individuals we describe above who participate in the IPA exchange with SSA.

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)
Non-Federal employee	10	1	30	5
Non-Federal employer signers	20	1	5	2
Totals	30			7

Dated: October 6, 2014.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2014–24231 Filed 10–9–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Second Meeting: RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services

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

ACTION: RTCA Special Committee 214 held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of twenty second meeting of RTCA Special Committee 214 to be held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held December 16th to 18th from 9:00 a.m. to 5:00 p.m. (Paris Time).

ADDRESSES: The meeting will be held at Thales Avionics 105 Avenue du General Eisenhower 31100 Toulouse, France.

FOR FURTHER INFORMATION CONTACT: Sophie Bousquet, 202–330–0663, *sbousquet@rtca.org* or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services. The agenda will include the following:

December 16th

- Welcome/Introduction/Administrative Remarks
- Approval of the Agenda and the Minutes of Plenary 21
- Coordination Activities with ICAO, OPDLWG and DCIWG
- Revision to Baseline 2 Initial Release, Dyn RNP, A–IM and ATC Winds
- Working Group/Special committee organization for future work

December 17th

- Dynamic-RNP service ConOps familiarization, review of Tiger Team results, initiation of B2 proposed amendments
- Revision to Baseline 2 Initial Release, Dynamic-RNP service ConOps familiarization, review of Tiger Team results, initiation of B2 proposed amendments
- Proposed resolutions for comments received on Initial Release

December 18th

- Wrap-up and consolidate high-level roadmap for revision to Baseline 2 Initial Release
- Review need for upcoming meetings and approve dates and locations of Plenary and SG Meetings
- Any Other Business
- Adjourn

Please confirm your attendance to *cedric.d-silva@fr.thalesgroup.com,* copying *marie-france.helbert@fr.thalesgroup.com* with subject ''WG78 THALES Dec2014'' no later than December 1st 2014 with the following security information:

- Surname, First Name
- Nationality
- Place of birth, Date of birth
- Passport Number, Authority or Place of delivery, Date of delivery

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION**

CONTACT section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 6th, 2014.

Mohannad Dawoud,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2014–24262 Filed 10–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Westover Metropolitan Airport, Chicopee, Massachusetts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Westover Metropolitan Airport, as submitted by the Westover Metropolitan Development Corporation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Westover Metropolitan Airport in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before April 8, 2015.

DATES: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is September 25, 2014. The public comment period ends on November 25, 2014.

ADDRESSES: Interested persons are invited to comment on the proposed program. All comments, other than those properly addressed to local land use authorities will be considered by the FAA to the extent practicable. Comments on the proposed noise compatibility program should also be submitted to the FAA office under the heading: **FOR FURTHER INFORMATION CONTACT**.

Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Westover Metropolitan Airport, Chicopee, Massachusetts.

Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington MA 01803.

SUPPLEMENTARY INFORMATION:

Authority: 49 U.S.C. 47501–47510; 14 CFR part 150.

This notice announces that the FAA finds that the noise exposure map submitted for Westover Metropolitan Airport is in compliance with applicable requirements of Part 150, effective October 8, 2014. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 8, 2015. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), codified at 49 U.S.C. 47503, an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts non-compatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The Westover Metropolitan Development Corporation submitted to the FAA, on October 8, 2014, a noise exposure map, descriptions, and other documentation that were produced during the Airport Noise Compatibility Planning (Part 150) study Westover Metropolitan Airport from August 2013 to September 2014. It was requested that the FAA review this material as the noise exposure map, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104 (b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Westover Metropolitan Development Corporation. The specific maps under consideration were:

—Existing (2014) Conditions Noise Exposure Map NEM–1

—Future (2019) Conditions Noise Exposure Map NEM–2

The FAA has determined that the maps for Westover Metropolitan Airport are in compliance with applicable requirements. This determination is effective on October 8, 2014.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Westover Metropolitan Airport, also effective on October 8, 2014. Preliminary review of the submitted material indicates that it conforms to the

requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 8, 2015. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT**.

Issued in Burlington, Massachusetts, on September 25, 2014.

Mary T. Walsh,

Manager, Airports Division.

[FR Doc. 2014–23818 Filed 10–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2014–0024]

Application From the State of Texas Under the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning FHWA's Environmental Review Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed MOU and request for comments.

SUMMARY: This notice announces that the FHWA has received and reviewed an application from the Texas Department of Transportation (State) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for States to apply to assume, and for FHWA to assign, environmental review responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FHWA's responsibilities for environmental reviews, consultations, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the application to be complete, and developed a draft MOU with the State outlining how the State will implement the program, with FHWA oversight. The public and agencies are now invited to comment on the State's request and the draft MOU. In particular, FHWA seeks comments on the proposed scope of the assignments and assumptions of responsibilities set out in the draft MOU for environmental reviews, consultations, and other activities to be assigned.

DATES: Please submit comments by November 10, 2014.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Facsimile (Fax):* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground, Floor Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Michael T. Leary, Director of Planning and Program Development, Federal Highway Administration Texas Division, 300 E. 8 St., Room 826, Austin, TX 78701, 7:00 a.m.–4:30 p.m. c.t., (512) 536–5940, *michael.leary@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.* An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at *http://www.regulations.gov/.*

Background

Section 327 of title 23, United States Code (U.S.C.), allows for States to apply to assume, and for the Secretary of the USDOT (Secretary) to assign, the Secretary's NEPA responsibilities and all or part of the Secretary's responsibilities for environmental review, consultation, or other actions required under any other Federal environmental law with respect to one or more Federal highway projects. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The State has submitted application materials requesting to participate in this Program. The FHWA has reviewed these application materials, which include public and agency comments on the application and has determined them complete. The FHWA and the State have developed a draft MOU outlining how the State will implement the Program and how FHWA will oversee the State's implementation as required by 23 U.S.C. 327. The FHWA now seeks public comments on the State's request pursuant to 23 CFR 773.111(a).

Under the proposed MOU, FHWA would assign to the State the NEPA environmental review responsibilities for the following Federal highway projects:

1. Projects requiring environmental impact statements (EIS), both on the State highway system (SHS) and local government projects off the SHS that FHWA funds or that require FHWA approvals, except the following EIS projects, which FHWA will not assign: Harbor Bridge, Trinity Parkway, and South Padre Island Causeway 2.

2. Projects requiring environmental assessments, both on the SHS and local government projects off the SHS that FHWA funds or that require FHWA approvals.

3. Projects qualifying for categorical exclusions (CE), both on the SHS and local government projects off the SHS that FHWA funds or that require FHWA approvals. The FHWA previously signed a MOU with the State assigning CE responsibility under the authority in 23 U.S.C. 326. Upon execution of this MOU, the 23 U.S.C. 326 CE MOU between FHWA and the State will be terminated, and projects included under that MOU will be assumed under the Program.

4. Highway projects within the State that other Federal agencies fund [or projects without any Federal funding] that also include FHWA funding or that require FHWA approvals. For these projects, the assigned environmental

review responsibilities would be limited to those that FHWA would otherwise have.

The FHWA's NEPA responsibilities include those established in implementing procedures such as 40 CFR parts 1500–1508, DOT Order 5610.1C, 23 CFR part 771, and those established through other NEPA-related provisions such as 23 U.S.C. 139. In addition to the NEPA review responsibilities associated with the above categories of projects, the assignment would include FHWA's responsibilities associated with these projects under the following environmental review, consultation, and other related requirements:

Air Quality

• Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any conformity determinations.

Noise

• Noise Control Act of 1972, 42 U.S.C. 4901–4918.
• Compliance with the noise regulations in 23 CFR part 772.

Wildlife

• Endangered Species Act of 1973, 16 U.S.C. 1531–1544.
• Marine Mammal Protection Act, 16 U.S.C. 1361–1423h.
• Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f.
• Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d.
• Migratory Bird Treaty Act, 16 U.S.C. 703–712.
• Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., with Essential Fish Habitat requirements at 1855(b)(2).

Historic and Cultural Resources

• National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq.
• 23 U.S.C. 138 (''Section 4(f)'') and 49 U.S.C. 303 and implementing regulations at 23 CFR part 774.
• Archaeological Resources Protection Act of 1977, 16 U.S.C. 470aa–470mm.
• Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469c.
• Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170.

Social and Economic Impacts

• American Indian Religious Freedom Act, 42 U.S.C. 1996.
• Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209.

Water Resources and Wetlands

• Clean Water Act, 33 U.S.C. 1251–1387 (Section 401, 402, 404, 408, Section 319).
• Coastal Barrier Resources Act, 16 U.S.C. 3501–3510.
• Coastal Zone Management Act, 16 U.S.C. 1451–1466.
• Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26.
• General Bridge Act of 1946, 33 U.S.C. 525–533.
• Rivers and Harbors Act of 1899, 33 U.S.C. 401–406.
• Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.
• Emergency Wetlands Resources Act, 16 U.S.C. 3901, 3921.
• Wetlands Mitigation, 23 U.S.C. 119(g), 133 (b)(14).
• Flood Disaster Protection Act, 42 U.S.C. 4001–4130.

Parklands and Other Special Uses

• 23 U.S.C. 138 and 49 U.S.C. 303, and implementing regulations at 23 CFR part 774.
• Land and Water Conservation Fund Act, 16 U.S.C. 4601–4 to 4601–11.

FHWA-Specific

• Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
• Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.

Executive Orders Relating to Highway Projects

• E.O. 11990, Protection of Wetlands.
• E.O. 11988, Floodplain Management.
• E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.
• E.O. 13112, Invasive Species.

The MOU would allow the State to act in the place of FHWA for highway projects in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the listed laws and Executive Orders. The State will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct government-to-government consultation with FHWA upon request. The State also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the formal consultation. The State also will not assume FHWA's responsibilities for conformity determinations required under section 176 of the CAA or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the application materials and proposed MOU may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on the State's Web site at *www.txdot.gov.*

The FHWA will consider the comments submitted when making its decision to approve the application and execute the MOU. Any final MOU approved by FHWA may include changes based on comments received on the proposed MOU.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR part 773.

Issued on: October 7, 2014.

Gregory G. Nadeau,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2014–24327 Filed 10–9–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2008–0362 and FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB) Meetings: Public Meetings

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Announcement of advisory committee public meetings.

SUMMARY: FMCSA announces a joint meeting of its Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB) on October 27, 2014, and a meeting of the MCSAC on Tuesday, October 28. MCSAC and the MRB will jointly identify concepts the Agency should consider in relation to Schedule II medications and their use by

commercial motor vehicle (CMV) drivers in interstate commerce. This follows the MRB's consideration of the effects of Schedule II medications on CMV drivers' ability to operate safely on September 11, 2013, and July 29–30, 2014. On Tuesday, October 28, the MCSAC will meet to finalize its deliberations on financial responsibility requirements for motor carriers and to consider the findings of its Subcommittee on the Long-Haul Cross-Border Trucking Pilot Program with Mexico. Meetings are open to the public for their entirety, and there will be a public comment period at the end of each day.

DATES: *Times and Dates:* The joint meeting will be held on Monday, October 27, 2014, from 9 a.m. to 4:30 p.m., Eastern Daylight Time (E.T.), at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 in the Washington and Jefferson Rooms on the 2nd floor. On Tuesday, October 28, the MCSAC will meet at that same location from 9 a.m. to 4:30 p.m., E.T. Copies of all MRB and MCSAC Task Statements and an agenda for the entire meeting will be made available in advance of the meeting at *http://mrb.fmcsa.dot.gov* and *http://mcsac.fmcsa.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Eran Segev at (617) 494–3174, *eran.segev@dot.gov,* by Wednesday, October 22.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish the MCSAC. The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) reauthorized the MCSAC through September 30, 2013, at which time its statutory authority expired, necessitating the establishment of MCSAC as a discretionary committee under FACA. Secretary Foxx established that effective September 30, 2013, through September 30, 2015. MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

MRB

The MRB is composed of five medical experts who each serve 2-year terms. Section 4116 of SAFETEA–LU requires the Secretary of Transportation, with the advice of the MRB and the chief medical examiner, to establish, review, and revise ''medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.'' The MRB operates in accordance with FACA under the terms of its charter, filed November 25, 2013.

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, October 22, to Federal Docket Management System (FDMC) Docket Number FMCSA–2008–0362 for the MRB and FMCSA–2006–26367 for the MCSAC using any of the following methods:

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

Issued on: October 6, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–24364 Filed 10–8–14; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0314]

Parts and Accessories Necessary for Safe Operation; Grant of Exemption for Van Hool N.V. and Coach USA

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant a limited 2-year exemption to Van Hool N.V. and Coach USA (Van Hool/Coach USA) that will allow Coach USA/Megabus to operate double deck motorcoaches constructed with a sleeper berth than has an exit that does not meet the minimum dimensional requirements specified in the Federal Motor Carrier Safety Regulations (FMCSRs). Section 393.76(c)(1) of the FMCSRs requires sleeper berths installed after January 1, 1963 to have an exit that is at least 18 inches high and 36 inches wide. The exemption will allow Coach USA/Megabus to operate double deck motorcoaches with an exit area from the sleeper berth that, while not meeting the specified dimensions, is only slightly smaller in overall size from what is required in the FMCSRs. FMCSA believes that permitting the reduced exit area size will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective from October 10, 2014 until October 10, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide

the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Van Hool/Coach USA Application for Exemption

Van Hool/Coach USA applied for an exemption from 49 CFR 393.76(c)(1) to allow Coach USA/Megabus to operate double deck motorcoaches with a sleeper berth exit which meets the requirements of those sleeper berths installed before January 1, 1963. Section 393.76(c)(1) of the FMCSRs requires that, for sleeper berths installed after January 1, 1963, the exit must be a doorway or opening at least 18 inches high and 36 inches wide. In its application, Van Hool/Coach USA states:

> Van Hool and Coach USA are making this request because we jointly developed a double deck motorcoach with sleeper berths for passengers (hereafter referred to as sleeper coach) where in order to meet the driver hours of service requirements for the routes planned for this sleeper coach, a sleeper berth must be provided for a 2nd driver. The designed sleeper berth compartment in the sleeper motor coach meets and exceeds the minimum dimensional requirements for the actual sleeper berth, however due to the limited available locations to place the sleeper berth within the confines of the motorcoach, it is requested that the entry/exit to the sleeper berth be allowed to meet the dimensional requirements for those sleeper berths manufactured/installed before January 1, 1963. The entry/exit of the sleeper berth (as currently designed) has a maximum area of 606 square inches, which is sufficient area to contain an ellipse having a major axis of 25 inches and a minor axis of 16 inches, which was the requirement for sleeper berths installed prior to January 1, 1963.

Van Hool/Coach USA states that whereas the pre-January 1, 1963, exit dimension requirements accommodated all types of commercial motor vehicles, the current language of Section 393.76(c)(1) ''is designed to fit sleeper berths in commercial trucks'' and does ''not take into account the limited space available on a motorcoach for utilization of a sleeper berth.''

Comments

On August 6, 2013, FMCSA published notice of the Van Hool/Coach USA application and requested public comment (78 FR 47817). Advocates for Highway and Auto Safety (Advocates) pointed out that the FMCSA had failed to include a copy of the Van Hool/Coach USA application in the docket for public inspection as required by statute and regulation. The Agency placed a copy of the Van Hool/Coach USA application in the docket, and published a notice in the **Federal Register** on February 14, 2014 (78 FR 9035) announcing the reopening of the comment period for 15 days. The Agency received four comments.

1. Advocates stated ''The reduced size of the major axis of the sleeper berth entry/exit portal from 36 inches to 24 inches results is a significant reduction of a critical dimension for egress, even if it does not necessarily reduce the overall area of the portal dramatically. Reducing the major axis by one-third could impede the ability of a driver to respond in a safety emergency . . . Finally, it is likely that the pre-Jan. 1, 1963 entry/exit dimensions were considered so restrictive and tight for drivers who needed to squeeze into or out of the sleeper berth that the major axis of the portal was enlarged significantly, by 50 percent, from 24 to 36 inches. Advocates believes that even the current dimensions of the entry/exit portal (not to mention the sleeper berth itself) are exceedingly narrow and should be further enlarged, not reduced.''

FMCSA response: FMCSA personnel inspected a Van Hool/Coach USA double deck motorcoach, and took physical measurements of a prototype of the proposed sleeper berth entry/exit area. The effective sleeper berth entry/exit area is a rectangle, 27 inches wide by 26 inches in height, with a smaller non-useable corner in the lower right side measuring 11 inches in height by 8 inches in width, resulting in a total sleeper berth entry/exit area of 614 square inches. While this is a nominal reduction in access area—approximately 5 percent—compared to the current requirements (a rectangular area 18 inches high and 36 inches wide = 648 square inches), it is significantly larger—more than double—than the pre-January 1, 1963 requirements (an ellipse having a major axis of 24 inches and a minor axis of 16 inches = 301.6 square inches).

Entry into and exit from the prototype sleeper berth was performed by both FMCSA and Coach USA personnel during the vehicle inspection. These representatives were both adult males, approximately the size/weight of the Hybrid III 95th percentile male anthropometric test device that is used worldwide for the evaluation of automotive and military safety restraints, and particularly for seat belt integrity testing.[1] Both representatives were easily able to enter and exit the prototype sleeper berth, and each found that the 26-inch height of the prototype sleeper berth entry/exit was much easier to access than a sleeper berth meeting the currently-permitted minimum allowable height of 18 inches despite the reduction in overall width of the prototype opening.

During the inspection of the prototype, FMCSA also found that Van Hool/Coach USA has designed and included an additional emergency exit in the sleeper berth that provides direct access to the exterior of the motorcoach. This additional exit is 26 inches wide and 26.5 inches high (689 square inches), which, while although it does not meet the specific dimensional requirements of the current standard, is larger in area than the current minimally compliant opening.

While FMCSA acknowledges that Van Hool/Coach USA did not present a specific safety study providing an analysis of the safety impacts of the requested exemption, the Agency believes that the 9-inch reduction in the minimum width of the entry/exit of the sleeper berth from the interior of the motorcoach does not degrade the level of safety for a driver exiting or entering the sleeper berth, especially given that the measured height of the prototype entry is 8 inches taller than the minimum allowable height of 18 inches. FMCSA also notes that Van Hool/Coach USA has provided a secondary emergency exit to the exterior of the vehicle.

2. Mr. Lawrence Hanley of the Amalgamated Transit Union (ATU) submitted comments opposing the use of sleeper berths generally, but did not provide any comments specifically relating to the reduced size of the exit from the sleeper berth that is the subject of this exemption application.

[1] The Hybrid III 95th percentile male dummy is 6′2″ tall and weighs 223 pounds.

FMCSA Response: The Van Hool/Coach USA application only requests an exemption from the requirements of section 393.76(c)(1) of the FMCSRs relating to the dimensions of the entry/exit into the sleeper berth. The Van Hool/Coach USA prototype sleeper berth fully conforms to all other requirements pertaining to sleeper berths in 49 CFR 393.76.

3. Mr. John Oakman, Sr. Vice President of Coach USA/Megabus commented in support of the application, stating ''With this exemption we will be able to travel with two drivers, while one is driving the other will be able to be in a legal sleeping berth, thus giving us a longer safer distance of operation.''

4. Mr. Tim Wayland, President and Chief Operating Officer of ABC Companies commented in support of the application, stating ''Approving this exemption would allow Coach USA to fulfill its obligations as an operator towards its drivers in meeting the hours of service requirements. Approval of this exemption will also increase the number of models available to the traveling public. Increasing the number of models available to the traveling public will result in increased ridership, less traffic congestion and road wear and tear plus positive effects on the environment such as lower emissions and consumption of natural resources.''

FMCSA Decision

Based on its evaluation of the application for an exemption, FMCSA grants the Van Hool/Coach USA exemption application. The Agency believes that the safety performance of motor carriers operating the subject double deck motorcoaches during the 2-year exemption period will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. While the proposed entry/exit does not meet the specific dimensional requirements of section 393.76(c)(1) of the FMCSRs, (1) the overall area of the proposed entry/exit is only slightly smaller than that which is required, and (2) FMCSA was able to confirm during a physical examination of the double deck motorcoach that operators are able to easily enter/exit the proposed sleeper berth. Additionally, Van Hool/Coach USA has designed and installed a second emergency exit in the sleeper berth that is 26 inches wide and 26.5 inches high that provides direct access to the exterior of the vehicle. The Agency hereby grants the exemption for a two-year period, beginning October 10, 2014 until October 10, 2016.

Terms and Conditions for the Exemption

During the temporary exemption period, Coach USA/Megabus motorcoaches can be legally operated using the reduced sleeper berth entry/exit dimensions. The motorcoaches must be constructed using the entry/exit configuration as depicted in the application. FMCSA encourages any party having information that Van Hool/Coach USA, in utilizing this exemption, is not achieving the requisite level of safety immediately to notify the Agency. If safety is being compromised, or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b) and 31136(e), FMCSA will take immediate steps to revoke the exemption.

Preemption

In accordance with section 381.600 of the FMCSRs, during the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

Issued on: October 1, 2014.

T.F. Scott Darling III,

Acting Administrator.

[FR Doc. 2014–24290 Filed 10–9–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35860]

Wisconsin Great Northern Railroad, Inc.—Lease and Operation Exemption—Rail Line of Wisconsin Central, Ltd.

Wisconsin Great Northern Railroad, Inc. (WGNR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Wisconsin Central, Ltd. (WC),[1] and to operate, pursuant to a lease agreement, an approximately 6.3-mile line of railroad between milepost 95.2 near Hayward Junction and milepost 101.5 at Hayward, in Washburn and Sawyer Counties, Wis.

According to WGNR, the lease does not contain any provision or agreement that may limit future interchange of traffic with a third-party connecting carrier. WGNR states that the line connects with WC's north-south main line at milepost 96.0 at Hayward Junction, Wis.

The proposed transaction may be consummated on or after October 25, 2014, the effective date of this exemption (30 days after the exemption was filed).

WGNR certifies that the projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by October 17, 2014 (at least seven days prior to the date the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35860, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: October 7, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2014–24251 Filed 10–9–14; 8:45 am]

BILLING CODE 4915–01–P

[1] WC is an affiliate of Canadian National Railway Company.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Wednesday, October 29, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Rm. 7559, 1111 Constitution Avenue NW., Washington, DC 20224. Phone: 202–317–6851 (not a toll-free number). Email address: *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988),

that a public meeting of the IRPAC will be held on Wednesday, October 29, 2014 from 9:00 a.m. to 12:00 p.m. at Residence Inn Marriott, 1199 Vermont Avenue NW., Washington, DC 20005. Report recommendations on issues that may be discussed include: Foreign Account Tax Compliance Act; Expand Use of TIN Matching; Cost Basis Reporting; *De minimis* Threshold for Form 1099 Corrections; Business master file and Form 8822–B; 1099–MISC—Miscellaneous Income; Form W–9 Revision; Nonresident Alien Withholding and Reporting of Payments for Truck or Rail; Instructions for Form 2848; Form 8889—Health Savings Account; Third Party Sick Pay Reporting; Proper Reporting of FSA Overpayments; ACA and HRA-Like Plans; ACA Education Using Plain Language; Withholding and Reporting for Pension Payments to NRAs; Reporting by Insurance Companies and Third Parties under IRC §§ 6055 and 6056; IRC § 6050W and Form 1099–K; Form 1098–T; Form 8300; Coordination of Taxpayer Forms with Broker Forms; and Rev. Procedure 95–48. Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, please call or email Caryl Grant to confirm your attendance. Ms. Grant can be reached at 202–317–6851 or *PublicLiaison@irs.gov*. Should you wish the IRPAC to consider a written statement, please call 202–317–6851, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:SRM, Room 7559, 1111 Constitution Avenue NW., Washington, DC 20224 or email: *PublicLiaison@irs.gov*.

Dated: October 6, 2014.

John Lipold,

Designated Federal Official, Branch Chief, National Public Liaison.

[FR Doc. 2014–24173 Filed 10–9–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Proposed Information Collection (Monthly Certification of On-the-Job and Apprenticeship Training) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 proposed revision of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's continued eligibility for educational benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 9, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0178'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Monthly Certification of On-the-Job and Apprenticeship Training, VA Forms 22–6553d and 22–6553d–1.

OMB Control Number: 2900–0178.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants receiving on the job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued, unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. Claimants use VA Form 22–6553d–1 when the computer-generated version of VA Form 22–6553d is not available. VA uses the data collected to process a claimant's educational benefit claim.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,384 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 68,301.

Dated: October 7, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–24213 Filed 10–9–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0777]

Proposed Information Collection (Medical Foster Homes Record Keeping Requirements); Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed for Veterans, Veteran Representatives and health care providers to request reimbursement from the federal government for emergency services at a private institution.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 9, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–0777'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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.

Titles: Medical Foster Homes Recordkeeping Requirements.

OMB Control Number: 2900–0777.

Type of Review: Extension.

Abstract: As proposed, § 17.74(q) contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Paragraph (q) of § 17.74 requires medical foster homes to comply with the recordkeeping requirements of 38 CFR 17.63(i) regarding facility records, and must document all inspection, testing, drills and maintenance activities required by this section. Such documentation must be maintained for 3 years or for the period specified by the applicable NFPA standard, whichever is longer. Documentation of emergency egress and relocation drills must include the date, time of day, length of time to evacuate the home, the name of each medical foster home caregiver who participated, the name of each resident, whether the resident participated, and whether the resident required assistance.

Affected Public: Individuals or Households.

Estimated Annual Burden: 600 burden hours.

Estimated Average Burden per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,800.

Dated: October 7, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–24211 Filed 10–9–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Funding Availability Under Supportive Services for Veteran Families Program

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice of funding availability.

SUMMARY: Funding Opportunity Title: Supportive Services for Veteran Families Program.

Announcement Type: Initial.

Funding Opportunity Number: VA–SSVF–101014.

Catalog of Federal Domestic Assistance Number: 64.033, VA Supportive Services for Veteran Families Program.

The Department of Veterans Affairs (VA) is announcing the availability of funds for supportive services grants under the Supportive Services for Veteran Families (SSVF) Program. This Notice of Funding Availability (NOFA) contains information concerning the SSVF Program, initial supportive services grant application processes, and the amount of funding available. Awards made for supportive services grants will fund operations beginning approximately March 1, 2015, through February 28, 2018.

DATES: Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4:00 p.m. Eastern Time on December 5, 2014. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages, or other delivery-related problems.

ADDRESSES: *For a Copy of the Application Package:* Copies of the application can be downloaded directly from the SSVF Program Web site at: *www.va.gov/homeless/ssvf.asp.* Questions should be referred to the SSVF Program Office via phone at (877) 767–0111 (toll-free number) or via email at *SSVF@va.gov.* For detailed SSVF Program information and requirements, see 38 CFR Part 62.

Submission of Application Package: Two completed, collated, hard copies of the application and two compact discs (CD) containing electronic versions of the entire application are required. Each application copy must (i) be fastened with a binder clip, and (ii) contain tabs listing the major sections of and exhibits to the application. Each CD must be labeled with the applicant's name and must contain an electronic copy of the entire application. A budget template must be attached in Excel format on the CD, but all other application materials may be attached in a PDF or other format. The application copies and CDs must be submitted to the following address: Supportive Services for Veteran Families Program Office National Center on Homelessness Among Veterans, 4100 Chester Avenue, Suite 201, Philadelphia, PA 19104. Applicants must submit two hard copies and two CDs. Applications may not be sent by facsimile (FAX). Applications must be received in the SSVF Program Office by 4:00 p.m. Eastern Time on the application deadline date. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. See Section II.C. of this NOFA for maximum allowable grant amounts.

Technical Assistance: Information regarding how to obtain technical assistance with the preparation of an initial supportive services grant application is available on the SSVF Program Web site at: *http://www.va.gov/HOMELESS/SSVF.asp.*

FOR FURTHER INFORMATION CONTACT: Mr. John Kuhn, Supportive Services for Veteran Families Program Office, National Center on Homelessness Among Veterans, 4100 Chester Avenue, Suite 201, Philadelphia, PA 19104; (877) 767–0111 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

A. *Purpose:* The SSVF Program's purpose is to provide supportive services grants to private non-profit organizations and consumer cooperatives, who will coordinate or provide supportive services to very low-income Veteran families who: (i) Are residing in permanent housing; (ii) are homeless and scheduled to become residents of permanent housing within a specified time period; or (iii) after exiting permanent housing within a specified time period, are seeking other housing that is responsive to such very low-income Veteran family's needs and preferences.

B. *Funding Priorities:* The overriding goal for this NOFA is to ensure that appropriate levels of resources are provided to communities with the greatest need to end Veteran homelessness. VA will provide approximately $93 million over a 3-year period for non-renewable grants to eligible entities proposing services for one of the 28 priority Continuums of Care (CoC) listed in II.B. VA has designed this 3-year effort to provide a surge of resources in communities with the highest need. These 28 locations have been selected based on factors that include levels of Veteran homelessness and current unmet service needs.

C. *Definitions:* Sections 62.2 and 62.11(a) of title 38, Code of Federal Regulations, contain definitions of terms used in the SSVF Program. In addition to the definitions included in those sections, this NOFA includes two program areas: Emergency Housing Assistance and General Housing Stability Assistance.

Emergency Housing Assistance means the provision of up to 30 days of temporary housing that does not require the participant to sign a lease or occupancy agreement. The cost cannot exceed the reasonable community standard for such housing. Emergency housing is limited to short-term commercial residences (private residences are not eligible for such funding) not already funded to provide on-demand emergency shelter (such as emergency congregate shelters). By authorizing the limited provision of SSVF-funded emergency housing, grantees will be able to ensure that participants do not become homeless while they transition to permanent housing or otherwise be put at risk, pending placement in permanent housing. Appropriate provision of emergency housing is limited to those cases in which no space is available at a community shelter that would be appropriate for placement of a family unit and where permanent housing has been identified and secured but the participant cannot immediately be placed in that housing. Only families with children under the age of 18 may receive such assistance; individuals are not eligible for SSVF funded emergency housing placement. In the event that longer term transitional housing or emergency housing is needed without such restrictions, VA offers community-based alternatives including the Grant and Per Diem Program and the Health Care for Homeless Veterans contract residential care program, as well as a variety of VA-based residential care programs.

General Housing Stability Assistance means the provision of goods or payment of expenses not included in other sections, but directly related to supporting a participant's housing stability. This is a category that may offer a maximum of $1,500 in assistance per participant. Such assistance, when not available through existing mainstream and community resources, may include: (i) items necessary for a participant's life or safety that are provided to the participant by a grantee on a temporary basis in order to address the participant's emergency situation (limited to $500 per participant under 38 CFR 62.34); (ii) expenses associated with gaining or keeping employment, such as obtaining uniforms, tools, certifications, and licenses; (iii) expenses associated with moving into permanent housing, such as obtaining basic kitchen utensils, bedding, and other supplies; and (iv) expenses necessary for securing appropriate permanent housing, such as fees for applications, brokerage fees, or background checks.

D. *Approach:* Grantees will be expected to leverage supportive services grant funds to enhance the housing stability of very low-income Veteran families who are occupying permanent housing. In doing so, grantees are required to establish relationships with local community resources. Therefore, agencies must work through coordinated partnerships built either through formal agreements or the informal working relationships commonly found amongst strong social service providers. As part of the application, under § 62.22(e), all applicants are strongly encouraged to provide letters of support from the VA's Network Homeless Coordinator (or their designee). In addition, applicants are strongly encouraged to provide letters of support from the CoC where they plan to deliver services that reflect the applicant's engagement in the CoC's efforts to coordinate services. CoCs may elect to provide VA with a rank order of their support in lieu of providing individual letters of support. A CoC is a community plan to organize and deliver housing and services to meet the needs of people who are homeless as they move to stable housing and maximize self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness (CoC locations and contact information can be found at the Department of Housing and Urban Development's (HUD) Web site, *http://www.hudhre.info/index.cfm?do=viewCocMaps*). This coordination should describe the applicant's participation in the CoC's coordinated assessment efforts (coordinated assessment refers to a common process for accessing homeless assistance services including: prevention, diversion, emergency shelter, transitional housing, rapid re-housing, supportive services and even permanent supportive housing). In addition, any applicant proposing to serve an Indian Tribal area is strongly encouraged to provide a letter of support from the relevant Indian Tribal Government. The aim of the provision of supportive services is to assist very low-income Veteran families residing in permanent housing to remain stably housed and to rapidly transition those not currently in permanent housing to stable housing. SSVF emphasizes the placement of homeless Veteran families who are described in regulation as (i) very low-income Veteran families who are homeless and scheduled to become residents of permanent housing within 90 days, and (ii) very low-income Veteran families who have exited permanent housing within the previous 90 days to seek other housing that is responsive to their needs and preferences. Accordingly, VA encourages eligible entities skilled in facilitating housing stability and experienced in operating rapid re-housing programs (i.e., administering HUD's Homelessness Prevention and Rapid Re-Housing Program, HUD's Emergency Solution Grant (ESG), or other comparable Federal or community resources) to apply for supportive services grants. As a crisis intervention program, the SSVF Program is not intended to provide long-term support for participants, nor will it be able to address all of the financial and supportive services needs of participants that affect housing stability. Rather, when participants require long-term support, grantees should focus on connecting such participants to income supports, such as employment and mainstream Federal and community

resources (e.g., HUD–VA Supportive Housing program, HUD Housing Choice Voucher programs, McKinney-Vento funded supportive housing programs, Temporary Assistance for Needy Families (TANF), Social Security Income/Social Security Disability Insurance (SSI/SSDI) etc.) that can provide ongoing support as required.

Assistance in obtaining or retaining permanent housing is a fundamental goal of the SSVF Program. Grantees are expected to provide case management services in accordance with 38 CFR 62.31. Such case management should include tenant counseling, mediation with landlords and outreach to landlords.

E. *Authority:* Funding applied for under this NOFA is authorized by 38 U.S.C. 2044. VA implements the SSVF Program by regulation in 38 CFR Part 62. Funds made available under this NOFA are subject to the requirements of the aforementioned regulations and other applicable laws and regulations.

F. *Requirements for the Use of Supportive Services Grant Funds:* The grantee's request for funding must be consistent with the limitations and uses of supportive services grant funds set forth in 38 CFR Part 62 and this NOFA. In accordance with the regulations and this NOFA, the following requirements apply to supportive services grants awarded under this NOFA:

1. Grantees may use a maximum of 10 percent of supportive services grant funds for administrative costs identified in § 62.70.

2. Grantees must use a minimum of 60 percent of the temporary financial assistance portion of their supportive services grant funds to serve very low-income Veteran families who either (i) are homeless and scheduled to become residents of permanent housing within 90 days pending the location or development of housing suitable for permanent housing, as described in § 62.11(a)(2), or (ii) have exited permanent housing within the previous 90 days to seek other housing that is responsive to their needs and preferences, as described in § 62.11(a)(3). (NOTE: Grantees may request a waiver to decrease this minimum, as discussed in section V.B.3.a.)

3. Grantees must use a minimum of 40 percent of supportive services grant funds to provide the supportive service of temporary financial assistance paid directly to a third party on behalf of a participant for child care, emergency housing assistance, transportation, rental assistance, utility-fee payment assistance, security deposits, utility deposits, moving costs, and general housing stability assistance (which includes emergency supplies) in accordance with §§ 62.33 and 62.34. Grantees may use a maximum of 50 percent of their supportive services grant funds to provide this temporary financial assistance.

G. *Guidance for the Use of Supportive Services Grant Funds:* It is VA policy to support a ''Housing First'' model in addressing and ending homelessness. Housing First establishes housing stability as the primary intervention in working with homeless persons. The Housing First approach is based on research that shows that a homeless individual or household's first and primary need is to obtain stable housing, and that other issues that may affect the household can and should be addressed as housing is obtained. Research supports this approach as an effective means to end homelessness. Housing is not contingent on compliance with services; instead, participants must comply with a standard lease agreement and are provided with the services and supports that are necessary to help them do so successfully.

Grantees must develop plans that will ensure that Veteran participants have the level of income and economic stability needed to remain in permanent housing after the conclusion of the SSVF intervention. Both employment and benefits assistance from VA and non-VA sources represent a significant underutilized source of income stability for homeless Veterans. The complexity of program rules and the stigma some associate with entitlement programs contributes to their lack of use. To this effect, grantees are encouraged to consider strategies that can lead to prompt and successful access to employment and benefits that are essential to retaining housing.

1. Consistent with the Housing First model supported by VA, grantees are expected to offer the following supportive services: housing counseling; assisting participants in understanding leases; securing utilities; making moving arrangements; provide representative payee services concerning rent and utilities when needed; and mediation and outreach to property owners related to locating or retaining housing. Grantees may also assist participants by providing rental assistance, security or utility deposits, moving costs or emergency supplies; or using other Federal resources, such as the HUD's ESG, or supportive services grant funds subject to the limitations described in this NOFA and 38 CFR 62.34.

2. As SSVF is a short-term crisis intervention, grantees must develop plans that will produce sufficient income to sustain Veteran participants in permanent housing after the conclusion of the SSVF intervention. Grantees must ensure the availability of employment and vocational services either through the direct provision of these services or their availability through formal or informal service agreements. Agreements with Homeless Veteran Reintegration Programs funded by the U.S. Department of Labor are strongly encouraged. For participants unable to work due to disability, income must be established through available benefits programs.

3. As per 38 CFR 62.33, grantees must assist participants obtain public benefits. Grantees must screen all participants for eligibility for a broad range of entitlements such as TANF, Social Security, the Supplemental Nutrition Assistance Program (SNAP), the Low Income Home Energy Assistance Program (LIHEAP), the Earned Income Tax Credit (EITC), and local General Assistance programs. Grantees are expected to access the Substance Abuse and Mental Health Services Administration's SSI/SSDI Outreach, Access, and Recovery (SOAR) program either though community linkages or by training staff to deliver SOAR services. In addition, where available grantees should access information technology tools to support case managers in their efforts to link participants to benefits.

4. Grantees are encouraged to provide, or assist participants in obtaining, legal services relevant to issues that interfere with the participants' ability to obtain or retain permanent housing. (NOTE: Legal services provided may be protected from release or review by the grantee or VA under attorney-client privilege.) Support for legal services can include paying for court filing fees to assist a participant with issues that interfere with the participant's ability to obtain or retain permanent housing or supportive services, including issues that affect the participant's employability and financial security. Grantees (in addition to employees and members of grantees) may represent participants before VA with respect to a claim for VA benefits, but only if they are recognized for that purpose pursuant to 38 U.S.C. chapter 59. Further, the individual providing such representation must be accredited pursuant to 38 U.S.C. chapter 59.

5. Access to mental health and addiction services are required by SSVF; however, grantees cannot fund these services directly through the SSVF grant. Therefore, applicants must demonstrate, through either formal or informal agreements, their ability to

promote rapid access and engagement to mental health and addiction services for the Veteran and family members.

6. VA recognizes that extremely low-income Veterans, with incomes below 30 percent of the area median income, face greater barriers to permanent housing placement. In order to support grantees' efforts to serve this population, VA has proposed new program regulations that will expand temporary financial assistance that may be offered to these participants. Grantees must consider the proposed rule when developing their response to this NOFA. The proposed rule was published in the **Federal Register** on May 9, 2014.

7. Notwithstanding any other section in this part, grantees are not authorized to use SSVF funds to pay for the following: (i) Mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing; (ii) construction or the cost of housing rehabilitation; (iii) credit card bills or other consumer debt; (iv) medical or dental care and medicines; (v) mental health, substance use, or other therapeutic interventions designed to treat diagnostic conditions as defined in the Diagnostic and Statistical Manual of Mental Disorders (NOTE: Although SSVF grant funds cannot be used to pay for the treatment of mental health or substance use disorders, grantees are required to offer such services through formal coordinated relationships with VA and other community providers); (vi) home care and home health aides typically used to provide care in support of daily living activities (this includes care that is focused on treatment for an injury or illness, rehabilitation, or other assistance generally required to assist those with handicaps or other physical limitations); (vii) pet care; (viii) entertainment activities; (ix) direct cash assistance to program participants; or (x) court-ordered judgments or fines.

8. When serving participants who are residing in permanent housing, it is required that the defining question to ask is: ''Would this individual or family be homeless but for this assistance?'' The grantee must use a VA approved screening tool with criteria that targets those most at-risk of homelessness. To qualify for SSVF services, a Veteran who is served under Category 1 (homeless prevention), the participants must not have sufficient resources or support networks (e.g., family, friends, faith-based or other social networks), immediately available to prevent them from becoming homeless. To further qualify for services under Category 1, the grantee must document that the participant meets at least one of the following conditions:

(a) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(b) Is living in the home of another because of economic hardship;

(c) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(d) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;

(e) Is exiting a publicly funded institution or system of care (such as a health care facility, a mental health facility, or correctional institution) without a stable housing plan; or

(f) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved screening tool.

9. The TANF program may also be used to address the housing-related needs of families who are homeless or precariously housed and, along with providing ongoing basic assistance, provide an array of non-recurrent, short-term benefits and services. Such benefits and services may include short-term rental or mortgage assistance (to prevent eviction or help a homeless family secure housing), security and utility payments, moving assistance, motel and hotel vouchers, and case management services. For additional information on TANF and homelessness, please visit the following link to an Information Memorandum issued by the United States Department of Health and Human Services Administration for Children and Families, Office of Family Assistance, on February 20, 2013, titled, ''Use of TANF Funds to Serve Homeless Families and Families at Risk of Experiencing Homelessness'': *http://www.acf.hhs.gov/programs/ofa/resource/tanf-acf-im-2013-01.*

10. Where other funds from community resources are not readily available, grantees may choose to utilize supportive services grants, subject to the limitations described in this NOFA and in 38 CFR 62.33 and 62.34, to provide temporary financial assistance. Such assistance may, subject to the limitations in this NOFA and 38 CFR Part 62, be paid directly to a third party on behalf of a participant for child care, transportation, family emergency housing assistance, rental assistance, utility-fee payment assistance, security or utility deposits, moving costs and general housing stability assistance as necessary.

II. Award Information

A. *Overview:* This NOFA announces the availability of funds for supportive services grants under the SSVF Program and pertains to proposals for initial supportive services grant programs. Up to $93 million will be available through this NOFA.

B. *Funding:* Up to $93 million will be available through this NOFA, as VA will provide funds over a 3-year period for non-renewable grants to eligible entities proposing services for one of the 28 priority CoCs listed below. Currently funded SSVF programs cannot apply for renewal funding through this NOFA. Applicants are strongly encouraged to include letters of support from the VA's Network Homeless Coordinator or local VA Medical Center Director assigned to the priority city. In addition, applicants should seek letters of support from CoCs where priority communities are located. CoCs may elect to provide VA with a rank order of their support in lieu of providing individual letters of support. Available funding for each CoC is as follows:

CoC No.	CoC name
AZ–500	Arizona Balance of State.
CA–500	San Jose/Santa Clara City and County.
CA–501	San Francisco.
CA–502	Oakland/Alameda County.
CA–504	Santa Rosa/Petaluma/Sonoma County.
CA–508	Watsonville/Santa Cruz City and County.
CA–600	Los Angeles City and County.
CA–601	San Diego City and County.
CA–602	Santa Ana/Anaheim/Orange County.
DC–500	District of Columbia.
FL–508	Gainesville/Alachua, Putnam Counties.
FL–519	Pasco County.
GA–500	Atlanta.
GA–501	Georgia Balance of State.
IL–510	Chicago.
LA–503	New Orleans/Jefferson Parish.
MD–501	Baltimore City.
MT–500	Montana Statewide.
NC–501	Asheville/Buncombe County.
NV–500	Las Vegas/Clark County.
OR–502	Medford/Ashland/Jackson County CoC.
OR–505	Oregon Balance of State.
SC–502	Columbia/Midlands.
TX–500	San Antonio/Bexar County.
TX–600	Dallas City & County/Irving.
TX–607	Texas Balance of State.
TX–700	City of Houston/Harris County.
WA–501	Washington Balance of State.

C. *Allocation of Funds:* Funding will be awarded under this NOFA to grantees for a non-renewable 3-year period beginning approximately March 1, 2015. The following requirements apply to supportive services grants awarded under this NOFA:

1. Each grant cannot exceed $2 million per year ($6 million total).

2. In response to this NOFA, applicants cannot submit more than one grant for each identified service area.

3. Applicants should fill out separate applications for each supportive services funding request.

D. *Supportive Services Grant Award Period:* All supportive services grants will be for a 3-year, non-renewable period.

III. Eligibility Information

A. *Eligible Applicants:* In order to be eligible, an applicant must qualify as a private non-profit organization (Section 501(c)(3) tax exempt status is required) or a consumer cooperative as has the meaning given such term in Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). In addition, tribally designated housing entities (as defined in Section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4104)) are eligible.

B. *Cost Sharing or Matching:* None.

IV. Application and Submission Information

A. *Address To Request Application Package:* Download directly from the SSVF Program Web site at *www.va.gov/homeless/ssvf.asp* or send a written request for an application to SSVF Program Office, National Center on Homelessness Among Veterans, 4100 Chester Avenue, Suite 201, Philadelphia, PA 19104. Any questions regarding this process should be referred to the SSVF Program Office via phone at (877) 767–0111 (toll-free number) or via email at *SSVF@va.gov.* For detailed SSVF Program information and requirements, see 38 CFR Part 62.

B. *Content and Form of Application:* Two completed collated, hard copies of the application and two compact discs (CD) containing electronic versions of the entire application are required. Each application copy must (i) be fastened with a binder clip, and (ii) contain tabs listing the major sections of and exhibits to the application. Each CD must be labeled with the applicant's name and must contain an electronic copy of the entire application. A budget template must be attached in Excel format on the CD, but all other application materials may be attached in a PDF or other format.

C. *Submission Dates and Times:* Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4:00 p.m. Eastern Time on December 5, 2014. Awards made for supportive services grants will fund operations beginning approximately March 1, 2015, thorough February 28, 2018. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. Additionally, in the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages, or other delivery-related problems.

D. *Intergovernmental Review:* This section is not applicable to the SSVF Program.

E. *Funding Restrictions:* Approximately $93 million may be awarded depending on funding availability and subject to available appropriations for initial supportive services grants to be funded under this NOFA. Applicants should fill out separate applications for each supportive services funding request. Funding will be awarded under this NOFA to grantees for a non-renewable 3-year period beginning approximately March 1, 2015.

F. *Other Submission Requirements:*

1. Applicants may apply only as new applicants using the application designed for new grants.

2. Additional supportive services grant application requirements are specified in the initial application package. Submission of an incorrect or incomplete application package will result in the application being rejected during threshold review. The application packages must contain all required forms and certifications. Selections will be made based on criteria described in 38 CFR Part 62 and this NOFA. Applicants and grantees will be notified of any additional information needed to confirm or clarify information provided in the application and the deadline by which to submit such information. The application copies and CDs must be submitted to the following address: SSVF Program Office, National Center on Homelessness Among Veterans, 4100 Chester Avenue, Suite 201, Philadelphia, PA 19104. Applicants must submit two hard copies and two CDs. Applications may not be sent by facsimile (FAX).

V. Application Review Information

A. *Criteria:*

1. VA will only score applicants that meet the following threshold requirements:

(a) The application is filed within the time period established in the NOFA, and any additional information or documentation requested by VA under § 62.20(c) is provided within the time frame established by VA;

(b) The application is completed in all parts;

(c) The applicant is an eligible entity;

(d) The activities for which the supportive services grant is requested are eligible for funding under this part;

(e) The applicant's proposed participants are eligible to receive supportive services under this part;

(f) The applicant agrees to comply with the requirements of this part;

(g) The applicant does not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and

(h) The applicant is not in default by failing to meet the requirements for any previous Federal assistance.

2. VA will use the following criteria to score applicants who are applying for a new supportive services grant:

(a) VA will award up to 35 points based on the background, qualifications, experience, and past performance (with particular focus on housing placement and retention rates for those applicants serving homeless persons) of the applicant, and any subcontractors identified by the applicant in the supportive services grant application. VA will consider previous work under other SSVF grant awards when scoring this section.

(b) VA will award up to 25 points based on the applicant's program concept and supportive services plan.

(c) VA will award up to 15 points based on the applicant's quality assurance and evaluation plan.

(d) VA will award up to 15 points based on the applicant's financial capability and plan.

(e) VA will award up to 10 points based on the applicant's area or community linkages and relations.

3. VA will use the following process to select applicants to receive supportive services grants: VA will score all applicants that meet the threshold requirements set forth in § 62.21 using the scoring criteria set forth in § 62.22.

B. *Review and Selection Process:* VA will review all initial supportive services grant applications in response to this NOFA according to the following steps:

1. Score all applications that meet the threshold requirements described in 38 CFR 62.21.

2. Rank those applications who score at least 70 cumulative points and receive at least one point under each of the categories identified for new applicants in § 62.22, paragraphs (a), (b), (c), (d), and (e). The applications will be ranked in order from highest to lowest scores.

3. Utilize the ranked scores of applications as the primary basis for selection. However, in accordance with § 62.23(d), VA will utilize the following considerations to select applicants for funding:

(a) Preference applications that provide or coordinate the provision of supportive services for very low-income Veteran families transitioning from homelessness to permanent housing. Consistent with this preference, applicants are required to spend no less than 60 percent of all budgeted temporary financial assistance on homeless participants defined in § 62.11(a)(2) and (a)(3). Waivers to this 60 percent requirement may be requested when grantees can demonstrate significant local progress towards eliminating homelessness in the target service area. Waiver requests must include data from authoritative sources such as HUD's Annual Homeless Assessment Report, annual Point-In-Time Counts and evidence of decreased demand for emergency shelter and transitional housing. Waivers for the 60 percent requirement may also be requested for services provided to rural Indian tribal areas and other rural areas where shelter capacity is insufficient to meet local need.

(b) To the extent practicable, ensure that supportive services grants are equitably distributed across geographic regions, including rural communities and tribal lands. This equitable distribution criteria will be used to ensure that SSVF resources are provided to those communities with the highest need as identified by authoritative sources such as HUD's Annual Homeless Assessment Report, annual Point-In-Time Counts and VA Homeless Registry data.

4. Subject to the considerations noted in paragraph B.3 above, VA will fund the highest-ranked applications for which funding is available.

VI. Award Administration Information

A. *Award Notices:* Although subject to change, the SSVF Program Office expects to announce grant recipients for all applicants in the second quarter of fiscal year 2015 with grants beginning March 1, 2015. Prior to executing a funding agreement, VA will contact the applicants and make known the amount of proposed funding and verify that the applicant would still like the funding. Once VA verifies that the applicant is still seeking funding, VA will execute an agreement and make payments to the grant recipient in accordance with 38 CFR 62 and other applicable provisions of this NOFA.

B. *Administrative and National Policy Requirements:* It is VA's policy to support a ''Housing First'' model in addressing and ending homelessness. Housing First establishes housing stability as the primary intervention in working with homeless persons. The Housing First approach is based on research that shows that a homeless individual or household's first and primary need is to obtain stable housing, and that other issues that may affect the household can and should be addressed as housing is obtained. Housing is not contingent on compliance with services; instead, participants must comply with a standard lease agreement and are provided with the services and supports that are necessary to help them do so successfully. Research supports this approach as an effective means to end homelessness.

Consistent with the Housing First model supported by VA, grantees are expected to offer the following supportive services: housing counseling; assisting participants in understanding leases; securing utilities; making moving arrangements; provide representative payee services concerning rent and utilities when needed; and mediation and outreach to property owners related to locating or retaining housing. Grantees may also assist participants by providing rental assistance, security or utility deposits, moving costs or emergency supplies, using other Federal resources, such as the ESG, or supportive services grant funds subject to the limitations described in this NOFA and 38 CFR 62.34.

As SSVF grants cannot be used to fund treatment for mental health or substance use disorders, applicants must provide evidence that they can provide access to such services to all program participants through formal and informal agreements with community providers.

C. *Reporting:* VA places great emphasis on the responsibility and accountability of grantees. As described in 38 CFR 62.63 and 62.71, VA has procedures in place to monitor supportive services provided to participants and outcomes associated with the supportive services provided under the SSVF Program. Applicants should be aware of the following:

1. Upon execution of a supportive services grant agreement with VA, grantees will have a VA regional coordinator assigned by the SSVF Program Office who will provide oversight and monitor supportive services provided to participants.

2. Grantees will be required to enter data into a Homeless Management Information System (HMIS) web-based software application. This data will consist of information on the participants served and types of supportive services provided by grantees. Grantees must treat the data for activities funded by the SSVF Program separate from that of activities funded by other programs. Grantees will be required to work with their HMIS Administrators to export client-level data for activities funded by the SSVF Program to VA on at least a monthly basis.

3. VA shall complete annual monitoring evaluations of each grantee. Monitoring will also include the submittal of quarterly and annual financial and performance reports by the grantee. The grantee will be expected to demonstrate adherence to the grantee's proposed program concept, as described in the grantee's application. All grantees are subject to audits conducted by VA's Financial Services Center.

4. Grantees will be required to provide each participant with a satisfaction survey which can be submitted by the participant directly to VA, within 45 to 60 days of the participant's entry into the grantee's program and again within 30 days of such participant's pending exit from the grantee's program. In all cases there should be a minimum of 30 days between administration of the two surveys. In cases when a brief SSVF intervention results in the first survey being administered 30 days after exit, only one survey shall be provided.

5. Grantees will be assessed based on their ability to meet critical performance measures. In addition to meeting program requirements defined by the regulations and NOFA, grantees will be assessed on their ability to place participants into housing and the housing retention rates of participants served. Higher placement for homeless

participants and higher housing retention rates for at-risk participants are expected for very-low income Veteran families when compared to extremely low-income Veteran families with incomes below 30 percent of the area median income.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: John Kuhn, Supportive SSVF Program Office, National Center on Homelessness Among Veterans, 4100 Chester Avenue, Suite 201, Philadelphia, PA 19104; (877) 767–0111 (this is a toll-free number); *SSVF@va.gov.*

VIII. Other Information

A. *VA's Goals and Objectives for Funds Awarded Under this NOFA:* In accordance with 38 CFR 62.22(b)(6), VA will evaluate an applicant's ability to meet VA's goals and objectives for the SSVF Program. VA's goals and objectives include the provision of supportive services designed to enhance the housing stability and independent living skills of very low-income Veteran families occupying permanent housing across geographic regions. For purposes of this NOFA, VA's goals and objectives also include the provision of supportive services designed to rapidly re-house or prevent homelessness among people in the following target populations who also meet all requirements for being part of a very low-income Veteran family occupying permanent housing:

1. Veteran families earning less than 30 percent of area median income as most recently published by HUD for programs under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (*http://www.huduser.org*).

2. Veterans with at least one dependent family member.

3. Veterans returning from Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn.

4. Veteran families located in a community, as defined by HUD's CoC, not currently served by a SSVF grantee.

5. Veteran families located in a community, as defined by HUD's CoC, where current level of SSVF services is not sufficient to meet demand of Category 2 and 3 (currently homeless) Veteran families.

6. Veteran families located in a rural area.

7. Veteran families located on Indian Tribal Property.

B. *Payments of Supportive Services Grant Funds:* Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System. Grantees will have the ability to request payments as frequently as they choose subject to the following limitations:

1. During the first quarter of the grantee's supportive services grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 35 percent of the total supportive services grant award without written approval by VA.

2. By the end of the second quarter of the grantee's supportive services grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 60 percent of the total supportive services grant award without written approval by VA.

3. By the end of the third quarter of the grantee's supportive services grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 80 percent of the total supportive services grant award without written approval by VA.

4. By the end of the fourth quarter of the grantee's supportive services grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 100 percent of the total supportive services grant award.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on October 3, 2014, for publication.

Dated: October 7, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2014–24281 Filed 10–9–14; 8:45 am]

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Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, et al.

Chemical Management and Permissible Exposure Limits (PELs); Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, and 1926

[Docket No. OSHA 2012–0023]

RIN 1218–AC74

Chemical Management and Permissible Exposure Limits (PELs)

AGENCY: Occupational Safety and Health Administration (OSHA), DOL.

ACTION: Request for Information (RFI).

SUMMARY: OSHA is reviewing its overall approach to managing chemical exposures in the workplace and seeks stakeholder input about more effective and efficient approaches that addresses challenges found with the current regulatory approach. This review involves considering issues related to updating permissible exposure limits (PELs), as well as examining other strategies that could be implemented to address workplace conditions where workers are exposed to chemicals. The notice details the role of past court decisions on the Agency's current approach to chemical management for the purpose of informing stakeholders of the legal framework in which the Agency must operate. It then describes possible modifications of existing processes, along with potential new sources of data and alternative approaches the Agency may consider. The Agency is particularly interested in information about how it may take advantage of newer approaches, given its legal requirements. This RFI is concerned primarily with chemicals that cause adverse health effects from long-term occupational exposure, and is not related to activities being conducted under Executive Order 13650, Improving Chemical Facility Safety and Security.

DATES: Comments must be submitted by the following dates:

Hard copy: must be submitted (postmarked or sent) by April 8, 2015.

Electronic transmission or facsimile: must be submitted by April 8, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronically: Submit comments electronically at: *www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: Submissions no longer than 10-pages (including attachments) may be faxed to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, or messenger or courier service: Copies must be submitted in triplicate (3) to the OSHA Docket Office, Docket No. OSHA–2012–0023, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m. (E.T.).

Instructions: All submissions must include the Agency name and the OSHA docket number (*i.e.* OSHA–2012–0023). Submissions, including any personal information provided, are placed in the public docket without change and may be made available online at: *www.regulations.gov.* OSHA cautions against the inclusion of personally identifiable information (*e.g.,* social security number, birth dates).

If you submit scientific or technical studies or other results of scientific research, OSHA requests that you also provide the following information where it is available: (1) Identification of the funding source(s) and sponsoring organization(s) of the research; (2) the extent to which the research findings were reviewed by a potentially affected party prior to publication or submission to the docket, and identification of any such parties; and (3) the nature of any financial relationships (*e.g.,* consulting agreements, expert witness support, or research funding) between investigators who conducted the research and any organization(s) or entities having an interest in the rulemaking. If you are submitting comments or testimony on the Agency's scientific and technical analyses, OSHA requests that you disclose: (1) The nature of any financial relationships you may have with any organization(s) or entities having an interest in the rulemaking; and (2) the extent to which your comments or testimony were reviewed by an interested party prior to its submission. Disclosure of such information is intended to promote transparency and scientific integrity of data and technical information submitted to the record. This request is consistent with Executive Order 13563, issued on January 18, 2011, which instructs agencies to ensure the objectivity of any scientific and technological information used to support their regulatory actions. OSHA emphasizes that all material submitted to the rulemaking record will be considered by the Agency to develop the final rule and supporting analyses.

Docket: To read or download submissions or other material in the docket go to: *www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the index; however, some information (*e.g.* copyrighted materials) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:* Mr. Frank Meilinger, Director, Office of Communications, U. S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 693–1999; email *meilinger.francis2@dol.gov. Technical information:* Ms. Lyn Penniman, Office of Physical Hazards, OSHA, Room N–3718, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 693–1950; email *penniman.lyn@dol.gov.*

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List of Acronyms: Request for Information on Chemical Management and Permissible Exposure Limits

ACGIH American Conference of Governmental Industrial Hygienists
ADI Allowable Daily Intake
AIHA American Industrial Hygiene Association
AISI American Iron and Steel Institute
ANSI American National Standards Institute
APHA American Public Health Association
ATSDR Agency for Toxic Substances Disease Registry
BAuA Federal Institute for Occupational Safety and Health (Germany)
BMD Benchmark Dose
BMDL Benchmark Dose Low
BMR Benchmark Response
CDR Chemical Data Reporting
CFD Computational Fluid Dynamics
COSHH Control of Substances Hazardous to Health (U.K.)
CrVI Hexavalent Chromium
CSTEE Scientific Committee on Toxicity, Ecotoxicity and the Environment (E.U.)
CT Control Technology
DfE Design for the Environment (EPA)
DHHS Department of Health and Human Services (U.S.)
DMEL Derived Minimal Effect Level
DNEL Derived No Effect Level
DOE Washington Department of Ecology
DOL Department of Labor (U.S.)
ECB European Chemicals Bureau (E.U.)
ECHA European Chemicals Agency (E.U.)
EPA Environmental Protection Agency (U.S.)
ES Exposure Scenario
EU European Union
FDA Food and Drug Administration (U.S.)
GAO Government Accountability Office (U.S.)
GHS Globally Harmonized System for the Classification and Labeling of Chemicals
HazCom 2012 Revised OSHA Hazard Communication Standard
HCS Hazard Communication Standard (OSHA)
HHE Health Hazard Evaluation (NIOSH)
HPV High Production Volume (EPA)
HPVIS High Production Volume Information System (EPA)
HSE Health and Safety Executive (U.K.)
HTS High Throughput Screening
IFA Federation of Institutions for Statutory Accident Insurance and Prevention (Germany)
IMIS Integrated Management Information System (OSHA)
IPCS World Health Organization International Programme on Chemical Safety
IRIS Integrated Risk Information System (EPA)
ISTAS Institute of Work, Environment, and Health (Spain)
ITC Interagency Testing Committee (EPA TSCA)
IUR Inventory Update Reporting
LETE Low-end Toxicity Exposure
LOAEL Lowest Observed Adverse Effect Level
LOD Limit of Detection
LTFE Lowest Technologically Feasible Exposure
MA DEP Massachusetts Department of Environmental Protection
MIBK Methyl isobutyl ketone
MOA Modes of Action
MOE Margin of Exposure
MRL Minimal Risk Level
NAICS North American Industry Classification System
NCGC National Institutes of Health Chemical Genomics Center
NIEHS National Institute of Environmental Health Sciences (U.S.)
NIOSH National Institute for Occupational Safety and Health (U.S.)
NIST National Institute of Standards and Technology (U.S.)
NMCSD Navy Medical Center San Diego
NOAEL No Observed Adverse Effect Level
NOES National Occupational Exposure Survey
NORA National Occupational Research Agenda (NIOSH)
NPRM Notice of Proposed Rulemaking (OSHA)
NRC National Research Council (U.S., private)
NTP National Toxicology Program (U.S.)
OECD Organization for Economic Cooperation and Development (multiple countries, private)
OEL Occupational Exposure Limit
OPPT Office of Pollution Prevention and Toxics (EPA)
OSHA Occupational Safety and Health Administration
OTA Massachusetts Office of Technical Assistance and Technology
PBT Persistent, Bioaccumulative and Toxic
PBZ Personal Breathing Zone
PCRARM (EPA) Presidential/Congressional Commission on Risk Assessment and Risk Management
PEL Permissible Exposure Limits
PMN Pre-manufacture Notification (EPA)
PNEC Predicted No Effect Concentration
POD Point of Departure
PPE Personal Protective Equipment
PPM Parts Per Million
QCAT Quick Chemical Assessment Tool (DOE)
QSAR Quantitative Structure-Activity Relationship
REACH Registration, Evaluation, Authorization and Restriction of Chemicals (E.U.)
REL Recommended Exposure Level
RfC Reference Concentration
RFI Request for Information
SAR Structural Activity Relation
SBREFA Small Business Regulatory Enforcement Fairness Act (U.S.)
SDS Safety Data Sheet
SEP Special Emphasis Program
SIC Standards Industrial Classification
SIDS Screening Information Data Set (OECD)
STEL Short-term Exposure Limit
TLV Threshold Value Limit (ACGIH)
TSCA Toxic Substances Control Act (EPA)
TTC Threshold of Toxicological Concern
TWA Time-weighted Average
vPvB Very Persistent and Very Bioaccumulative
WEEL Workplace Environmental Exposure Level (AIHA)

I. Purpose

The purpose of this Request for Information (RFI) is to present background information and request comment on a number of technical issues related to aspects of OSHA's rulemaking process for chemical hazards in the workplace. In particular, the purpose of the RFI is to:

- Review OSHA's current approach to chemical regulation in its historical context;
- Describe and explore other possible approaches that may be relevant to future strategies to reduce and control exposure to chemicals in the workplace; and
- Inform the public and obtain public input on the best approaches for the

Agency to advance the development and implementation of approaches to reduce or eliminate harmful chemical exposures in the 21st century workplace.

By all estimates, the number of chemicals found in workplaces today far exceeds the number which OSHA regulates, and is growing rapidly. There is no single source recording all chemicals available in commerce. Through its Chemical Data Reporting Rule, EPA collects information on chemicals manufactured or imported at a single site at 25,000 pounds or greater; currently this number exceeds 7,674 chemicals (U.S. EPA, 2013a; *Ex. #1*)

The American Chemistry Council estimates that approximately 8,300 chemicals (or about 10 percent of the 87,000 chemicals in the TSCA inventory) are actually in commerce in significant amounts (Hogue, 2007; *Ex. #2*). By contrast the European Chemicals Agency database contains 10,203 unique substances (as of 9/12/2013) (ECHA, 2013; *Ex. #3*). Of these, OSHA has occupational exposure limits for only about 470 substances. Most of these are listed as simple limits and appear in tables (referred to as ''Z-tables'') in 29 CFR 1910.1000, *Air Contaminants,* Subpart Z, *Toxic and Hazardous Substances; Ex. #4.* Approximately 30 have been adopted by OSHA as a part of a comprehensive standard, and include a number of additional requirements such as regulated areas, air sampling, medical monitoring, and training However, with few exceptions, OSHA's permissible exposure limits, (PELs), which specify the amount of a particular chemical substance allowed in workplace air, have not been updated since they were established in 1971 under expedited procedures available in the short period after the OSH Act's adoption (see 29 CFR 1910.1000; *Ex. #4,* 1915.1000; *Ex. #5,* and 1926.55; *Ex. #6*). Yet, in many instances, scientific evidence has accumulated suggesting that the current limits are not sufficiently protective. Although OSHA has attempted to update its PELs, the Agency has not been successful, except through the promulgation of a relatively few substance-specific health standard rulemakings (e.g., benzene, cadmium, lead, and asbestos).

The most significant effort to update the PELs occurred in 1989 when OSHA tried to update many of its outdated PELs and to create new PELs for other substances in a single rulemaking covering general industry PELs. After public notice and comment, the Agency published a general industry rule that lowered PELs for 212 chemicals and added new PELs for 164 more (54 FR 2332; *Ex. #7*). Appendix B to this Request for Information contains the table of PELs from the 1989 Air Contaminants Final Rule. The table includes both the PELs originally adopted by OSHA in 1971 and the PELs established under the 1989 final rule. While the Agency presented analyses of the risks associated with these chemicals, as well as the analyses of the economic and technological feasibility of the proposed limits for these chemicals, these analyses were not as detailed as those OSHA would have prepared for individual rulemakings. The final rule was challenged by both industry and labor groups. The 1989 PEL update was vacated by the Eleventh Circuit Court of Appeals because it found that OSHA had not made sufficiently detailed findings that each new PEL would eliminate significant risk and would be feasible in each industry in which the chemical was used. (*AFL–CIO* v. *OSHA, 965 F.*2d 962 (11th Cir. 1992) (the *Air Contaminants* case; *Ex. #8*). This decision is discussed further below and in Appendix A.

Despite these challenges, health professionals and labor and industry groups have continued to support addressing PELs which may be outdated and or inconsistent with the best available current science. The 1989 Air Contaminants rulemaking effort was supported by the American Industrial Hygiene Association (AIHA), the American Conference of Governmental Industrial Hygienists (ACGIH), and the American Public Health Association (APHA), among many other professional organizations and associations representing both industry and labor. In an October 2012 survey, members of the AIHA identified updating OSHA PELs as their number one policy priority. The U.S. Chamber of Commerce, in a letter dated April 8, 2011 to then Deputy Secretary of Labor, Seth Harris, also supported updating OSHA's PELs.

Much has changed in the world since the OSH Act was signed in 1970. However, workers are essentially covered by the same PELs as they were forty years ago. And while OSHA has been given no new tools or increased resources to control workplace exposures, it has had to conduct increasingly complex analyses, which has effectively slowed the process. The purpose of this RFI is for OSHA to solicit information as to the best approach(es) for the Agency to help employers and employees devise and implement risk management strategies to reduce or eliminate chemical exposures in the 21st century workplace environment. This is likely to involve a multi-faceted plan that may include changing or improving OSHA policies and procedures regarding the derivation and implementation of PELs, as well as pursuing new strategies to improve chemical management in the workplace. The Agency is publishing this notice to inform the public of its consideration of these issues, as well as solicit public input that can be used to inform further deliberations, and the determination of an appropriate approach.

II. Legal Requirements for OSHA Standards

In the past, OSHA has received many suggestions for updating its PELs, but these suggestions often do not take account of the requirements imposed by the OSH Act, and thus have been of limited value to OSHA. OSHA is providing an overview of its legal requirements for setting standards in order to help commenters responding to this RFI to provide suggestions that can satisfy these requirements. This section summarizes OSHA's legal requirements, which are discussed in greater detail in Appendix A. The next section provides an overview of OSHA's previous attempts to update the PELs.

Section 6(b) of the OSH Act (*Ex. #9*) provides OSHA with the authority to promulgate health standards. It specifies procedures that OSHA must use to promulgate, modify, or revoke its standards, including publishing the proposed rule in the **Federal Register**, providing interested persons an opportunity to comment, and holding a public hearing upon request. However, much of the labor and analysis that goes into the final rule starts before the publication of the proposal. Section 6(b)(5) of the Act specifies:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

In general, as this provision has been construed by the courts, any workplace

health standard adopted by OSHA must meet the following requirements:

(1) The standard must substantially reduce a significant risk of material harm.

(2) Compliance with the standard must be technically feasible. This means that the protective measures required by the standard currently exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed.

(3) Compliance with the standard must be economically feasible. This means that the standard will not threaten the industry's long term profitability or substantially alter its competitive structure.

(4) It must reduce risk of adverse health to workers to the extent feasible.

(5) The standard must be supported by substantial evidence in the record, consistent with prior agency practice or is supported by some justification for departing from that practice.

The significant risk, economic and technological feasibility, and substantial evidence requirements are of particular relevance in setting PELs, and are discussed further below.

A. Significant Risk of a Material Impairment: The Benzene Case

The significant risk requirement was first articulated in a plurality decision of the Supreme Court in *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980), commonly referred to as the *Benzene* case. The petitioners challenged OSHA's rule lowering the PEL for benzene from 10 ppm to 1 ppm. In support of the new PEL, OSHA found that benzene caused leukemia and that the evidence did not show that there was a safe threshold exposure level below which no excess leukemia would occur; OSHA chose the new PEL of 1 ppm as the lowest feasible exposure level. The *Benzene* Court rejected OSHA's approach, finding that the OSH Act only required that employers ensure that their workplaces are safe, that is, that their workers are not exposed to ''significant risk[s] of harm.'' 448 U.S. at 642 (*Ex. #10*). The Court also made it clear that it is OSHA's burden to establish that a significant risk is present at the current standard before lowering a PEL, stating that the burden of proof is normally on the proponent. Thus, the Court held, before promulgating a health standard, OSHA is required to make a ''threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices'' before it can adopt a new standard. Id.

Although the Court declined to establish a set test for determining whether a workplace is unsafe, it did state that a significant risk was one that a reasonable person would consider significant and ''take appropriate steps to decrease or eliminate.'' 448 U.S. at 655. For example, it said, a one in a 1,000 risk would satisfy the requirement. However, this example was merely an illustration, not a hard line rule. The Court made it clear that determining whether a risk was ''significant'' was not a ''mathematical straitjacket'' and did not require the Agency to calculate the exact probability of harm. Id. The 1 ppm PEL was vacated because OSHA had not made a significant risk finding at the 10 ppm level.

Following the *Benzene* case, OSHA has satisfied the significant risk requirement by estimating the risk to workers subject to a lifetime of exposure at various possible exposure levels. These estimates have typically been based on quantitative risk assessments in which OSHA, as a general policy, has considered an excess risk of one death per 1000 workers over a 45-year working lifetime as clearly representing a significant risk. However, the *Benzene* case does not require OSHA to use such a benchmark. In the past, OSHA has stated that a lower risk of death could be considered significant. *See, e.g.,* Preamble to Formaldehyde Standard, 52 FR 46168, 46234 (suggesting that risk approaching six in a million could be viewed as significant). (*Ex. #11*)

B. Technological and Economic Feasibility

Under section 6(b)(5) of the Act, a standard must protect against significant risk, ''to the extent feasible, and feasibility is understood to have both technological and economic aspects. A standard is technologically feasible if ''a typical firm will be able to develop and install engineering and work practice controls that can meet the PEL in most operations.'' *United Steelworkers* v. *Marshall,* 647 F.2d 1189, 1272 (D.C. Cir. 1981) (''*Lead I''; Ex. #12*). OSHA must show the existence of ''technology that is either already in use or has been conceived and is reasonably capable of experimental refinement and distribution within the standard's deadlines.'' Id. Where the Agency presents ''substantial evidence that companies acting vigorously and in good faith can develop the technology,'' the Agency is not bound to the technological status quo, and ''can require industry to meet PELs never attained anywhere.'' Id. at 1264–65.

Some courts have required OSHA to determine whether a standard is technologically feasible on an industry-by-industry basis, *Color Pigments Manufacturers Assoc.* v. *OSHA,* 16 F.3d 1157, 1162–63 (11th Cir. 1994; *Ex. #13*); AFL–CIO v. OSHA, 965, F.2d 962, 981–82 (11th Cir. 1992) (*Air Contaminants; Ex. #8*). However, another court has upheld technological feasibility findings based on the nature of an activity across many industries rather than on an industry-by-industry basis, *Public Citizen Health Research Group* v. *United States Department of Labor,* 557 F.3d 165,178–79 (3d Cir. 2009; *Ex. #14*).

With respect to economic feasibility, the courts have stated ''A standard is feasible if it does not threaten massive dislocation to . . . or imperil the existence of the industry.'' *Lead I,* 647 F.2d at 1265 *(Ex. #12).* In order to show this, OSHA should ''construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry.'' Id. at 1266. However, ''[T]he court probably cannot expect hard and precise estimates of costs. Nevertheless, the agency must of course provide a reasonable assessment of the likely range of costs of its standard, and the likely effects of those costs on the industry.'' Id.

While OSHA is not required to show that all companies within an industry will be able to bear the burden of compliance, at least one court has held that OSHA is required to show that the rule is economically feasible on an industry-by-industry basis. *Air Contaminants,* 965 F.2d at 982, 986. *(Ex. #8)*

C. The Substantial Evidence Test

The ''substantial evidence test'' is used by the courts to determine whether OSHA has reached its burden of proof for policy decisions and factual determinations. ''Substantial evidence'' is defined as ''such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'' *American Textile Mfrs. Inst., Inc.* v. *Donovan,* 452 U.S. 490, 522 (1981; *Ex. #15*) (quoting *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 477 (1951); *Ex. #16*). The substantial evidence test does not require ''scientific certainty'' before promulgating a health standard (*AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 656 (1980); *Ex. 10*), but the test does require OSHA to ''identify relevant factual evidence, to explain the logic and the policies underlying any legislative choice, to state candidly any

assumptions on which it relies, and to present its reasons for rejecting significant contrary evidence and argument.'' *Lead I,* 647 F.2d. at 1207. (*Ex. #12*)

III. History of OSHA's Efforts To Establish PELs

The history of OSHA's PELs has three stages. First, OSHA adopted its current PELs in 1971, shortly after coming into existence. Second, OSHA attempted to update its PELs wholesale in 1989, but that effort was rejected by the Eleventh Circuit Court of Appeals in 1992. Third, OSHA has made subsequent, smaller efforts to update certain PELs, but those efforts have never come to fruition. This history is summarized below, and discussed in further detail in Appendix A.

A. Adopting the PELs in 1971

Under section 6(a), OSHA was permitted an initial two-year window after the passage of the OSH Act to adopt ''any national consensus standard and any established Federal standard'' 29 U.S.C 655(6)(a). OSHA used this authority in 1971 to establish PELs that were adopted from federal health standards originally set by the Department of Labor through the Walsh-Healy Act, in which approximately 400 occupational exposure limits were selected based on ACGIH's 1968 list of Threshold Limit Values (TLVs). In addition, about 25 additional exposure limits recommended by the American Standards Association (now called the American National Standards Institute) (ANSI), were adopted as national consensus standards.

These standards were intended to provide initial protections for workers from what the Congress deemed to be the most dangerous workplace threats. Congress found it was ''essential that such standards be constantly improved and replaced as new knowledge and techniques are developed.'' S. Rep. 91–1282 at 6. (*Ex. #17*) However, because OSHA has been unable to update the PELs, they remain frozen at the levels at which they were initially adopted. OSHA's PELs are also largely based on acute health effects and do not take into consideration newer research regarding chronic health effects occurring at lower occupational exposures.

B. The 1989 PELs Update

In 1989, OSHA published the *Air Contaminants* final rule, which remains the Agency's most significant attempt at updating the PELs (54 FR 2332). (*Ex. #7*) Unlike typical substance-specific rulemakings, where OSHA develops a comprehensive standard, the *Air Contaminants* final rule was only intended to update existing PELs or to add PELs for substances within established boundaries. After extensive review of all available sources of occupational exposure limits (OELs), OSHA selected the ACGIH's 1987–88 TLVs as the boundaries for identifying the substances that would be included in the proposed rule. OSHA proposed 212 more protective PELs and new PELs for 164 substances not previously regulated. In general, rather than performing a quantitative risk assessment for each chemical, the agency looked at whether studies showed excess effects of concern at concentrations lower than allowed under the existing standard. Where they did, OSHA made a significant risk finding and either set a PEL (where none existed previously) or lowered the existing PEL. These new PELs were based on Agency judgment, taking into account the existing studies and, as appropriate, safety factors. Safety factors (also called uncertainty factors) are applied to the lowest level an effect is seen or to a level where no effects are seen to derive a PEL.

In order to determine whether the *Air Contaminants* rule was feasible, OSHA prepared the regulatory impact analysis. As part of the analysis, OSHA performed an industry survey as well as site visits. The survey was the largest survey ever conducted by OSHA and included responses from 5,700 firms in industries believed to use chemicals addressed in the scope of the *Air Contaminants* proposal. (*Ex. #18)* It was designed to focus on industry sectors that potentially had the highest compliance costs, identified through an analysis of existing exposure data at the four-digit SIC (Standards Industrial Classification) code level. OSHA analyzed the data collected to determine whether the updated PELs were both technologically and economically feasible for each industry sector covered.

For technological feasibility, OSHA found that ''in the overwhelming majority of situations where air contaminants [were] encountered by workers, compliance [could] be achieved by applying known engineering control methods, and work practice improvements.'' 54 FR at 2789; *Ex. #7.* For economic feasibility, OSHA assessed the economic impact of the standard on industry profits at the two-digit SIC code level, and found the economic impact not to be significant, and the new standard therefore economically feasible.

In the *Air Contaminants* final rule, OSHA summarized the health evidence for each individual substance, discussed over 2,000 studies, reviewed and addressed all major comments submitted to the record, and provided a rationale for each new PEL chosen. OSHA estimated that over 21 million employees were potentially exposed to hazardous substances in the workplace and over 4.5 million employees were exposed to levels above the applicable exposure limits. OSHA projected that the final rule would result in a potential reduction of over 55,000 lost workdays due to illnesses per year and that annual compliance with this final rule would prevent an average of 683 fatalities annually from exposures to hazardous substances.

C. The 1989 PELs Update Is Vacated by the Court of Appeals

The update to the *Air Contaminants* standard generally received widespread support from both industry and labor. However, there was dissatisfaction on the part of some industry representatives and union leaders, who brought petitions for review challenging the standard. For example, some industry petitioners argued that OSHA's use of generic findings, the inclusion of so many substances in one rulemaking, and the allegedly insufficient time provided for comment by interested parties created a record inadequate to support the new set of PELs. In contrast, the unions challenged the approach used by OSHA to promulgate the standard and argued that several PELs were not protective enough. The unions also asserted that OSHA's failure to include any ancillary provisions, such as exposure monitoring and medical surveillance, prevented employers from ensuring the exposure limits were not exceeded, and resulted in less-protective PELs.

Although only 23 of the 428 PELs were challenged, the court ultimately decided to vacate the entire rulemaking, finding that ''OSHA [had] not sufficiently explained or supported its threshold determination that exposure to these substances at previous levels posed a significant risk of these material health impairments or that the new standard eliminates or reduces that risk to the extent feasible.'' *Air Contaminants* 965 F.2d at 986–987; *Ex. #8*

With respect to significant risk, the court held that OSHA had failed to ''explain why the studies mandated a particular PEL chosen.'' Id. at 976. Specifically, the court stated that OSHA failed to quantify the risk from individual substances and merely provided conclusory statements that the new PEL would reduce a significant risk

of material health effects.'' Id. at 975. Further, the court rejected OSHA's argument that it had relied on safety factors in setting the new PELs, stating that OSHA had not adequately supported their use. The court observed that ''the difference between the level shown by the evidence and the final PEL is sometimes substantial.'' Id. at 978. It said that OSHA had not indicated ''how the existing evidence for individual substances was inadequate to show the extent of risk for these factors'' and that the agency had ''failed to explain the method by which its safety factors were determined.'' Id. ''OSHA may use assumptions but only to the extent that those assumptions have some basis in reputable scientific evidence,'' the court concluded. Id. at 978–79.

The *Eleventh Circuit* court also rejected OSHA's technological feasibility findings. The Agency had made these findings mainly at the two-digit SIC level, but also at the three- and four- digit level where appropriate given the processes involved. The court rejected this approach, finding that OSHA failed to make industry-specific findings or identify the specific technologies capable of meeting the proposed limit in industry-specific operations. Id. at 981. While OSHA had identified primary air contaminant control methods: Engineering controls, administrative controls and work practices and personal protective equipment, the agency, ''only provided a general description of how the generic engineering controls might be used in the given sector.'' Id. Though noting that OSHA need only provide evidence sufficient to justify a ''general presumption of feasibility,'' the court held that this ''does not grant OSHA license to make overbroad generalities as to feasibility or to group large categories of industries together without some explanation of why findings for the group adequately represents the different industries in that group.'' Id. at 981–82.

The court rejected OSHA's economic feasibility findings for similar reasons. As discussed above, OSHA supported its economic feasibility findings for the 1989 Air Contaminants rule based primarily on the results of a survey of over 5700 businesses, summarizing the projected cost of compliance at the two-digit SIC industry sector level. The court held that OSHA was required to show that the rule was economically feasible on an industry-by industry basis, and that OSHA had not shown that its analyses at the two-digit SIC industry sector level were appropriate to meet this burden. Id. at 982. ''[A]verage estimates of cost can be extremely misleading in assessing the impact of particular standards on individual industries'' the court said, and ''analyzing the economic impact for an entire sector could conceal particular industries laboring under special disabilities and likely to fail as a result of enforcement.'' Id. While OSHA might ''find and explain that certain impacts and standards do apply to entire sectors of an industry'' if ''coupled with a showing that there are no disproportionately affected industries within the group,'' OSHA had not explained why its use of such a ''broad grouping was appropriate.'' Id. at 982 n.28, 983.

D. Revising OSHA's PELs in the Wake of the Eleventh Circuit Decision

In the wake of the Eleventh Circuit's decision, OSHA has generally pursued a conservative course in satisfying its judicially imposed analytical burdens. The set of resulting analytical approaches OSHA has engaged in is highly resource-intensive and has constrained OSHA's ability to prioritize its regulatory efforts based on risk of harm to workers. In 1995, OSHA made its first attempt following the *Air Contaminants* ruling to update a smaller number of PELs using a more rigorous analysis of risk, workplace exposures, and technological and economic feasibility. (*Ex. #20)* OSHA and the National Institute for Occupational Safety and Health (NIOSH) conducted preliminary research on health risks associated with exposure and extent of occupational exposure. Sixty priority substances were identified for further examination and twenty of the sixty substances were selected to form a priority list. Early in 1996, the Agency announced its plans for a stakeholder meeting, and identified the twenty priority substances, as well as several risk-related discussion topics. (*Ex. #21)* During the meeting, almost all stakeholders from industry and labor agreed that the PELs needed to be updated; however, not one group completely supported OSHA's suggested approach. Overall, many of the stakeholders did not support the development of a list of priority chemicals targeted for potential regulation and felt there was a lack of transparency in the process for selecting the initial chemicals.

In response to stakeholder input and OSHA's research, the agency selected seven of the 20 substances discussed at the stakeholder meeting for detailed analysis of risks and feasibility. The chemicals selected were: (i) Glutaraldehyde, (ii) carbon disulfide, (iii) hydrazine, (iv) perchloroethylene, (v) manganese, (vi) trimellitic anhydride, and (vii) chloroprene. Quantitative risk assessments were performed in-house, and research (including site visits) was undertaken to collect detailed data on uses, worker exposures, exposure control technology effectiveness, and economic characteristics of affected industries.

The research and analysis were carried out over several years, after which OSHA decided not to proceed with rulemaking. (*Ex. #22)* This decision was influenced by findings that (i) prevalence and intensity of worker exposures for some of the substances (*e.g.,* carbon disulfide and hydrazine) had declined substantially since the 1989 rule was promulgated; (ii) industry had voluntarily implemented controls to reduce the exposure to safe levels; and (iii) for others, substantial Agency resources would have been required to fully assess technological and economic impacts.

In 1997, OSHA held another meeting with industry and labor on the proposed PEL development process. Although the project did not result in a rulemaking to revise the PELs, OSHA gained valuable experience in developing useful approaches for quantifying non-cancer health risks through collaboration with external reviewers in scientific peer reviews of its risk analyses. OSHA is now examining ways to better address chemical exposures given current resource constraints and regulatory limitations.

For readers who are interested in a more detailed account of the legislation and court decisions that shaped OSHA's current regulatory framework, Appendix A to this Request for Information, *History, Legal Background and Significant Court Decisions,* provides additional information. Readers may want to consult Appendix A as they frame responses to the questions posed in this Request for Information.

IV. Reconsideration of Current Rulemaking Processes

As reviewed in Section II (Legal Requirements for OSHA Standards) and Section III (History of OSHA's Efforts to Establish PELs), OSHA has to use the best available evidence to make findings of significant risk, substantial reductions in risk, and technological and economic feasibility under the Act. This section reviews how interpretation of 6(b)(5) and subsequent case law has resulted in the methods it uses when developing risk, technical feasibility, and economic findings as well as the evidence OSHA has used in the past to make these findings (*i.e.,* OSHA's use of

formal risk assessment modeling to evaluate significant risk, and the Agency's use of worker exposure data and exposure control effectiveness data to evaluate technical feasibility and costs of compliance).

This section also reviews developments in science and technology and how these new advancements may improve the scientific basis for making findings of significant risk, technical feasibility, and economic feasibility. As an example, the National Academies of Science has released extensive reviews of advances in science, toxicology, and risk and exposure assessment and evaluated how the Federal government can potentially utilize these advancements in its decision-making processes (NRC, 2012; *Ex. #23,* NRC, 2009; *Ex. #24,* NRC, 2007; *Ex. #25*). While new technologies will advance the public's understanding in these critical areas, the Agency has obligations under the OSH Act to make certain findings under 6(b)(5), as discussed above in Section III. How OSHA might utilize these new developments to meet the Agency's evidentiary burden will be discussed in this section.

A. Considerations for Risk Assessment Methods

1. Current Quantitative Risk Assessment Methods Typically Used by OSHA To Support 6(b) Single Substance Rulemaking

As discussed in Section III, the Supreme Court requires OSHA to determine that a significant risk exists before adopting an occupational safety and health standard. While the Court did not stipulate a means to distinguish significant from insignificant risks, it broadly described the range of risks OSHA might determine to be significant:

> It is the Agency's responsibility to determine in the first instance what it considers to be a ''significant'' risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2 percent benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*Benzene,* 448 U.S. at 655). (*Ex. #10*),

OSHA has interpreted the Court's example to mean that a 1 in 1000 risk of serious illness is significant, and has used this measure to guide its significance of risk determinations. For example, OSHA's risk assessment for hexavalent chromium estimated that a 45-year occupational exposure at the PEL of 5μg/m^3 would lead to more than 10 lung cancer cases per 1000 workers exposed. Because this risk exceeds the value of one case of lung cancer per 1000 exposed workers, OSHA found it to be significant. The significance of risk determinations of other rules since the *Benzene* decision have typically followed a similar logic.

Over the three decades since the *Benzene* decision, OSHA has gradually built up a highly rigorous approach to derive quantitative estimates of risk such as those found in the hexavalent chromium preamble. First, the Agency reviews the available exposure-response data for a chemical of interest. It evaluates the available data sets and identifies those best suited for quantitative analysis. Using the best available data, the Agency then conducts extensive statistical analyses to develop an exposure-response model that is able to extrapolate probability of disease at exposures below the observed data. Once the model is developed, OSHA conducts further analyses to evaluate the sensitivity of the model to error and uncertainties in the modeling inputs and approach. The exposure-response model is used to generate estimates of risk associated with a working lifetime of occupational exposure to the chemical of interest over a range of PEL options that often include exposure levels below those considered to be technologically feasible. The entire risk assessment has always been subject to peer review, from choice of data set(s) through generation of lifetime risk estimates.When the proposed rule is released for comment, it receives additional scrutiny from the scientific community, stakeholders, and the general public. The Agency uses the feedback of the peer review panel and public comment at the time of proposal to further test and develop the risk analysis.

This model-based approach to risk assessment has a number of important advantages. The quantitative risk estimates can be easily compared with the level of 1 in 1000 that the Court cited as an example of significant risk. Sometimes, the best available data come from worker or animal populations with exposure levels far above the technologically feasible levels for which OSHA must evaluate risk, and a risk model is used to extrapolate from high to low exposures. When large, high-quality exposure-response data sets are available, a rigorous quantitative analysis can yield robust and fairly precise risk estimates to inform public understanding and debate about the health benefits of a new or revised regulation. However, there are also drawbacks to the model-based approach, and there are situations where a modeling analysis may not be necessary or appropriate for OSHA to make the significance of risk determination to support a new or revised regulation. Model-based risk analyses tend to require a great deal of Agency time and resources.

In some cases, the model-based approach is essential to OSHA's significant risk determination, because it is not evident prior to a modeling analysis whether there is significant risk at current and technologically-feasible exposures. In other cases, however, it may be evident from the scientific literature or other readily available evidence that risk at the existing PEL is clearly significant and that it can be substantially reduced by a more stringent regulation without the need for quantitative estimates extrapolated from an exposure-response model. In addition to reducing significant risk of harm, the OSH Act also directs the Agency to determine that health standards for toxic chemicals are feasible. At times, it is evident without extensive analysis that the most stringent PEL feasible can only reduce, not eliminate, significant risk. In such cases, the value of a model-based quantitative risk assessment may not warrant the Agency time and resources that model-based risk assessment requires.

In situations described above where the PEL may be set at the lowest feasible level, OSHA believes that it can establish significant risk more efficiently instead of relying on probabilistic estimates from dose-response modeling as described above. OSHA is exploring a number of more flexible, scientifically accepted approaches that may streamline the risk assessment process and increase the capacity to address a greater number of chemicals.

Question IV.A.1: OSHA seeks input on the risk assessment process described above. When is a model-based analysis necessary or appropriate to determine significance of risk and to select a new or revised PEL? When should simpler approaches be employed? Are there specific approaches OSHA should consider using when a model-based analysis is not required? To the extent possible, please provide detailed explanation and examples of situations when a model-based risk analysis is or is not necessary to determine significance of risk and to develop a new standard.

2. Proposed Tiered Approach to Risk Assessment in Support of Updating PELs for Chemical Substances

a. General Description and Rationale of Tiered Approach

OSHA is considering a tiered process to exposure-response assessment that may enable the agency to more efficiently make the significant risk findings needed to establish acceptable PELs for larger numbers of workplace chemicals. The approach involves three stages: dose-response analysis in the observed range, margin of exposure determination, and exposure-response extrapolation (if needed). The process overlaps with the risk-based methodologies employed by EPA IRIS, NIOSH, the Agency for Toxic Substances Disease Registry (ATSDR), the European Union Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) program, and other organizations that recommend chemical toxicity values or exposure levels protective of human health. The first step is dose-response analysis in the observed range. During this step, OSHA analyzes exposures (or doses) and adverse outcomes from human studies or animal bioassays, particularly at the lower end of the exposure range. This involves the derivation of a ''low-end toxicity exposure'' (LETE), which is discussed further in section IV.A.2.c. below.

The second step is margin of exposure determination, where LETEs are compared with the range of possible exposure limits that OSHA believes to be feasible for the new or proposed standard. Typically, there is a close and ongoing dialogue between those OSHA technical staff and management responsible for the risk assessment and their counterparts responsible for the feasibility analyses as the separate determinations are being simultaneously developed. Feasibility analyses, in particular, can take years of research, including site visits and industry surveys. In many of OSHA's rulemakings, the lowest feasible PEL can only reduce, not eliminate, significant risk. Thus, OSHA sets many PELs at the lowest feasible level, and not at a level of occupational exposure considered to be without significant risk. This significant risk orientation differs from other Federal Agencies, such as EPA and ATSDR that set environmental exposure levels determined to be health protective without consideration of feasibility.

OSHA is considering using a margin of exposure (MOE) approach to compare the LETE with the range of feasible exposure limits. If the MOE indicates the range of feasible exposures is in close proximity to the exposures where toxicity is observed (*i.e.,* a low MOE) then it may not be necessary to extrapolate exposure-response below the observed range in order to establish significant risk. In this situation, OSHA would set the PEL at the exposure level it determines to be feasible and the dose-response analysis in the observed range should be sufficient to support Agency significant risk findings. The PEL is set at the lowest feasible level, with the understanding that significant risk of adverse health outcomes remains at the new PEL. In the traditional risk assessment approach described previously, OSHA uses quantitative exposure-response modeling to estimate risks below the range of observed exposure, without regard to whether such exposures are considered to be technologically feasible. If the lowest technologically feasible workplace exposures are determined to be far below the LETE (*i.e.,* a high MOE), an exposure-response model would be needed to determine significant risk at exposures below the observed range and to set the appropriate PEL.

If there is a high MOE, then the Agency would move onto the final stage of the tiered approach, which is exposure-response extrapolation, where the dose-response relationship is extrapolated outside the observed range. Many regulatory agencies, such as EPA, choose to extrapolate outside the observed range for non-cancer health outcomes by applying a series of extrapolation factors, also called uncertainty factors, to an observed low-end toxicity value, referred to as a *point of departure* (POD). The POD is very similar to the LETE described above. The distinction between these toxicity values is discussed later in the subsection. The extrapolation factors are further explained below.

In many instances, EPA does not use the extrapolation factor approach for cancer effects. Rather, EPA uses dose-response modeling in the observed range and a linear extrapolation below the observed range to derive a unit risk (*i.e.,* risk per unit of exposure). As described previously, OSHA also uses dose-response modeling to extrapolate risk below the observed range for carcinogens as was done for hexavalent chromium (71 FR 10174–10221; *Ex. #26*) and methylene chloride (62 FR 1516–1560; *Ex. #27*). There is a reasonable body of scientific evidence that genotoxic carcinogens, and perhaps other carcinogenic modes of action, display linear, non-threshold behavior at very low dose levels. OSHA also uses dose-response modeling to extrapolate risk below the observed range for carcinogens. As mentioned earlier, the Agency develops appropriate exposure-response models (linear or non-linear) that best fit the existing data and are consistent with available information on mode of action. The models can be used to extrapolate risk associated with a working lifetime at occupational exposures below the observed range.

In some situations, the LETE is further adjusted to calculate worker equivalent exposures and to account for how the chemical is absorbed, distributed, and metabolized, and interacts with target tissues in the body. These features and other important issues related to the tiered approach to exposure-response assessment are discussed below. OSHA believes that there are a number of potential advantages to using a tiered risk assessment framework including opportunities to rely more heavily on peer-reviewed risk assessments already prepared by other Federal agencies.

b. Hazard Identification and Dose-Response Analysis in the Observed Range

Hazard identification is the first step in the Federal risk assessment framework as laid out by the National Research Council's 'red book' in 1983 (NRC, 1983; *Ex. #28*). In conducting a hazard identification, OSHA evaluates individual study quality and determines the weight of evidence from epidemiological, experimental, and supporting data. Study quality favors strong methodology, characterization of exposure during critical periods, adequate sample size/statistical power, and relevance to the workplace population. OSHA gives weight to both positive and negative studies according to study quality when the Agency evaluates the association between chemical agent and an adverse health effect. OSHA determines causality based on criteria developed by Bradford Hill (Hill, 1965; *Ex. #29,* Rothman & Greenland, 1998; *Ex. #30*). In its review of the available evidence, OSHA assesses the chemical's modes of action (MOA) and the key molecular, biological, pathological, and clinical endpoints that contribute to the health effects of concern.

The Mode of Action (MOA) is a sequence of key events and processes starting with the interaction of the agent with a molecular or cellular target(s) and proceeding through operational and anatomical changes that result in an adverse health effect(s) of concern. The key events are empirically measurable molecular or pathological endpoints and outcomes in experimental systems. These represent necessary precursor

steps or biologically-based markers along the progression to frank illness and injury.

MOA informs selection of appropriate toxicity-related endpoints and models for dose-response analysis. OSHA then conducts a dose-response analysis for critical health effects determined to be associated with a chemical, provided there are suitable data available. Dose-response analysis requires quantitative measures of both exposure and toxicity-related endpoints. OSHA gives preference to studies with relevant occupational routes that display a well-defined dose-related change in response with adequate power to detect effects at the exposure levels of interest. The Agency generally prefers high quality epidemiologic studies for dose-response analysis over experimental animal models, provided there is adequate exposure information and confounding factors are appropriately controlled. OSHA may only adopt standards for exposure to ''toxic materials and harmful physical agents'' that causes ''material impairment of health and loss of functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.'' OSH Act § 6(b)(5) (*Ex. #9*) Therefore, its dose-response analysis considers those biological endpoints and health outcomes that can lead to adverse physiological or clinical harm caused by continued exposure over a working lifetime. This includes key molecular and cellular biomarkers established as necessary precursor events along a critical disease pathway. It is important that the toxicity-related endpoints observed in experimental animals selected for dose-response analysis have relevance to humans and are not unique to the test species.

In the past, OSHA, for the most part, has undertaken an independent evaluation of the evidence in its identification of hazards and selection of critical studies and toxicity-related endpoints for dose-response analysis. However, other Federal agencies use the same risk assessment framework with similar hazard identification and dose-response selection procedures. EPA, ATSDR, NIOSH and others have active risk assessment programs and have recently evaluated many chemicals of interest to OSHA. These assessments undergo scientific peer review and are subject to public comment. The Agency is considering ways to reduce the time and resources needed to independently evaluate the available study data by placing greater reliance on the efforts of other credible scientific organizations. Although some organizations use their study evaluations to support non-occupational risk assessments, OSHA believes that, in most cases, these evaluations can be adapted to the occupational context.

Question IV.A.2: If there is no OSHA PEL for a particular substance used in your facility, does your company/firm develop and/or use internal occupational exposure limits (OELs)? If so, what is the basis and process for establishing the OEL? Do you use an authoritative source, or do you conduct a risk assessment? If so, what sources and risk assessment approaches are applied? What criteria do facilities/firms consider when deciding which authoritative source to use? For example, is rigorous scientific peer review of the OEL an important factor? Is transparency of how the OEL was developed important?

Question IV.A.3: OSHA is considering greater reliance on peer-reviewed toxicological evaluations by other Federal agencies, such as NIOSH, EPA, ATSDR, NIEHS and NTP for hazard identification and dose-response analysis in the observed range. What advantages and disadvantages would result from this approach and could it be used in support of the PEL update process?

c. Derivation of Low-End Toxicity Exposure (LETE)

An important aspect of the dose-response analysis is the determination of exposures that can result in adverse outcomes of interest. For most studies, response rates ranging from 1 to 10 percent represent the low end of the observed range. Epidemiologic studies generally are larger and can show a lower observed response rate than animal studies, which typically have fewer test subjects. EPA, ATSDR and EU REACH also derive an estimated dose at the low end of the observed range (*i.e.,* LETE) as part of their dose-response assessments. This dose is referred to as the POD ('point of departure') because it is used as a starting point for low dose extrapolation or the application of uncertainty factors as described above to derive toxicity values. EPA, ATSDR and EU REACH use the POD/extrapolation factor approach to determine Reference Concentrations (RfC), Minimal Risk Levels (MRL) and Derived No Effect Levels (DNELs), respectively. OSHA believes the LETE is an exposure where studies may have demonstrated significant risk. However, OSHA does not intend to use the LETE as the point of extrapolation for determining a ''safe'' exposure level in the manner used by the aforementioned agencies. OSHA may use the LETE in calculating an MOE to evaluate the need for low dose extrapolation as described in the next section.

Traditionally, either the Lowest Observed Adverse Effect Level (LOAEL) or No Observed Adverse Effect Levels (NOAEL) has served as easily obtainable LETE descriptors. More recently, the Benchmark Dose (BMD) methodology has increasingly been applied to derive an LETE. The BMD approach uses a standard set of empirical models to determine the dose associated with a pre-selected benchmark response (BMR) level. An example is the dose associated with a 10 percent incidence (*i.e.,* BMD_{10}) and the statistical lower confidence limit (*i.e.,* $BMDL_{10}$). Selection of an appropriate BMR considers biologic as well as statistical factors and a lower BMR is typically applied for clinically serious outcomes (*e.g.,* lung or heart disease) than for less serious adverse effects (*e.g.,* preclinical loss of neurological or pulmonary function). In some cases, more sophisticated models can be used in the LETE determination, based on physiologically-based toxicokinetics, toxicodynamics, or dosimetry models that relate the administered dose to a more toxicologically relevant dose metric at a biological target site, if sufficient data is available and the models are appropriately validated. This is discussed further below.

Question IV.A.4: OSHA is considering using the Point of Departure (POD) (*e.g.,* BMD, LOAEL, NOAEL), commonly employed by other authoritative organizations for carrying out non-cancer risk assessments as a suitable descriptor of the Low End Toxicity Exposure (LETE) level that represents a significant risk of harm. Is this an appropriate application of the POD by OSHA? Are there other exposure values that OSHA should consider for its LETE?

In many situations, the LETE must be adjusted to represent a typical worker exposure. The most common adjustments are to correct for the standard occupational exposure conditions of eight hours a day/five days a week and/or respiratory volume during work activity. OSHA and NIOSH have used a standard ventilation rate of 10 m^3 of air per 8-hour work shift for a typical worker undergoing light physical work activity.

Allometric scaling (*i.e.,* $BW^{3/4}$) is recommended by some Federal authorities when scaling animal doses to human equivalents to account for toxicokinetic differences in rates of absorption, metabolism, and excretion when more specific data is lacking. Allometric scaling refers to scaling

physiological rates and quantities to mass or volume of one animal species to another animal species. The relationship is generally dependent on body weight (BW), often in the form of $y=BW\alpha$ where y is the physiological measure and α is the scaling component. Many physiological and biochemical processes (such as heart rate, basal metabolic rate, and respiration rate have been found to have a scaling component of 0.75.

Allometric scaling is most applicable when the toxicologically relevant dose is a parent compound or stable metabolite whose absorption rate and clearance from the target site is controlled primarily by first order processes. Allometric scaling is less well suited for portal-of-entry effects or when toxicity is a consequence of a highly reactive compound or metabolite. Portal of entry refers to the tissue or organ of first contact between the biological system and the agent. This is nasal, respiratory tract and pulmonary tissues for inhalation; skin for dermal contact, and mouth and digestive tract for oral exposure.

In the case of respiratory tract effects from inhalation, EPA recommends adjusting inhalation doses based on generic dosimetry modeling that depends on the form of the chemical (*e.g.,* particle of gas) and site of toxicity (*e.g.,* portal of entry or systemic) (EPA, 1994; *Ex. #31*). For example, the human equivalent for a reactive gas that exerts its toxic effect on the respiratory tract is scaled based on animal to human differences in ventilation rate and regional surface area of the respiratory tract. On the other hand, the dosimetry model adjustment for an insoluble gas that exerts its effect in a tissue remote from the lung is scaled by species differences in the blood: gas partition coefficient. The generic dosimetry models can accommodate specific chemical data, if available. The models are only intended to account for human-to-animal differences in bioavailability and further allometric or extrapolation factors may be needed to account for species differences in metabolic activation and toxicodynamics (*i.e.,* target site sensitivity to an equivalent delivered dose).

Question IV.A.5: Several methodologies have been utilized to adjust critical study exposures to a worker equivalent under representative occupational exposure conditions including standard ventilation rates, allometric scaling, and toxicokinetic modeling. What are reasonable and acceptable methods to determine worker equivalent exposure concentrations, especially from studies in animals or other experimental systems?

The worker-adjusted LETE that is derived from dose-response analysis in the observed range should be regarded as a chemical exposure level that leads to significant risk of harm. In most cases, the LETE is expected to elicit a toxic response in 1 to 10 percent of the worker population. This approximates an excess risk of 10 to 100 cases of impairment per 1000 exposed workers over a duration that is typically less than a 45-year working life. This degree of risk would exceed the 1 per 1000 probability that OSHA historically regards as a clearly significant risk.

d. Margin of Exposure (MOE) as a Decision Tool for Low Dose Extrapolation

As discussed previously, OSHA's statutory and legal obligations dictate that PELs be set at the level that eliminates significant risk, if feasible, or if not, at the lowest feasible level. Therefore, Agency risk assessments are directed at determining significant risk at these feasible exposures. Because of the feasibility constraints, low dose extrapolation is not always needed to make the required risk findings. The OSHA significant risk orientation differs from other Federal Agencies, such as EPA and ATSDR. The risk-based EPA RfCs and ATSDR MRLs are intended as environmental exposure levels determined to be health protective without consideration of feasibility. NIOSH also develops workplace exposure limits. These recommended exposure limits (RELs) are based on risk evaluations using human or animal health effects data. The exposure levels that can be achieved by engineering controls and measured by analytical techniques are considered in the development of RELs, but the recommended levels are often below what OSHA regards as technologically feasible.

A MOE approach can assist in determining the need to extrapolate risk below the observed range. The appropriate MOE for use as a decision tool for low dose extrapolation is the LETE divided by an estimate of the lowest technologically feasible exposure (LTFE). A large MOE (*i.e.,* LETE/LTFE ratio) means the LTFE is considerably below exposures observed to cause adverse outcomes along a critical toxicity pathway. This situation would require low-dose risk extrapolation to determine whether technologically feasible exposures lead to significant risk. A small MOE means the LTFE estimate is reasonably close to the observed toxic exposures indicating the LTFE likely leads to significant risk of harm. In this situation, OSHA would set the PEL at the exposure level it determines to be feasible and the dose-response analysis in the observed range should be sufficient to support Agency significant risk findings.

There are several factors that OSHA would need to consider in order to find that the MOE is adequate to avoid low-dose risk extrapolation. These include the nature of the adverse outcome, the magnitude of the effect, the methodological designs and experimental models of the selected studies, the exposure metric associated with the outcome, and the exposure period over which the outcome was studied. OSHA may regard a larger MOE as acceptable to avoid the need for low-dose extrapolation for serious clinical effects than a less serious subclinical outcome. A larger MOE may also be found acceptable for irreversible health outcomes that continue to progress with continued exposure and respond poorly to treatment than reversible health outcomes that do not progress with further exposure. Health outcomes that relate to cumulative exposures would tolerate higher MOEs than similar outcomes unrelated to cumulative exposure, especially in short-term studies. In some instances, an adverse outcome observed in experimental animals would tolerate higher MOEs than the same response in a human study that more closely resembles the occupational situation.

Other Federal agencies apply the MOE approach as part of the risk assessment process. EPA has included MOE calculations in risk characterizations of environmental exposure scenarios to assist in risk management decisions (EPA, 2005; *Ex. #32*). The EU has also applied a very similar Margin of Safety analysis to characterize results of risk assessment conclusions (ECB, 2003; *Ex. #33*). In its report on the appropriate uses of risk assessment and risk management in federal regulatory programs, the Presidential Commission on Risk Assessment and Risk Management recommended MOE as an approach that provides a common metric for comparing health risks across different toxicities and public health programs (PCRARM, 1997; *Ex. #34*).

Question IV.A.6: OSHA is considering a Margin of Exposure approach that compares the LETE with the Lowest Technologically Feasible Exposure (LTFE) as a decision tool for low dose extrapolation. Is this a reasonable means of determining if further low dose extrapolation methods are needed to meet agency significant risk findings?

What other approaches should be considered?

e. Extrapolation Below the Observed Range

The last step in the tiered approach is extrapolation of risk below the observed range. This low-dose extrapolation would only be needed if the MOE is sufficiently high to warrant further dose-response analysis. This situation occurs when technologically feasible exposures are far below the LETE and quantitative estimates of risk could be highly informative in the determination of significant risk. As described in subsection A.1, OSHA has historically used probabilistic risk modeling to quantitatively estimate risks at exposure levels below the observed range. Depending on the nature of the exposure-response data, the Agency has relied on a wide range of different models that have included linear relative risk (*e.g.,* hexavalent chromium/lung cancer), logistic regression (*e.g.,* cadmium/kidney dysfunction), and physiologically-based pharmacokinetic (*e.g.,* methylene chloride/cancer) approaches.

Probabilistic risk models can require considerable time and resources to construct, parameterize, and statistically verify against appropriate study data, especially for a large number of chemical substances. As mentioned previously, several government authorities responsible for managing the risk to human populations posed by hazardous chemicals commonly use the computationally less complex uncertainty factor approach to extrapolate dose-response below the observed range. The uncertainty factors account for variability in response within the human population, uncertainty with regard to the differences between experimental animals and humans, and uncertainty associated with various other data inferences made in the assessment. For each of these considerations, a numerical value is assigned and the point of departure is divided by the product of all applied uncertainty factors. The result is an exposure level considered to be without appreciable risk. OSHA attempted to apply uncertainty factors in the 1989 Air Contaminants Rule to ensure that new PELs were set at levels that were sufficiently below exposures observed to cause health effects. The Eleventh Circuit ruled that OSHA had failed to show how uncertainty factors addressed the extent of risk posed by individual substances and that similarly, OSHA failed to explain the method it used to derive the safety factors. *Air Contaminants* 965 F.2d at 978.(*Ex. #8)* Since the court ruling, the uncertainty factor approach has undergone considerable refinement. The scientific considerations for applying individual factors have been carefully articulated by EPA and other scientific authorities in various guidance materials (EPA, 2002; *Ex. #35,* IPCS, 2005; *Ex. #36,* ECHA, 2012a; *Ex. #37*). For some factors under certain circumstances, it is being proposed that standard 'default' values can be replaced with 'data-driven' values (EPA, 2011; *Ex. #38*). However, the type and magnitude of the uncertainty factor employed for any individual substance still requires a degree of scientific judgment. The methodology does not provide quantitative exposure-specific estimates of risk, such as one in a thousand, that can readily be compared to the significant risk probabilities discussed in the *Benzene* decision.

The National Research Council's *Science and Decisions* report recently advocated a dose-response framework that provides quantitative risk estimates by applying distributions instead of 'single value' factors (NRC, 2009; *Ex. #24*). The critical extrapolation factors, such as species differences in toxic response at equivalent target doses and inter-individual variability in the human population are defined by lognormal distribution with an estimated standard deviation. This allows the human equivalent LETE to be derived in terms of a median and statistical lower confidence bound. The distributional nature of the analysis facilitates extrapolation in terms of a probabilistic projection of average and upper bound risk at specific exposures, such as X number of individuals projected to develop disease out of 1000 workers exposed to Z level of a toxic substance within some confidence level Y. The NRC report describes several different conceptual models with case examples and extrapolation factor distribution calculations (NRC, 2009; *Ex. #24*).

Question IV.A.7: Can the uncertainty factor methodology for extrapolating below the observed range for non-cancer effects be successfully adapted by OSHA to streamline its risk assessment process for the purpose of setting updated PELs? Why or why not? Are there advantages and disadvantages to applying extrapolation factor distributions rather than single uncertainty factor values? Please explain your reasoning.

3. Chemical Grouping for Risk Assessment

OSHA is also considering the use of one or more chemical grouping approaches to expedite the risk assessment process. In certain cases, it may be appropriate to extrapolate data about one chemical across a group or category of similar chemicals. These approaches are discussed below.

a. Background on Chemical Grouping

The term 'grouping' or 'chemical grouping' describes the general approach to assessing more than one chemical at the same time. It can include formation of a chemical category or identification of a chemical analogue (OECD, 2007; *Ex. #39*). Chemical categories or analogues can be based on the structural relationship between the chemicals being grouped.

Structure-activity relationships (SAR) are relationships between a compound's chemical structure and physicochemical properties and its biological effects (*e.g.,* cancer) on living systems. Structurally diverse chemicals can sometimes be grouped for risk analysis based on a common mechanism/mode of action or metabolic activation pathway (*i.e.,* mechanism/mode of action clustering). Endpoint information for one chemical is used to predict the same endpoint for another chemical, which is considered to be ''similar'' in some way (usually on the basis of structural similarity and similar properties and/or activities).

A chemical category is a group of chemicals whose physical-chemical, human health, environmental, toxicological, and/or environmental fate properties are likely to be similar or follow a regular pattern as a result of structural similarity, structural relationship, or other characteristic(s). A chemical category is selected based on the hypothesis that the properties of a series of chemicals with common features will show coherent trends in their physical-chemical properties, and more importantly, in their toxicological effects (OECD, 2007; *Ex. #39*).

The use of a category approach means that it is possible to identify chemical properties which are common to at least some members of the category. This approach provides a basis for establishing trends in properties across that category and extends the measured data (*e.g.,* toxicological endpoint) to similar untested chemicals.

In the category approach, not every chemical in a group needs to have exposure-response data in order to be evaluated. Rather, the overall data for the category as a whole must prove adequate to support a risk assessment.

The overall data set must allow for an assessment of risk for the compounds and adverse outcomes that lack adequate study. Chemicals may be grouped for risk assessment based on the following:

- Common functional group (*e.g.,* aldehyde, epoxide, ester, specific metal ion);
- Common constituents or chemical classes, similar carbon range numbers;
- Incremental and constant change across the category (*e.g.,* a chain-length category);
- The likelihood of common precursors and/or breakdown products, via physical or biological processes, which result in structurally similar chemicals (*e.g.,* the metabolic pathway approach of examining related chemicals such as acid/ester/salt).

Within a chemical category, data gaps may be filled by read-across, trend analysis and Quantitative Structure-Activity Relationships (QSARs) and threshold of toxicological concern. In some cases, an effect can be present for some but not all members of the category. An example is the glycol ethers, where the lower carbon chain length members of the category indicate reproductive toxicity but the higher carbon chain length members of the category do not. In other cases, the category may show a consistent trend where the resulting potencies lead to different classifications (OECD, 2007; *Ex. #39*).

b. Methods of Gap Analysis and Filling

As a result of grouping chemicals based on similarities determined when employing the various techniques as described above, data gap filling in a chemical category can be carried out by applying one or more of the following procedures: read-across, trend analysis, quantitative (Q)SARs and threshold of toxicological concern (TTC).

i. Read-Across Method

The read-across approach uses endpoint information for one chemical (the source chemical) to predict the same endpoint for another chemical (the target chemical), which is considered to be ''similar'' in some way (usually on the basis of structural similarity or on the basis of the same mode or mechanisms of action). Read-across methods have been used to assess physicochemical properties and toxicity in a qualitative or quantitative manner. The main application for qualitative read-across is in hazard identification.

ii. Trend Analysis

Chemical category members are often related by a trend (*e.g.,* increasing, decreasing or constant) for any specific endpoint. The relationship of the categorical trend could be molecular mass, carbon chain length, or to some other physicochemical property.

The observation of a trend (increasing, decreasing or constant) in the experimental data for a given endpoint across chemicals can be used as the basis for interpolation and possibly also extrapolation to fill data gaps for chemicals with little to no data. Interpolation is the estimation of a value for a member using measured values from other members on ''both sides'' of that member within the defined category spectrum, whereas extrapolation refers to the estimation of a value for a member that is near or at the category boundary using measured values from internal category members (OECD, 2007; *Ex. #39*).

iii. QSAR

A Quantitative Structure-Activity Relationship (QSAR) is a quantitative relationship between a numerical measure of chemical structure, and/or a physicochemical property, and an effect/activity. QSARs use mathematical calculations to make predictions of effects/activities that are either on a continuous scale or on a categorical scale. ''Quantitative'' refers to the nature of the relationship between structurally related chemicals, not the endpoint being predicted. Most often QSARs have been used for determining aquatic toxicity or genotoxicity but can be used for evaluating other endpoints as well (OECD, 2007; *Ex. #39*).

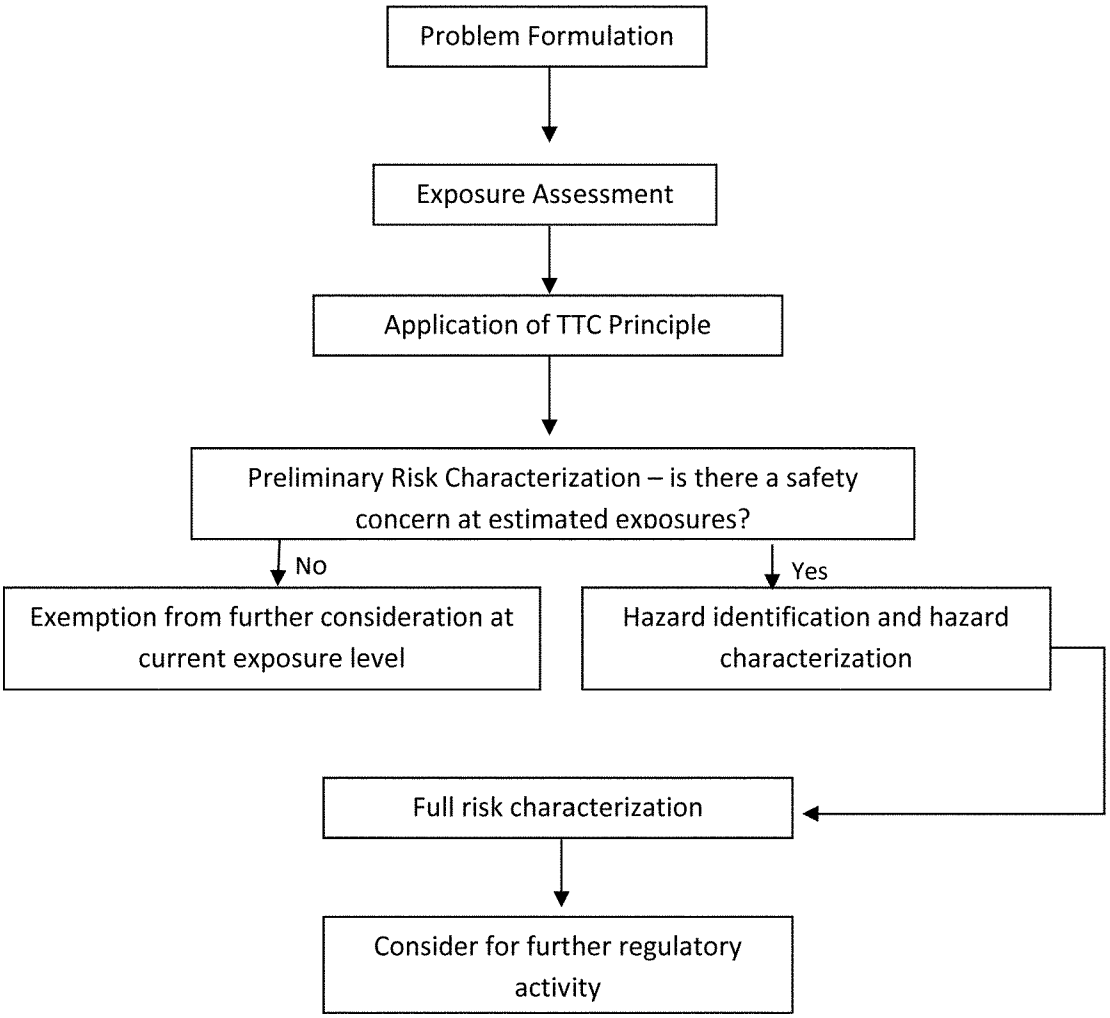
Question IV.A.8: Are QSAR, read-across, and trend analysis acceptable methods for developing risk assessments for a category of chemicals with similar structural alerts (chemical groupings known to be associated with a particular type of toxic effect, *e.g.,* mutagenicity) or other toxicologically-relevant physiochemical attributes? Why or why not? Are there other suitable approaches?

iv. Threshold of Toxicological Concern (TTC)

The Threshold of Toxicological Concern (TTC) refers to the establishment of an exposure level for a group of chemicals below which there would be no appreciable risk to human health. The original concept proposed that a low level of exposure with a negligible risk can be identified for many chemicals, including those of unknown toxicity, based on knowledge of their chemical structures. The TTC approach is a form of risk characterization in which uncertainties arising from the use of data on other compounds are balanced against the low level of exposure. The approach was initially developed by the FDA for migration of chemicals from consumer packaging into food products and used a single threshold value of 1.5μg/day (referred to as the threshold of regulation).

The TTC principle extends the concept used in setting acceptable daily allowable intakes (ADIs) by proposing that a de minimis value can be identified for chemicals with little to no toxicity data utilizing information from structurally related chemicals with known toxicities.

A decision tree can be developed to apply the TTC principle for risk assessment decisions:



For OSHA purposes the TTC approach could be adapted to develop an endpoint-specific LETE value for chemicals in a specific category where little to no toxicity data exist utilizing source chemicals within the category where toxicity data is available.

4. Use of Systems Biology and Other Emerging Test Data in Risk Assessment

Toxicity testing is undergoing transformation from an approach primarily based on pathological outcomes in experimental animal studies to a more predictive paradigm that characterizes critical molecular/cellular perturbations in toxicity pathways using *in vitro* test systems. The paradigm shift is being largely driven by the technological advances in molecular systems biology such as the use of high throughput screening (HTS) assays, new computational methods to predict chemical properties, and computer models able to associate molecular events with a biological response. The vision, strategies, and frameworks for applying the new toxicity data to risk-based decision making are laid out in landmark reports by the National Research Council (NRC, 2009; *Ex. #24,* NRC, 2007; *Ex. #25*). A collaborative Federal initiative known as ''Tox21'' has been established between the National Toxicology Program (NTP), the EPA Office of Research and Development, the NIH Chemical Genomics Center (NCGC), and the Food and Drug Administration (FDA) to collaborate on development, validation, and translation of innovative HTS methods to characterize key steps in toxicity pathways (NTP, 2013; *Ex. #40*). Tox21 has already screened over a 1000 compounds in more than 50 quantitative HTS assays that have been made available to the scientific community through publically accessible databases (*e.g.,* EPA ACToR, NTP CEBS). EPA has launched a program, known as ''NexGen'', to implement the NRC vision and advance the next generation of risk assessment (EPA, 2013b; *Ex. #41*). NexGen is a partnership among EPA, NTP, NCGC, AND FDA, along with ATSDR and California's EPA Office of Environmental Health Hazard Assessment. The objectives of NexGen are to pilot the new NRC risk assessment framework, refine existing bioinformatics systems, and develop specific prototype health risk assessments. These objectives are expected to be achieved through an iterative development process that includes discussion with scientists, risk managers, and stakeholders.

Question IV.A.9: How should OSHA utilize the new molecular-based toxicity data, high throughput and computer-based computational approaches being generated on many workplace chemicals and the updated NRC risk-based decision making framework to inform future Agency risk assessments?

B. Considerations for Technological Feasibility

Before adopting a particular regulatory alternative, the Agency must demonstrate that it is technologically feasible. As OSHA currently performs it, a technological feasibility analysis is often one of the most resource-intensive

aspects of the rulemaking process. The Agency must identify all of the industries that are potentially affected and compile the available information on current worker exposure and existing controls for each industry. On occasion, the best information available for technological feasibility analyses comes from sparse and incomplete data sets. Rather than rely exclusively on such variable information, OSHA is considering the use of exposure modeling, such as computational fluid dynamics (CFD) modeling, for a more complete picture of worker exposures and the potential effectiveness of different control strategies. Additionally, OSHA is looking at other sources of information, such as the REACH initiative from the European Union, that may help the Agency to better characterize industries or jobs where there is little to no data on worker exposures and control technologies.

1. Legal Background of Technological Feasibility

OSHA must demonstrate that a PEL, as well as any ancillary provisions, to the extend they are being adopted, are feasible. In general, OSHA determines that a regulatory alternative is technologically feasible when it has evidence that demonstrates the alternative is achievable in most operations most of the time. The Agency must also show that sampling and analytical methods can measure exposures at the proposed PEL within an acceptable degree of accuracy. OSHA makes these determinations in the technological feasibility analysis, which is made available to the public in the OSHA rulemaking docket.

2. Current Methodology of the Technological Feasibility Requirement

To develop its technological feasibility analysis, the Agency must first collect the information about the industries that are affected by a particular hazard, the sources of exposure, the frequency of the exposure, the number of workers exposed to various levels, what control measures or other efforts are being made to reduce exposure to the hazard, and what sampling and analytical methods are available.

This information is typically obtained from numerous sources including:

- Published literature,
- OSHA Special Emphasis Program (SEP) reports,
- NIOSH reports, such as health hazard evaluations (HHE), control technology (CT) assessments, surveys, recommendations for exposure control, and engineering control feasibility studies,
- Site visits, conducted by OSHA, NIOSH, or supporting contractors,
- Information from other stakeholders, such as federal and state agencies, labor organizations, industry associations, and consensus standards,
- Unpublished information, such as personal communications, meetings, and presentations, and
- OSHA Integrated Management Information System (IMIS) data.

With this information, OSHA creates profiles that identify the industries where exposures occur, what operations lead to exposures, and what engineering controls and work practices are being implemented to mitigate exposures. A technological feasibility analysis is typically organized by industry sector or group of sectors that performs a unique activity involving similar activities. OSHA identifies the operations that lead to exposures in all of these industries, and eventually determines the feasibility of a PEL by analyzing whether the PEL can be achieved in most operations most of the time, as an aggregate across all industries affected. OSHA has also utilized an application approach that evaluates the feasibility of controls for a specific type of process used across a number of industry sectors, such as welding, rather than on an industry-by-industry basis.

OSHA develops detailed descriptions of how the substance is used in different industries, the work activities during which workers are exposed, and the primary sources of exposure. The Agency also constructs exposure profiles for each industry, or by job category, based on operations performed. The Agency classifies workers by job categories within those industries, based on how similar work processes are, and to what extent similar engineering controls can be applied to control exposures in those processes.

Each exposure profile contains a list of affected job categories, summary statistics for each job category and subcategories (such as the mean, median, and range of exposures), and the distribution of worker exposures using increments based on the regulatory alternatives.

OSHA's technological feasibility analyses for PEL-setting standards have traditionally relied on full-shift, personal breathing zone (PBZ) samples to create exposure profiles. A PBZ sample is the best sample type to quantify the inhalation exposure of a worker. Area samples are typically not used to construct exposure profiles but are useful to characterize how much airborne contamination is present in a work environment and to evaluate the effectiveness of engineering and other process control measures.

Exposure profiles are used to establish the baseline exposure conditions for every job category in affected industries. Baseline conditions are developed to allow the Agency to estimate the extent to which additional controls will be required to achieve a level specified by a regulatory alternative.

Next, the technological feasibility analysis describes the additional controls necessary to achieve the regulatory alternatives. OSHA relies on its traditional hierarchy of controls when demonstrating the feasibility of control technology. The traditional hierarchy of controls includes, in order of preference: Substitution, local exhaust ventilation, dust suppression, process enclosures, work practices, and housekeeping. OSHA considers use of personal protective equipment, such as respirators, to be is the least effective method for controlling employee exposure, and therefore, personal protective equipment is considered only for limited situations in which all feasible engineering controls have been implemented, but do not effectively reduce exposure to below the permissible exposure limit. To identify what additional controls are feasible, the Agency conducts a detailed investigation of the controls used in different industries based primarily on case studies.

OSHA develops preliminary conclusions regarding feasibility of regulatory alternatives, by identifying the lowest levels of exposure that are technologically feasible in workplaces. To determine whether an alternative is feasible throughout the spectrum of affected industries, OSHA studies whether the regulatory alternative is achievable in most operations most of the time by a typical firm. OSHA may also determine whether a specific process used across a number of different industries can be effectively controlled.

3. Role of Exposure Modeling in Technological Feasibility

In many situations, the Agency has found it difficult to develop comprehensive exposure profiles and determine additional controls because of limitations associated with the available exposure data. These information gaps could be filled by incorporating exposure modeling into the technological feasibility process. The limitations associated with the data collected include:

- *Limited number of exposure samples:* On occasions, an exposure

profile for a job category may be built on a limited number of full-shift exposure samples, and the Agency has to judge whether the samples available are representative of the actual exposure distribution for that industry.

• *Limit of Detection (LOD) issues:* Because only a few exposure samples may be available for a job category, the analysis may include samples reported as ''less than'' values, high LODs, or adjusted LOD values. This causes inconsistency in the use of LOD samples and may cause the Agency to under- or over-estimate the actual exposure distribution.

• *Lack of information on controls associated with data:* Information regarding working conditions and control strategies associated with exposure samples may not be available. This makes it difficult for the Agency to determine the impact of the control strategies for various sources of exposure. Additionally, it is common that the data does not include information about the exact nature of the task performed during the sampling period. Sometimes, samples may not exactly correspond to the job category to which OSHA assigns it in the analysis because the job activities performed are not adequately described.

• *Limitations of traditional industrial hygiene sampling:* Traditional industrial hygiene practices require a ''before and after'' data set to gauge the effectiveness of control strategies implemented, and changes that occur in the working environment during the sampling periods. The exact impact of control strategies and environmental conditions cannot be determined easily with only one set of samples obtained at a discrete moment in time. It is often the case that OSHA does not have the luxury of ''before and after'' data sets and must determine how the sample set fits into the exposure profile.

• *IMIS data limitations:* Since the Agency may lack exposure data for a particular job category or operation, it sometimes relies on IMIS data. OSHA does not usually rely on IMIS data in its exposure profiles unless there are no other exposure data available because the IMIS data can have some significant limitations, which include the following:

○ Insufficient information to determine if a hazard is present in the work area in significant amounts as to be relevant for an exposure profile. For example, an analyst cannot tell from the information available in the IMIS database if a sample was targeted for the hazard in question, or if it was part of a larger metal screening process (if the hazard is a metal), which typically includes up to 16 different metals whether they are thought to be present in the sampling environment or not.

○ Use of SIC codes in historic IMIS data, which do not translate directly into the NAICS codes currently used in the analyses.

○ There is no information in the database on the end product being developed, the action performed to produce it, or the materials being used when the sample is taken. This limits the interpretation of the data, since an analyst is not able to attribute the exposure to any particular practice or process, and cannot recommend engineering controls.

Generally, OSHA has had the most success using IMIS data to identify and collect enforcement case files for further review. Case files from OSHA inspections contain more detailed information on worker activities and exposure controls observed at the time an exposure sample is taken. Thus, use of case files to a large extent mitigates the limitations of using IMIS data.

For most health standards, OSHA does not have the resources to conduct site visits to obtain the necessary exposure information at firms that are representative of all the affected industries. In an effort to develop more robust exposure profiles, the Agency is considering the use of exposure modeling, such as computational fluid dynamics (CFD) modeling, to complement the exposure information that is already available from literature, site visits, NIOSH and similar field investigations, and employer-provided data. This technique would potentially allow OSHA to better estimate workplace exposures in those environments were data are limited.

Question IV.B.1: OSHA described how it obtains information necessary to conduct its industry profiles. Are there additional or better sources of information on the industries where exposures are likely, the numbers of workers and current exposure levels that OSHA could use?

a. Computational Fluid Dynamics Modeling To Predict Workplace Exposures

OSHA is considering the use of computational fluid dynamics (CFD) to model workplace exposure. CFD is a discipline of fluid mechanics that uses computer modeling to solve complex problems involving fluid flows. Fluid flow is the physical behavior of fluids, either liquids or gases, and it is represented by systems of partial differential equations that describe conservation of energy, mass, and momentum. For some physical phenomena, such as the laminar flow of a fluid through a cylindrical pipe, these equations can be solved mathematically. Such solutions describe how a fluid will move through the specified area, or geometry, as a function of time. For more complex physical phenomena, such as turbulent flow of a fluid through a complex geometry, numerical approaches are used to solve the governing differential equations. As such, CFD modeling uses mathematical models and numerical methods to determine how fluids will behave according to a particular set of variables and parameters. A mathematical model simulates the physical phenomena under consideration (*i.e.* governing equations of energy, mass, and momentum) and, in turn, a numerical method solves that model. Overall, CFD modeling enables scientists and engineers to perform computer simulations in order to make better qualitative and quantitative predictions of fluid flows.

Some modeling techniques, such as CFD, allow a user to create a virtual geometry to simulate actual work environments using appropriate mathematical models and computational methods. The solutions predict exposures at any given time and in any point in the space of the geometry established. A model developed with this technique allows the user to evaluate exposures in a worker's personal breathing zone and identify areas in the work space that present high concentrations of the contaminant. Because the exposure concentration can be solved as a function of time, the user can observe how concentration increases or decreases with time or other changes in the model input parameters. This allows the user to consider administrative controls such as limiting the time of the operation, the quantity of material emitted by the process, or determining how long after an operation a worker can safely enter a previously contaminated area. In some cases, work tasks and processes that are time-varying can be communicated to the CFD model through time-varying boundary conditions.

Models require a defined geometry (*i.e.,* work space), and this step in the model building may be resource intensive. To construct geometries of complex work environments, OSHA would need to gather the necessary information to model the work environment. This includes taking measurements of the work area, machinery, engineering control specifications (*e.g.,* exhaust face velocities, spray systems flow rates),

and any other objects or activities that may affect the air flow in the area of interest. Moreover, gathering site-specific information for building CFD models can be integrated with traditional industrial hygiene survey activities. OSHA is interested in identifying ways to reduce the time and money that may be spent recreating work environments. One alternative is to import facility layouts in an electronic format (such as CAD) into the modeling software. If an establishment has its facility layout in this format, then the model designer would not have to take physical measurements and recreate the work area by 3–D modeling.

Question IV.B.2: In cases where there is no exposure information available, to what degree should OSHA rely on modeling results to develop exposure profiles and feasible control strategies? Please explain why or why not.

Question IV.B.3: What partnerships should OSHA seek to obtain information required to most efficiently construct models of work environments? More specifically, how should OSHA select facility layouts to model that are representative of typical work environments in a particular industry? Note that the considerations should include variables such as work area dimensions, production volumes and ventilation rates in order to develop models for both large and small scale operations.

Models must undergo validation and testing to determine if they provide an accurate prediction of the physical phenomenon under consideration, or in this case, the concentrations of air contaminants to which workers could be potentially exposed. Sensitivity analyses can be used to determine if model outputs are consistent given minor changes to grid cell size and time step duration. Grid cell size refers to the division of space according to nodes, and time step refers to the value attributed to the time variable to numerically solve the equations with reference to the nodes. Another method for model evaluation is the comparison between the solutions of different models to the same problem in that a similarity of findings across multiple CFD models would provide greater confidence in the results. Arguably, the best performance evaluation is the comparison of model results to those of a field experiment that simulates on different scales the actual work environment.

This method of predicting workplace exposures has some potential advantages over traditional industrial hygiene sampling methods. Patankar (1980; *Ex. #42*) explains some of the advantages of theoretical calculations, in a general sense, to predict heat transfer and fluid flow processes. Some of these are:

- *Low Cost:* In many current and future applications, the cost of a computational method may be lower than the corresponding sampling cost. As mentioned above, the most resource-consuming aspect of solid modeling is simulating the geometry that resembles actual physical space of work environments.
- *Speed:* A numerical solution to predict exposures can be obtained very easily in a day. A user could manipulate different configurations regarding worker positioning and engineering controls to find an optimal control strategy.
- *Complete information:* A computer solution provides the values of all relevant variables throughout the domain of interest. These variables cover fluid flow patterns, areas in the geometry with highest concentrations of contamination, exposure values at any point in the geometry, time profile of contamination, and exposure results based on different control configurations. Traditional industrial hygiene sampling does not allow for this level of analysis as it measures results based on a particular work environment, and it cannot distinguish how each independent variable (*e.g.,* changes in the workplace during sampling) affects the exposure result.
- *Ability to simulate realistic conditions:* A computer solution can accommodate any environmental condition and the values for all variables that affect the solution can be easily modified to fit a particular scenario.

Patankar (1980; *Ex. #42*) also discusses the disadvantages of theoretical predictions to address heat transfer and fluid flow processes, and they are applicable to exposure modeling. The solutions obtained depend on the mathematical model used to simulate the situation, the value of the input parameters, and the numerical method used to obtain a solution. As Patankar notes, ''a perfectly satisfactory numerical technique can produce worthless results if an inadequate mathematical model is employed''. This is why it is imperative that the mathematical model chosen actually resembles the physical phenomena under consideration.

The Agency also realizes that even if an appropriate mathematical model and numerical method are obtained to describe contamination in a workplace, the exposure modeling approach may prove to be more resource-intensive than traditional industrial hygiene sampling for work environments with complex geometries. In these situations, OSHA would have to develop a site visit protocol for gathering dimensions of the work environment of interest. The information to be collected includes the dimensions of the physical space, the ventilation system that affects airflow patterns, and other details (such as location and size of windows, doors, and large obstructions).

Despite these limitations, modeling promises to provide significant advantages that could help OSHA construct more robust technological feasibility analyses while reducing the considerable amount of resources the Agency already expends on them. In addition to CFD modeling, the Agency will continue to investigate other exposure modeling techniques and their applicability in the rulemaking process.

Question IV.B.4: Should OSHA use only models that have been validated? If so, what criteria for model validation should be employed?

Question IV.B.5: What exposure models are you aware of that can be useful for predicting workplace exposures and help OSHA create exposure profiles and in what circumstances?

At this time, OSHA is primarily examining the possibility of incorporating CFD models to indoor work operations. Most general industry and some construction operations are performed indoors. As the Agency conducts more research on the applicability of CFD models to predict workplace exposures, outdoor models will also be considered. As such, OSHA is interested in obtaining input from parties experienced in these models.

Question IV.B.6: Should OSHA consider CFD models primarily for indoor operations, outdoor operations, or both? What limitations exist with these two different types of models?

Various U.S. federal agencies have used CFD modeling for projects related to indoor air quality and/or occupational health and safety. Preliminary research indicates that this CFD modeling work has been performed mostly for academic and research purposes. There is little information available discussing the use of CFD modeling for the purposes of litigation and/or regulatory decision-making.

NIOSH has used CFD on a variety of internal research initiatives that involve evaluating and controlling airborne exposures. Among other projects, NIOSH has used CFD modeling to:

- Evaluate potential exposure concentrations to hexavalent chromium (CrVI), hexamethylene diisocyanate

(HDI), methyl isobutyl ketone (MIBK), and others with different ventilation control configurations during spray painting operations at a Navy aircraft paint hangar. In this study, NIOSH also tested and validated the predictive value of CFD modelling against methods of physical sampling by conducting workplace air sampling and comparing with model results. The project was performed with assistance from the Naval Facilities Engineering Command (NAVFAC) and the Navy Medical Center San Diego (NMCSD) (NIOSH, 2011a; *Ex. #43*),

- Study the effectiveness of ventilation systems for controlling Tuberculosis (NIOSH, 2010; *Ex. #44*),
- Evaluate emission controls for mail processing and handling facilities (NIOSH, 2010; *Ex. #44*),
- Better understand the role airflow and ventilation play in disease transmission in commercial aircraft cabins (NIOSH, 2010; *Ex. #44*),
- Simulate different air sampling methods to better understand how sampling methods can assess exposure (NIOSH, 2010; *Ex. #44*), and
- Help better understand the effectiveness of various forms of exposure control technologies in the manufacturing and transportation, warehousing, and utilities in the National Occupational Research Agenda (NORA) Sectors (NIOSH, 2011b; *Ex. #45*).

Additionally, NIOSH has also used CFD models in mine safety research:

- NIOSH conducted a CFD study to model the potential for spontaneous heating in particular areas of underground coal mines (Yuan, L. et al., 2006; *Ex. #46*). The purpose of the study was to provide insights into the optimization of ventilation systems for underground coal mines that face both methane control and spontaneous combustion issues.
- NIOSH looked at the rate of flame spread along combustible materials in a ventilated underground mine entry. CFD models were used to estimate the flame spreading rates of a mine fire (Edwards, J. C., and Hwang, C. C., 2006; *Ex. #47*).
- NIOSH has also used CFD modeling to model inert gas injection and oxygen depletion in sealed areas of underground mines (Trevits, M. A., et al., 2010; ; *Ex. #48*). CFD simulations were created to model inert gas injections that aim to eliminate explosive atmospheres that form in sealed mine areas. The CFD model was able to quantify oxygen depletion and gas leakage rates of the sealed area.

EPA has conducted a substantial amount of work using CFD modeling to assess outdoor air quality. However there is little information available on EPA projects that have used CFD to evaluate indoor air quality.

As part of the Labs21 program, EPA, in conjunction with the Department of Energy, has published a guidance document for optimization of laboratory ventilation rates (EPA & DOE, 2008; *Ex #49*). The guidance is geared towards architects, engineers, and facilities managers, in order to provide information about technologies and practices to use in designing, constructing, and operating safe, sustainable, high-performance laboratories. EPA advocates the use of CFD simulations to determine the airflow characteristics of a laboratory space in order to improve ventilation systems and increase safety and energy efficiency.

The Building and Fire Research Laboratory of National Institute of Standards and Technology (NIST) developed a CFD model to simulate the transport of smoke and hot gases during a fire in an enclosed space (NIST, 1997; *Ex. #50*). The results of the study and an extensive literature review indicated to NIST that CFD can have significant benefits in the study of indoor air quality and ventilation. The report resulting from this study provides a thorough description of CFD and provides recommendations for future directions in CFD research.

The Building and Fire Research Laboratory of NIST has also used CFD to model the effects of outdoor gas generator use on the air concentrations of carbon monoxide inside nearby buildings (NIST, 2009; *Ex. #51*). Using CONTAM (a mathematical indoor air quality model), coupled with CFD simulations, the researchers were able to determine factors (*e.g.,* generator positioning, wind direction) that contributed to elevated carbon monoxide accumulation in the building.

As OSHA continues to explore the option of incorporating CFD modeling into its technological feasibility analyses, the Agency will conduct further research on existing models.

b. The Potential Role of REACH in Technological Feasibility

Similar to the evaluation of chemical substances by the European Chemicals Agency (ECHA) and the European Commission before making a decision to ban or restrict the use of a substance, OSHA must evaluate information on health effects, exposure levels, and existing controls before setting a new or revised PEL. However, ECHA requires chemical manufacturers to generate the information evaluated by government decision-makers, while in the U.S., OSHA itself is responsible for generating, researching, and evaluating the relevant information.

As explained in more detail above, OSHA creates industry profiles to evaluate the technological feasibility of a standard. The objective of these profiles is to estimate the number of workers potentially exposed to occupational hazards. OSHA relies on information from numerous sources including the U.S. EPA, U.S. DOL, U.S. Census Bureau, NIOSH, scientific publications, and site visits to identify specific industries where workers are potentially exposed to hazards.

Acquiring data from these sources is straightforward and usually achieved through standard procedures. However, these sources often contain data gaps or inconclusive information. Thus, new sources of information are needed to fill existing data gaps and strengthen OSHA's analyses.

Since similar types of data are currently being developed and submitted by manufacturers and importers under REACH, this information could provide an additional reference source for OSHA to utilize. The incorporation of REACH data into OSHA's technological feasibility analyses could greatly assist the Agency in creating a more exhaustive, thorough, and complete analysis. The information developed during the REACH registration process could help OSHA better understand the industries, uses, processes, and products in which a chemical of concern is used, gain knowledge about the risk management measures and controls currently in place, and develop scenarios where exposure may be greatest. Exposure information generated by manufacturers in a chemical safety assessment could be valuable for completing exposure profiles on chemicals where current references for field sampling analytical data are limited. In addition, utilizing information presented in exposure scenarios that describe the conditions under which a chemical can be used safely (*i.e.,* risk management measures and operating conditions) could provide insight on currently employed industry control methods and their effectiveness.

While the benefits of incorporating REACH data into OSHA's technological feasibility analyses seems promising, challenges such as data access and data validity have been identified as potential drawbacks. Despite provisions under REACH that require the public availability of data and the sharing of data with other government agencies, the European Chemicals Agency, which maintains the REACH databases, has not

yet made some of the information available, including information generated for and compiled in the chemical safety assessment. Additionally, some manufacturers and importers may be prohibited from sharing the data generated for REACH directly with other entities for non-REACH purposes due to agreements made among the members of groups organized under REACH to more efficiently share the information needed for the registration of a chemical.

Question IV.B.7: How can exposure information in REACH be incorporated into OSHA's technological feasibility analysis?

c. Technological Feasibility Analysis With a Focus on Industries With Highest Exposures

OSHA's technological feasibility analysis is one of the most resource-intensive parts of the rulemaking process. OSHA typically analyzes exposures in all industries and job categories within those industries that show potential for exposures and determine whether a proposed exposure limit can be achieved in most operations most of the time. These can range from industries that are constantly experiencing exposures in most job categories above an existing PEL or the regulatory alternatives, to industries where only a few job categories have shown elevated exposures. OSHA has also utilized an application approach in which it analyzed exposure associated with a specific process across a number of different industries.

The Agency is investigating whether it is appropriate to focus future technological feasibility analyses only on job categories that have the highest exposures. An analysis performed in this manner may reduce the amount of time and money OSHA has to expend to prove feasibility. In many cases the control methods applicable for one industry may also be effective in reducing exposures in other industries. By determining the additional engineering controls and work practices necessary to reduce the most elevated exposures to a level specified by a regulatory alternative, the Agency could propose that similar control strategies (wherever applicable) would also be effective in reducing lesser exposures to that same level. In other words, by making feasibility findings in the most problematic industries, OSHA would argue that all other industries would also be able to comply with a regulatory alternative. A related possibility is for OSHA to make a feasibility determination based on enforcement activities of the proposed or lower PEL in other geographic jurisdictions, *e.g.,* other states.

Question IV.B.8: To what extent and in what circumstances should OSHA argue that feasibility for a regulatory alternative can be established by proving the feasibility of reducing the highest exposures to the level proposed by that regulatory alternative?

Question IV.B.9: To what extent and in what circumstances can OSHA argue that feasibility for a regulatory alternative can be established by the enforcement of a lower PEL [*e.g.,* the 1989 PEL (See Appendix B)] by an individual state or states?

Question IV.B.10: What are the appropriate criteria that OSHA should use to assess whether control strategies implemented in a process from one industry are applicable to a process from another industry (*e.g.,* similarity of chemicals, type, extent and duration of exposures, similar uses)?

Question IV.B.11: Regardless of the industries involved, are there criteria that OSHA should use to show that control strategies implemented in a process from one operation are applicable to a process from another operation? Please explain.

The Agency realizes that analyses performed in this manner may have some implications for smaller firms that may find it harder to implement resource intensive control strategies than larger firms. Additionally, the control strategies from the most problematic industries may not be similar to those that may be needed for industries with lower exposures because the processes and sources of exposure require different control methods.

Question IV.B.12: How should OSHA take into consideration the size of a business of facility when determining technological feasibility?

C. Economic Feasibility in Health Standards

The purpose of this section is (1) to discuss how and why OSHA currently conducts its economic feasibility analysis of health standards, and (2) to examine approaches to economic feasibility that might involve less time and fewer resources.

1. OSHA's Current Approach to Economic Feasibility

The Agency's existing approach to economic feasibility rests directly on relevant language in the OSH Act, as interpreted by the courts, requiring OSHA to establish that new standards are economically feasible. OSHA also conducts economic analysis of its regulations in compliance with other legislation and as a result of executive orders that require analysis of the benefits and costs of a regulation as a whole, and in the case of the Regulatory Flexibility Act, some estimate of the economic impacts on small entities. However, the degree of industry detail provided in OSHA's economic analyses is primarily a function of judicial interpretation of the economic feasibility requirements of the OSH Act. The development of the law on economic feasibility is discussed in detail in Section III. Below we discuss potential alternatives to current methods of economic feasibility analysis, and then follow with a brief discussion on how the other analytical requirements OSHA is required to meet might be satisfied.

As guided by the courts, OSHA develops economic feasibility analyses that cover every affected industry and process. OSHA has not always taken this position. For example, in its economic and technological feasibility analysis of benzene, OSHA examined only industries believed to be the worst in terms of significant exposure to benzene. Since then, however, OSHA has attempted to cover all affected industries in its feasibility analysis.

The courts have suggested that the economic feasibility analysis must be reasonably detailed. In the *Air Contaminants* case, the court said:

> Indeed, it would seem particularly important not to aggregate disparate industries when making a showing of economic feasibility . . . [R]eliance on such tools as average estimates of cost can be extremely misleading in assessing the impact of particular standards on individual industries. *AFL–CIO* v. *OSHA,* 965 F.2d 962, 982 (11th Cir. 1992) *(''Air Contaminants'').* *(Ex. #8)*

However, the court added:

> We are not foreclosing the possibility that OSHA could properly find and explain that certain impacts and standards do apply to entire sectors of an industry. Two-digit SICs could be appropriate, but only if coupled with a showing that there are no disproportionately affected industries within the group. *Air Contaminants,* 965 F.2d at 982 n.28

In the hexavalent chromium case, *Public Citizen Health Research Group* v. *United States Dep't of Labor,* 557 F.3d 165, 178 (3d Cir. 2009; Ex. #14), the court recognized that OSHA had the flexibility to demonstrate technological feasibility on a process or activity rather than industry-by-industry basis, if the processes or activities are sufficiently similar from industry to industry. The court, however, did not address the question of whether the same flexibility applies to economic feasibility. OSHA, especially in health standards, has tried

to provide the most detailed analysis of industries and processes that resources permit. For most recent health standards, this has meant the use of the lowest level industry codes for which industry data are available, and where more than one process is used in an industry, consideration of each process separately. Further, in order to assure that a regulation does not alter the competitive structure of an industry, OSHA normally analyses three size classes of employer within each industry: All establishments, small firms as defined by SBA, and small firms with fewer than twenty employees (always smaller than the SBA definitions). For the typical OSHA substance-specific health standard, OSHA analyses each of the controls for each of the many processes in which the substance might appear, and then of each industry in which any process might appear, and then of three sizes of establishment within the industry. Finally, OSHA examines the varying levels of exposure and controls within an industry and develops analyses that reflect these differences within an industry. In terms of the form of the analysis, OSHA has followed the advice of the D.C. Circuit to ''construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry.'' *United Steelworkers* v. *Marshall,* 647 F.2d 1189, 1272 (D.C. Cir. 1980; Ex. #12) (''*Lead I*'').

In response to this guidance, OSHA develops detailed estimates of the costs of a health standard for each affected industry, and by the three size categories of establishment. The result is that the economic analyses of health standards routinely contain a series of tables showing costs for each industry by multiple size classes of firms within the industry, and sometimes for more than one process per industry. Each entry in these tables is documented by detailed explanations of how the costs were estimated for each industry and size class and level of exposure.

OSHA then makes a determination for each industry whether or not these costs are likely to threaten the existence or competitive structure of that industry. In order to do this, OSHA first constructs a ''screening analysis'' for each industry. For the purposes of this screening analysis, OSHA combines its estimates on the costs per establishment of various sizes with statistical data on the profits and revenues of the affected establishment sizes, and then calculates costs as a percentage of profits and revenues. For most industries, the costs in comparison to revenues and profits are so small that, in OSHA's view, no reasonable person could think that the costs could possibly be expected to threaten the existence or competitive structure of an industry. Where the costs are not this small, OSHA conducts a variety of further economic analysis, depending on the economic situation, nature of the costs, the affected industry, and the economic data available.

This basic approach to economic feasibility analysis has been used for many health standards, and the approach has generally been successful in assuring that OSHA standards are economically feasible. In the PELs rulemaking, where OSHA tried a more general approach, the court found the level of detail inadequate. Similarly, OSHA has encountered problems when the Agency did not have an adequate level of detail with respect to the exposure profile and the technological feasibility analysis, such as for dry-color formulators of cadmium pigments. OSHA's eight lookback studies, conducted under both Sections 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866, have not found any instance in which subsequent study showed that a standard had threatened the existence of or brought about massive dislocation within an industry.

OSHA can reasonably say that it has found a methodology such that the Agency's determinations of economic feasibility have both been considered adequate by the courts and proven to be accurate in determining regulations to be feasible when re-evaluated by retrospective analysis. However, the resulting methodology is extremely resource intensive and time-consuming because OSHA always has to make detailed cost estimates and provide detailed statistical data for every single process and industry affected. For this reason, OSHA wants to consider whether there may be methods that can short-cut this process and still meet all of OSHA's legal requirements.

The remainder of this section examines two kinds of alternative approaches to accelerating the process and reducing the resources needed to produce health standards. One kind of alternative involves formulating health standards differently. The second kind involves different kinds of analysis OSHA might perform.

2. Alternative Approaches to Formulating Health Standards That Might Accelerate the Economic Feasibility Analysis

One approach to simplifying, speeding up, and making the development of standards less resource intensive would be to have the standards themselves address health issues in a way that involves less analysis for any given standard. Health standards can be analyzed faster to the extent that there are fewer processes and/or fewer industries to analyze. It would be less time consuming for OSHA to analyze a health standard for a single process rather than a single substance that is found in dozens of processes. OSHA already has a variety of process-oriented standards that partially address health hazards in such areas as abrasive blasting, welding, and electroplating. Control banding also represents an approach that, following the hazard assessment, examines controls for specific processes. In control banding, the hazards are generic, but the controls are process specific. Process-oriented approaches would be most useful for processes widely used in a variety of settings—abrasive blasting, degreasing, welding, etc. Industry-by-industry economic feasibility analysis for a process-oriented approach would be enormously simplified by the fact the controls and their costs would be very similar across industries. As a result, OSHA could develop more detailed and more secure cost estimates, with full opportunities for a variety of affected parties to comment on those estimates. This approach might also serve to greatly simplify the technological feasibility analysis. On the other hand, since process-oriented standards commonly involve multiple substances, risk assessment issues might be more complex.

A related approach to speeding up at least portions of substance specific health standards might be to regulate a single substance process by process in multiple rulemakings—for example, regulate exposures to hexavalent chromium in electroplating, then in welding, and then painting. By producing process standards in this manner, rather than waiting until analyses of all processes and industries is completed, OSHA could potentially address the most severe exposures much more rapidly. This approach could also allow OSHA to ignore processes where the exposures are likely to be small and the chance of exceeding a PEL minimal. Though this approach might result in portions of a substance-specific standard being produced more quickly, the approach would probably require more resources for multiple hearings and docket analyses. A major disadvantage of this approach is that it would result in the possibility that workers in industries not yet regulated

would have to endure exposures higher than those in regulated industries. Another disadvantage might be that the risk assessment would be subject to multiple public hearings as each industry or process was regulated.

3. Alternative Analytic Approaches to Economic Feasibility of Health Standards

A different approach to producing less resource-intensive and time-consuming economic feasibility analyses would be to re-examine whether OSHA's basic approach of estimating the costs of each process, industry, size class, and possible level of control is really necessary in all cases given how the courts have defined economic feasibility. The key to meeting the legal requirements is to return to the concept of economic feasibility. In the *Lead I* decision, the court stated:

> A standard is feasible if it does not threaten ''massive dislocation'' to . . . or imperil the existence of the industry. No matter how initially frightening the projected . . . costs of compliance appear, a court must examine those costs in relation to the financial health and profitability of the industry and the likely effect of such costs on unit consumer prices. More specifically . . . the practical question is whether the standard threatens the competitive stability of an industry. *Lead I,* 647 F.2d at 1265 (citations omitted). (Ex. #12)

As the court recognized, this is a strong criterion. In the real world, industries are rarely eliminated or have their competitive structure radically altered for reasons related to changes in their costs, and it is changes in costs that courts recognized as the principle reason a regulation might not be economically feasible. Radical changes in industries tend to come from two major causes. Most are the result of changes in demand such that the public is no longer interested in the product or service an industry provides, for such reasons as technological obsolescence or the existence of better substitutes. Some radical changes in industries are the result of foreign competition. However, foreign competition applies largely, in an OSHA context, to manufacturing, but not to construction, utilities, domestic transportation, or most services that OSHA regulates.

OSHA is not aware of any instance in which an OSHA regulation eliminated or altered the competitive structure of an industry—though in some cases, a combination of liability-based concerns, environmental regulations, and OSHA regulation may have radically altered the use of a product. For example, asbestos is not used in many applications where it was once commonplace. Benzidine-based dyes have disappeared from the U.S. marketplace. However, these cases had no effect on the viability of user industries or their employment. Insulation contractors still install insulation—it just no longer contains asbestos. Dyers continue to dye textiles and leather all the colors benzidene-based dyes imparted, but without using benzidene-based dyes. The chief effect has been substitution away from a substance. This has resulted in serious economic impacts on a limited number of producers of the substance but little economic impact on the thousands of users of the substance who simply found a substitute. It would seem that such substitution away from a substance is not the kind of economic change that would make a regulation economically infeasible.

OSHA might be able to place major emphasis on evidence that a significant portion of an industry is already meeting a standard. Such evidence is an obvious indication that a standard is both technologically and economically feasible for that industry. After all, the actual fact that a majority of employers of all sizes in an industry is meeting a standard, while remaining viable, should be more convincing than a set of cost estimates in an economic analysis predicting that employers in a given industry could meet the standard. Actual empirical evidence of a proposition is normally considered superior to theoretical evidence for a proposition. There are several reasons why many or most employers in an industry may already meet a standard—these include ease of meeting the standard, industry consensus standards, and concern about liability.

Similarly, the fact that a state or other jurisdiction has already implemented a requirement and that firms within the state are generally following the requirement would represent very strong evidence that a requirement is economically and technologically feasible. For example, twenty-two states currently operate their own OSHA programs that cover both private sector and State and local government employees, and five states cover public employees only. Of the twenty-two states that cover both private and public sector employees, five states (South Carolina, Minnesota, Tennessee, Vermont and Washington) are still enforcing the 1989 PELs, and did not revert to the less protective PELs when the Court remanded the *Air Contaminants* rule. *(Ex. #8)* Michigan is also enforcing the 1989 PELs in general industry, but not in construction. Three states (Connecticut, Illinois, and New York) are enforcing the 1989 PELs in the public sector only. California enforces its own PELs which in many cases are substantially lower than OSHA's. Situations in which most firms in a state meet a potential requirement of a standard are particularly convincing because they show that employers are not only able to carry out the requirement, but can do so even in competition with employers who are not required to meet such a requirement.

Nevertheless, OSHA is aware that some care must be taken with evidence that all or most firms in an industry or in an industry within a state meet a requirement. It is particularly important to determine whether those who do not meet the requirement might require fundamentally different controls, have different costs, or operate in a different market in spite of being in the same statistical industry. Consider a standard addressing a specific metal. Most firms in an industry may find the standard easy to meet because they only use the metal in alloys that call for a very small percentage of the metal. However, those firms that use alloys with high percentages of the metal might be unable to meet the standard. This would not be apparent looking solely at aggregate industry data. OSHA should take reasonable steps to determine that those that did not meet the standard do not have important technological or economic characteristics that are different from those that did.

Under this approach, OSHA could conclude that a standard is feasible where a state already had such a standard if it first determines that (1) the standard is enforced; (2) employers in the state in fact meet the standard; and (3) which of the relevant industries and technologies are represented within that state.

However, in spite of these caveats, it would frequently take OSHA less time and fewer resources to demonstrate that a standard is technologically and economically feasible by showing that employers in the industry already meet the standard than by the full identification of control technologies, exposure levels achieved by those technologies, the costs of the technologies, and the economic impacts of these technologies that OSHA now undertakes.

As noted above, at one point in the *Lead I* decision, the court suggested OSHA develop a ''reasonable estimate of costs.'' However at another point in this decision the same court clarified:

> [T]he court probably cannot expect hard and precise estimates of costs. Nevertheless,

the agency must of course provide a reasonable assessment of the likely range of costs of its standard, and the likely effects of those costs on the industry . . . And OSHA can revise any gloomy forecast that estimated costs will imperil an industry by allowing for the industry's demonstrated ability to pass through costs to consumers. *Lead I,* 647 F.2d at 1266. *(Ex. #12)*

OSHA has made little use of the concept of a likely range of costs or of developing generic approaches to determining a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry.

OSHA could significantly reduce its resource and time expenditures by providing ranges of costs, given that the upper end of the range provides ''a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry.'' Such an approach would not only reduce OSHA's time and effort but also that of the interested public. Too often stakeholders devote significant time and effort questioning cost estimates when even the stakeholders' alternative cost estimate would have no effect on whether the costs would threaten the existence or competitive structure of an industry. The simple fact is that both OSHA and its stakeholders spend far too much time examining the accuracy of cost estimates even when the highest cost estimates considered would have little effect on the determination of economic feasibility.

OSHA could also make more effort to clarify historically the circumstances under which regulations of any kind have eliminated or altered the competitive structure of an industry. As noted above, OSHA has yet to find an instance in which OSHA regulations eliminated or altered the competitive structure of an industry. A more thorough exploration of past experiences with OSHA regulations might simplify OSHA analyses and make it more empirically based in a variety of situations.

OSHA believes that it may be able to meet the requirements of Executive Orders 12866 and 13563 and the Regulatory Flexibility Act without the kind of industry-by-industry detail that OSHA now provides in its economic analyses. The requirements of executive orders for analysis of costs and benefits do not include requirements that they be made available on an industry-by-industry basis, and OIRA encourages the reporting of ranges as opposed to precise but possibly inaccurate point estimates. OSHA believes that the requirements of the executive orders and for determining if a regulatory flexibility analysis or Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel is needed can, in most cases, be met by focusing on those sectors and size classes where the most severe impacts are expected.

Question IV.C.1: Should OSHA consider greater use of process oriented regulations, such as regulations on abrasive blasting, welding, or degreasing, as an approach to health standards? Should such an approach be combined with a control banding approach?

Question IV.C.2: Should OSHA consider issuing substance-specific standards in segments as the analysis of a particular process or industry is completed rather than waiting until every process and industry using a substance has been thoroughly analyzed?

Question IV.C.3: To what extend and in what circumstances can OSHA argue that feasibility for a regulatory alternative can be established by the enforcement of a lower PEL (e. g., the 1989 PEL) by an individual state or states?

4. Approaches to Economic Feasibility Analysis for a Comprehensive PELs Update

Following the Eleventh Circuit's direction in the *Air Contaminants* case (956 F.2d at 980–82; Ex. #8) and in *Color Pigments Mfrs. Ass'n* v. *OSHA,* 16 F.3d 1157, 1161–64 (11th Cir. 1994; Ex. #13), OSHA has typically performed its economic feasibility analyses on an industry-by-industry basis using the lowest level industry codes for which industry data are available. While such an approach best insures that the effect of the standard on small industry segments will be considered, it is very resource intensive. If OSHA were required to use of this approach to address feasibility for a comprehensive PELs update, which would require addressing the feasibility of new PELs for hundreds of chemicals in hundreds of industry segments, it might require more resources than the agency would have available.

There are good reasons to think that the OSH Act does not require such a detailed level of economic analysis to support a feasibility finding. The purpose of the OSH Act is to assure all workers ''safe and healthful working conditions,'' and therefore it is unlikely that Congress intended for OSHA to meet such demanding analytical requirements if it meant that the agency could not issue a standard addressing well-recognized hazards. *See, e.g., Public Citizen Health Research Group* v. *Dep't of Labor,* 557 F.3d 165, 178–79 (3d Cir. 2009; Ex. #14) (''*Hexchrome*'') (rejecting interpretation that OSH Act required OSHA to research all workplace operations involving hexavalent chromium exposure to prove feasibility, which would ''severely hinder OSHA's ability to regulate exposure to common toxins''); *American Dental Ass'n* v. *Martin,* 984 F.2d 823, 827 (7th Cir. 1993; Ex. #53) (OSHA not required to regulate ''workplace by workplace''); *Assoc. Bldrs & Contrs. Inc.* v. *Brock,* 862 F.2d 63, 68 (3d Cir. 1988; Ex. #54) (''A requirement that the Secretary assess risk to workers and need for disclosure with respect to each substance in each industry would effectively cripple OSHA's performance of the duty imposed on it by 29 U.S.C. 655(b)(5); a duty to protect all employees, to the maximum extent feasible.'').

Indeed, the requirement that an OSHA standard not threaten ''massive dislocation'' or ''imperil the existence'' of an industry is an outgrowth of the idea that OSHA may adopt standards that may cause marginal firms to go out of business if they are only able to make a profit by endangering their employees. *See Industrial Union Dep't, AFL–CIO* v. *Hodgson,* 499 F.2d 467, 478 (XX Cir. 1974; Ex. #55). And the notion that the determination must be made on an industry basis arises from cases in which OSHA attempted to do just that; the statute does not require feasibility to be evaluated in this way. *See Lead I,* 647 F.2d at 1301 (where OSHA attempted to determine the feasibility of the lead standard on an industry-by-industry basis, noting that the parties did not dispute that feasibility was to be determined in that manner); *Hexchrome,* 557 F.3d at 178 (''nothing in 29 U.S.C. 655(b)(5) requires OSHA to analyze employee groups by industry, nor does the term 'industry' even appear''). The approach articulated by the *Air Contaminants* court, which places an affirmative duty on OSHA to establish that proposed standards would not threaten even the smallest industry segments before adopting a standard, creates a heavy analytical burden that is not necessarily required by the statute.

As the *Lead I* court notes, in the case of a standard requiring an employer to adopt only those engineering and administrative controls that are feasible, what really is at stake in OSHA's feasibility determinations is whether OSHA has justified creating a presumption that the implementation of such controls are feasible. 647 F.2d at 1269–70. Thus, OSHA need not ''prove the standard certainly feasible for all firms at all times in all jobs.'' 647 F.2d at 1270. The court recognized that under

this approach, some employers might not be able to comply with a standard, but noted that the statute offers those employers several alternatives: requesting a variance, asserting a feasibility defense in an enforcement proceeding, or petitioning the agency to revise the standard. 647 F.2d at 1270.

As noted above, most of OSHA's current PELs are over 40 years old, and are based on science that is even older. It seems unlikely that a statute enacted to protect workers against chemical health hazards would preclude OSHA from updating hundreds of those PELs unless it can show that each is feasible in each of the smallest industry segments in which the chemical is used. The question, then, is what level of analysis would be sufficient to justify a presumption that the standard is feasible, shifting the burden to the employer as allowed by *Lead I*.

If OSHA moved forward with a global PELs update, the Agency might consider analyzing economic feasibility at a higher level than it has typically employed in substance specific health standards. In order to do so, OSHA would need to develop criteria as to what chemicals are suited to be part of a PELs rulemaking rather than subject to a substance-specific rulemaking. For example, if the rulemaking record showed that, for a specific chemical application group, generally available exposure controls had not been successful in achieving the proposed PEL, then this chemical or at least the application group would be transferred from updated PELs rulemaking to being a candidate for further study and possible inclusion in a substance-specific rulemaking. The goal under this approach would be to develop a reasonable basis for believing that the chemicals and application groups remaining in a PELs-update rulemaking are (1) likely to be economically feasible; and (2) subject to relatively simple and easily-costed controls that are likely to be relatively homogenous across industries.

As a result, rather than accumulating data at the lowest industry level available regarding exposures and controls needed for each chemical for which a new PEL would be adopted, OSHA could consider a more general approach. For example, OSHA might conduct an economic feasibility analysis at the industry level for which sufficient exposure data are currently available. It might use a control banding approach in order to determine the types of controls necessary to comply with a new PEL, and validate models to implement each type of control based on variables such as establishment size and process type. The results of this analysis would be used to build up costs at the industry level. It is possible that the results of such an analysis might be better characterized in ranges, and of sufficient precision to establish feasibility at a level as low as the method that OSHA typically uses. Under this approach, a determination made in this way would be presumptively sufficient to establish feasibility in the absence of contrary evidence provided by commenters. If such evidence were presented, OSHA would address it and incorporate it into its feasibility analysis supporting the final rule.

Question IV.C.4: Should OSHA consider providing ranges of costs for industries in situations where even the upper range of the costs would obviously not provide a threat to the existence of competitive structure of an industry?

Question IV.C.5: What peer-reviewed economics literature should OSHA consult when determining whether the competitive structure of an industry would be altered? Are there any instances where an OSHA standard did threaten the existence or competitive structure of an industry? What were they and what is the evidence that an OSHA standard was the origin of the difficulties?

Question IV.C.6: Should OSHA consider and encourage substitution and elimination of substances that cause significant risk in workplaces even if such substitution or elimination will eliminate or alter the competitive structure of the industry or industries that produce the hazardous substance?

Question IV.C.7: Are there other approaches OSHA could use that would provide for more timely and less resource-intensive economic feasibility analyses?

Question IV.C.8: In determining the level of industry detail at which OSHA should conduct an economic feasibility analysis for a comprehensive PELs update, what considerations should OSHA take into account? What level of detail do you think is sufficient to justify the presumption of feasibility for such a standard? Please explain.

Question IV.C.9: Are the methodologies suggested above appropriate to establish economic feasibility for a comprehensive PELs update? Why or why not? What other cost effective methods are available for OSHA to establish economic feasibility for such a rulemaking?

Question IV.C.10: What factors should OSHA consider in determining whether a chemical should be part of an overall PELs update or subject to substance-specific rulemaking? Should OSHA consider some application groups for a given chemical as subject to a PELs update rulemaking if some other application groups present feasibility issues that make them inadvisable candidates for a PELs rulemaking?

V. Recent Developments and Potential Alternative Approaches

Wide access to information on the Internet and the development of a global economy has shifted occupational safety and health from a domestic to a global concern. Countries often struggle with similar experiences and challenges related to exposure to hazardous chemicals, and sharing information and experiences across borders is a common practice. Global data sharing allows for the widespread and rapid dissemination of available chemical information to employers, employees, managers, chemical suppliers and importers, risk managers, or anyone with access to the Internet. The development of hazard assessment tools that take advantage of readily available hazard information make it possible for employers to implement effective exposure control strategies without the need to rely solely on OELs.

Some of these resources for data and tools that OSHA may use more systematically in the future for hazardous chemical identification and/or assessment are addressed in Section V.

A. Sources of Information About Hazardous Chemicals

In order to design and implement appropriate protective measures to control chemical exposures in the workplace, employers need reliable information about the identities and hazards associated with those chemicals. OSHA is considering ways in which recently developed data sources could be used by the Agency and employers to more effectively manage chemical hazards in the workplace. Developments in the use of structure—activity data for grouping chemicals having similar properties, the Environmental Protection Agency's High Production Volume (HPV) Chemicals, OSHA's Hazard Communication standard and the Globally Harmonized Hazard Communication Standard, health hazard banding, the European Union's Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH), are discussed here. OSHA is interested in stakeholders' comments on how the Agency may make use of any of these data sources or other alternative data or information sources not discussed here

to better manage workplace chemical exposures.

1. EPA's High Production Volume Chemicals

One potential source of relevant and timely information on chemicals that OSHA may make better use of in the future is the data on High Production Volume chemicals that are being collected by the EPA and the Organization for Economic Cooperation and Development (OECD). The OECD program lists approximately 5,000 chemicals on its list, and OSHA has determined that 290, or 62 percent of the 470 substances with PELs are included on the OECD list.

Under the HPV program, EPA has identified over 2,000 chemicals that are produced in quantities of one million pounds a year or more in the United States. It would appear that these chemicals are thus economically significant in the US, and there are likely to be a large number of workers exposed to them. Through the HPV Challenge program, EPA encouraged industry to make health and environmental effects data on these HPV chemicals publicly available. To date, data on the properties of approximately 900 HPV chemicals has been made available through the Agency's High Production Volume Information System (HPVIS) (U.S. EPA, 2012a; *Ex. #56*). For each HPV chemical, the database includes information on up to 50 endpoints on physical/chemical properties, environmental fate and pathways, ecotoxicity, and mammalian health effects. EPA has also used this information to generate publicly available chemical hazard characterizations, which provide a concise assessment of the raw technical data on HPV chemicals and evaluate the quality and completeness of the data received from industry (U.S. EPA, 2013d; *Ex. #63*).

Data on HPV chemicals submitted through the OECD's program are available through its Global Portal to Information on Chemical Substances, eChemPortal (OECD, 2013; *Ex. #58*). In addition to searching data collected through the EPA HPV and OECD HPV programs, eChemPortal allows for simultaneous searching of 26 databases for existing publicly available data on the properties of chemicals, including: physical/chemical properties, environmental fate and behavior, ecotoxicity, and toxicity.

Question V.A.1. How might publicly available information on the properties and toxicity of HPV chemicals be utilized by employers to identify chemical hazards and protect workers from these hazards? OSHA is also interested to hear from commenters who may currently make use of these data in their worker protection programs.

2. EPA's CompTox and ToxCast

EPA has also launched an effort to prioritize the tens of thousands chemicals that are currently in use for testing and exposure control. Through its computational toxicology (CompTox) research, the U.S. Environmental Protection Agency (EPA) is working to figure out how to change the current approach used to evaluate the safety of chemicals. CompTox research integrates advances in biology, biotechnology, chemistry, and computer science to identify important biological processes that may be disrupted by the chemicals and trace those biological disruptions to a related dose and human exposure. The combined information helps prioritize chemicals based on potential human health risks. Using CompTox, thousands of chemicals can be evaluated for potential risk at a small cost in a very short amount of time. A major part of EPA's CompTox research is the Toxicity Forecaster (ToxCast™). ToxCast is a multiyear effort launched in 2007 that uses automated chemical screening technologies, called ''highthroughput screening assays,'' to expose living cells or isolated proteins to chemicals. The cells or proteins then are screened for changes in biological activity that may suggest potential toxic effects.

These innovative methods have the potential to limit the number of required animal-based laboratory toxicity tests while, quickly and efficiently screening large numbers of chemicals. The first phase of ToxCast, called ''proof of concept'', was completed in 2009, and it evaluated more than 300 well studied chemicals (primarily pesticides) in more than 500 high-throughput screening assays. Because most of these chemicals already have undergone extensive animal-based toxicity testing, this enables EPA researchers to compare the results of the high-throughput assays with those of the traditional animal tests. (EPA, 2014a; *Ex. #59*)

Completed in 2013, the second phase of ToxCast evaluated over 2,000 chemicals from a broad range of sources, including industrial and consumer products, food additives, and potentially ''green'' chemicals that could be safer alternatives to existing chemicals. These chemicals were evaluated in more than 700 high-throughput assays covering a range of high-level cell responses and approximately 300 signaling pathways. ToxCast research is ongoing to determine which assays, under what conditions, may lead to toxicological responses. The results of this research then can be used to suggest the context in which decision makers can use the data. The EPA's Endocrine Disruptor Screening Program already has begun the scientific review process necessary to begin using ToxCast data to prioritize the thousands of chemicals that need to be tested for potential endocrine-related activity. Other potential uses include prioritizing chemicals that need testing under the Toxic Substances Control Act and informing the Safe Drinking Water Act's contaminant candidate lists. (EPA, 2014b; *Ex. #60*) EPA contributes the results of ToxCast to a Federal agency collaboration called Toxicity Testing in the 21st Century (Tox21). Tox21 pools those results with chemical research, data and screening tools from the National Toxicology Program at the National Institute of Environmental Health Science, the National Institutes of Health's National Center for Advancing Translational Sciences and the Food and Drug Administration. (EPA, 2014b; *Ex. #60*)

Thus far, Tox21 has compiled highthroughput screening data on nearly 10,000 chemicals. All ToxCast chemical data are publicly available for anyone to access and use through user-friendly Web applications called interactive Chemical Safety for Sustainability (iCSS) Dashboards at *http://actor.epa.gov/actor/faces/*.

OSHA could use this publicly available information on chemical properties and toxicity as a part of the Agency's risk assessments that support the revision and development of permissible exposure limits. Tox21 could also be used by the Agency for screening chemicals and prioritizing for risk management.

Question V.A.2. How might the information on the properties and toxicity of chemicals generated by CompTox, ToxCast, and/or Tox21 be utilized by employers to identify chemical hazards and protect workers from these hazards? OSHA is also interested to hear from commenters who may currently make use of these data in their worker protection programs.

3. Production and Use Data Under EPA's Chemical Data Reporting Rule

Under the EPA's Chemical Data Reporting (CDR) Rule, issued in 2011, EPA collects screening-level, exposure-related information on certain chemicals included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory and makes that information publicly available to the extent possible. The CDR rule amended the TSCA Inventory Update Reporting (IUR) rule

and significantly increased the type and amount of information covered entities are required to report. The 2012 submissions included data on more chemicals and with more in-depth information on manufacturing (including import), industrial processing and use, and consumer and commercial use than data collected under the IUR in 2006 (U.S. EPA, 2013a; *Ex. #1*).

The expanded reporting on chemical production and use information under the CDR could help OSHA better understand how workers are exposed to chemicals and the industries and occupations where exposures to chemicals might occur.

4.Structure-Activity Data for Chemical Grouping

Although toxicity testing for chemicals has increased greatly since the passage of the Toxic Substances Control Act (15 U.S.C. 2601–2629; *Ex. #62*) in the United States, and with similar legislation elsewhere, toxicity data is only publicly available for a fraction of industrial chemicals. Since the enactment of TSCA and creation of the TSCA Interagency Testing Committee (U.S. EPA, 2013c; *Ex. #57*), the ITC has recommended testing for hundreds of chemicals, and chemical producers have conducted more than 900 tests for these chemicals. However, potentially thousands of industrial chemicals have not been tested.

With the rapidly expanding development of new chemical substances and mixtures, the need for toxicity information to inform chemical safety management and public health decisions in a timely manner has exceeded the capacity of the government programs to provide those data. As a result, programs such as the Organization for Economic Cooperation and Development's (OECD) Screening Information Data Set (SIDS) and the U.S. EPA High Production Volume (HPV) Challenge programs were designed to encourage the voluntary development of data. However, even with the creation of these non-statutory programs, potentially thousands of non-HPV industrial chemicals go untested. Therefore, chemical prioritization for screening and testing requires the development and validation of standard methods to predict the human and environmental effects and potential fate of chemicals. Where screening and testing data are sparse, the use of predictive models called structural activity relations (SARs) or quantitative structural activity relationships (QSARs) can extend the use of limited toxicity and safety data for some untested chemicals (Russom *et al.,* 2003; *Ex. #64*). QSARs are mathematical models that are used to predict measures of toxicity from physical characteristics of the structure of chemicals, known as molecular descriptors.

Other U.S. and international agencies have explored the use of chemical groupings to regulate chemicals in order to fulfill their regulatory and statutory authorities. Under the TSCA Work Plan, the EPA announced in 2013 that it would begin to assess 20 flame retardant chemicals and three non-flame retardant chemicals. EPA utilized a structure-based approach, grouping eight other flame retardants with similar characteristics together with the chemicals targeted for full assessment in three groupings. EPA will use the information from these assessments to better understand the other chemicals in the group, which currently lack sufficient data for a full risk assessment.

EPA uses chemical groupings to fill data gaps in its New Chemical Program. EPA's New Chemical Program, also under TSCA, requires anyone who plans to manufacture or import a new chemical substance into commerce to provide EPA with notice before initiating the activity. This is called a pre-manufacture notification (PMN). EPA received approximately 1,500 new chemical notices each year and has reviewed more than 45,000 from 1979 through 2005 (GAO, 2007; *Ex. #65*). Because TSCA does not require testing before submission of a PMN, SARs and QSARs are often used to predict the environmental fate and ecologic effects. In addition, the EPA makes predictions concerning chemical identity, physical/chemical properties, environmental transport and partitioning, environmental fate, environmental toxicity, engineering releases to the environment, and environmental concentrations. The agency uses a variety of methods to make these predictions that include SARs, nearest-analogue analysis, chemical class analogy, mechanisms of toxicity, and chemical industry survey data and the collective professional judgment of expert scientific staff, in the absence of empirical data. The agency uses these methods to fill data gaps in an assessment and to validate submitted data in notifications. Predictions are also made by the U.S. EPA Office of Pollution Prevention and Toxics (OPPT) under TSCA (Zeeman., 1995; *Ex. #66*). The OPPT has routinely used QSARs to predict ecologic hazards, fate, and risks of new industrial chemicals, as well as to identify new chemical testing needs, for more than two decades. OPPT SAR/QSARs for physical/chemical properties used for new chemical assessments are publically available (U.S. EPA, 2012b; *Ex. #67*).

In Europe, internationally agreed-upon principles for the validation of (Q)SARs were adopted by OECD Member Countries and the Commission in 2004. In 2007, the Inter-organization Programme for the Sound Management of Chemicals, a cooperative agreement among United Nations Environmental Program (UNEP); International Labor Organization (ILO); Food and Agriculture Organization of the United Nations (FAO); World Health Organization (WHO); United Nations Industrial Development Organization (UNIDO), United Nations Institute for Training and Research (UNITAR) and Organization for Economic Co-operation and Development (OECD) published ''Guidance on Grouping of Chemicals'' as part of an ongoing monograph series on testing chemicals. REACH registrants may rely on (Q)SAR data instead of experimental data, provided the registrants can provide adequate and reliable documentation of the applied method and document the validity of the model. Validation focuses on the relevance and reliability of a model (ECHA, 2008; *Ex. #68).*

The EU Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) recommended, in their general data requirements for regulatory submission, that QSAR data may be used as well as animal data. A chemical category approach based on the metal ion has been extensively used for the classification and labeling of metal compounds in the EU. Other category entries are based on certain anions of concern such as oxalates and thiocyanates. For these EU classifications the category approach has often been applied to certain endpoints of particular concern for the compounds under consideration, but has not necessarily been applied to all endpoints of each individual compound in the category of substances.

The Danish EPA has made extensive use of QSARs and has developed a QSAR database that contains predicted data on more than 166,000 substances (OSPAR Commission, 2000; *Ex. #69*). A recent publication from the Danish EPA reports the use of QSARs for identification of potential persistent, bioaccumulative and toxic (PBT) and very persistent and very bioaccumulative (vPvB) substances from among the HPV and medium-production volume chemicals in the EU.

OSHA is considering using a combination of chemical group approaches to evaluate multiple chemicals with similar attributes

utilizing limited data that can be extrapolated across categories. The Agency invites comment on how such grouping approaches have been used to evaluate risks to worker populations.

Question V.A.3: Are QSAR, read-across, and trend analysis useful and acceptable methods for developing hazard information utilizing multiple data sets for a specific group of chemicals?

Question V.A.4: Are there other acceptable methods that can be used to develop hazard information for multiple chemicals within a group?

Question V.A.5: What are the advantages and disadvantages of each method?

5. REACH: Registration, Evaluation, Authorization, and Restriction of Chemicals in the European Union (EU)

Safe chemical management is a universal concern. The European Union, recognizing the need for a more integrated approach to chemical management, adopted REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals) to address chemicals throughout their life cycle. Although REACH applies to European Union Member States, chemical manufacturers in other countries exporting to European countries also have to comply with the REACH requirements to sell their products in Europe.

The REACH Regulation (EC) No 1907/2006 became effective on June 1, 2007, and relies on the generation and disclosure of data by manufacturers and importers of chemicals in order to protect human health and the environment from chemical hazards. The regulation also established the European Chemicals Agency (ECHA) to coordinate implementation (EC 1907/2006, 2006; *Ex. #70*).

REACH establishes processes for the Registration, Evaluation, Authorization, and Restriction of Chemicals. REACH requires manufacturers and importers to register their chemicals and establish procedures for collecting and assessing information on the properties, hazards, potential risks and uses of their chemicals. The registration process, which began in 2010, is being phased-in based on the tonnage and hazard classification of the substances. For existing chemicals, it is set to be completed in June 2018.

For each chemical manufactured or imported in quantities of 1 ton or more per year, companies must register the substance by providing a technical dossier to ECHA. The technical dossier includes information on: Substance identity; physicochemical properties; mammalian toxicity; ecotoxicity; environmental fate; manufacture and use; and risk management measures (ECHA, 2012b; *Ex. #71*). Non-confidential information from the technical dossiers is published on the ECHA Web site (ECHA, 2012c; *Ex. #72*).

Companies manufacturing or importing a chemical in quantities of 10 or more tons per year must also conduct a chemical safety assessment. This assessment includes the evaluation of: (1) Human health hazards; (2) physicochemical hazards; (3) environmental hazards; and (4) persistent, bioaccumulative and toxic (PBT), and very persistent and very bioaccumulative (vPvB) potential (ECHA, 2012b; *Ex. #71*). If a substance is determined to be hazardous or a PBT/vPvB, registrants must then conduct an exposure assessment, including the development of exposure scenario(s) (ES) and exposure estimation, and a risk characterization that includes development of a health effects benchmark, such as the Derived No Effect Level (DNEL).

An exposure scenario, the main output of the exposure assessment process, documents a set of operational conditions and risk management measures for a specific use of a substance. A number of exposure estimation models have been developed in the EU to help the regulated community create these exposure scenarios. Exposure scenarios must also be included in the Safety Data Sheets (SDS) in order to communicate this information down the supply chain. When an extended SDS with exposure scenarios is received by a chemical user, the exposure scenarios must be reviewed to determine if they are applicable to the use situation in that facility. If the exposure scenarios are applicable, the user has 12 months to implement them. If they are not, the user has several options to choose from to determine appropriate controls. These options include: (1) User informing supplier of their use, and user convincing supplier to recognize it as an ''identified use'' on suppliers safety assessment; (2) user implementing the suppliers conditions of use described in the exposure scenario of the original/current safety assessment; (3) user substituting the substance for another substance that is covered in a pre-existing safety assessment; (4) user finding another supplier who does provide an exposure scenario that covers the use of the substance; or (5) prepare a downstream user chemical safety report. (ECHA, 2012c; *Ex. #72*).

After completing the exposure assessment, registrants conduct a risk characterization process to determine if the operational conditions cause exposures that require risk management measures to ensure risks of the substance are controlled. Risk characterization consists of the comparison of exposure values derived from each exposure scenario with their respective DNEL or an analogous health benchmark such as Derived Minimal Effect Level (DMEL) or Predicted No Effect Concentration (PNEC)), established by the registrant. Where no health benchmark is available, a qualitative risk characterization is required (ECHA, 2009; *Ex. #73*).

Manufacturers and importers are required to document the information developed during the chemical safety assessment in a chemical safety report, which is submitted to ECHA. The report then forms the basis for other REACH processes, including substance evaluation, authorization, and restriction.

ECHA and the EU Member States then evaluate the information submitted during the registration process to examine the testing proposals, check the quality of the registration dossiers, and evaluate whether a substance constitutes a risk to human health or the environment. Following the evaluation process, registrants may be required to comply with additional actions to address concerns (*i.e.,* submit further information, proceed on restriction or authorization procedures under REACH, take actions under other legislation, etc.). (ECHA, 2012d; *Ex. #74*).

As the implementation of REACH continues, large amounts of information will be generated by manufacturers, importers, and downstream users throughout the registration, authorization, and restriction processes. Some of this information is publicly available on ECHA Web sites, and includes toxicological information, general exposure control recommendations, and assessments of the availability of alternatives. The generation and availability of this extensive data on chemicals can assist OSHA, as well as U.S. employers and workers, to further enhance chemical safety and health management by assisting in the assessment of hazards, development of exposure control recommendations, and selection of substitutes to help drive the transition to safer chemicals in the workplace.

As of July, 2013, the REACH database of registered substances is comprised of more than 9900 substances. The database provides extensive information to the public from dossiers prepared by chemical manufacturers, importers, and downstream users. OSHA is interested

in determining whether some information developed and submitted under REACH may be helpful to OSHA in its own regulatory initiatives. Information submitted under REACH's requirements to assess chemical risks in workplaces may be useful in developing task-based exposure control plans, or of use in OSHA's feasibility analyses. OSHA is participating in high-level discussions with the EU about the feasibility of sharing these data.

Question V.A.6: OSHA is interested in the experiences of companies that have had to prepare chemical dossiers and submit registration information to the European Chemicals Agency (ECHA) ECHA. In particular, how might the approaches be used to support occupational exposure assessments and development of use-specific risk management in the United States?

Question V.A.7: To what extent is information developed under REACH used by U.S. businesses to promote product stewardship and ensure safe use of substances and mixtures by product users?

Question V.A.8: Should OSHA pursue efforts to obtain data from ECHA that companies are required to provide under REACH?

B. Non-OEL Approaches to Chemical Management

OSHA's PELs and its corresponding hierarchy of controls have been a major focus in the fields of occupational health and industrial hygiene for many years. Undoubtedly, occupational exposure limits (OELs), which help reduce workers' risk of adverse health by establishing precise targets for employers to follow, will always be an essential part of controlling chemical exposures in workplaces. However, regardless of whether a more effective process for updating OSHA's PELs can be established, the rapid development of new chemical substances and mixtures that will continue to leave workers exposed to thousands of unregulated substances make it impractical to solely rely on OELs. Moreover, for many of the chemicals and mixtures that have been developed since the PELs were initially promulgated, insufficient hazard information exists to serve as a basis for developing OELs. While OELs generally focus on a single chemical, workers are typically exposed to mixtures or multiple substances in the workplace. Mixed exposures may also result in synergistic or antagonistic effects that are rarely considered in developing OELs.

Workplace risk assessments, and corresponding risk management plans, should be based on an evaluation of all hazards present—OELs established for a few chemicals among the many in the workplace environment have diminished impact in these situations. Unlike OELs, which are only useful in protecting workers if regular measurement and assessment of compliance is completed, alternative risk management approaches focus more on determining what types of controls are required to reduce exposures without necessarily referring to quantitative assessments of exposure to evaluate success.

An important aspect of risk assessment and risk management is consideration of safer alternatives, which can often result in a path forward that is less hazardous, technically feasible, and economically viable.

1. Informed Substitution to Safer Chemicals and Processes

While establishing exposure limits for hazardous chemicals helps to reduce workers' risk of adverse health effects, the process is costly, time consuming, and does not drive the development or adoption of safer alternatives that could best protect workers. OSHA recognizes that ultimately, an approach to chemical management that incentivizes and spurs the transition to safer chemicals, products, and processes in a thoughtful, systematic way will most effectively ensure safe and healthful conditions for workers.

Informed substitution, the considered transition from hazardous chemicals to safer substances or non-chemical alternatives, provides a way of moving toward a more preventative chemical management framework.

a. Substitution in Practice

Whenever a hazardous chemical is regulated, there is always the potential for the chemical to be replaced with a substitute chemical or redesigned product or process that poses new and potentially greater hazards to workers, consumers, or the environment or results in risk-shifting from one group to another. Regrettably, this potential has been realized in a number of cases. For example:

- The regulation of methylene chloride by EPA, FDA, and OSHA spurred the shift to 1-bromopropane, an unregulated neurotoxicant and possible carcinogen, in a variety of applications, such as refrigeration, metal cleaning, and vapor and immersion degreasing applications, as well as in adhesive resins (Kriebel et al., 2011; *Ex. #75*).
- Air quality regulations in California created a market in the vehicle repair industry for solvent products formulated with n-hexane, a neurotoxicant causing symptoms of peripheral neuropathy, and hexane-acetone blends, which amplify the neurotoxic effects of n-hexane, thus resulting in risk-shifting from the environment to workers (Wilson *et al.,* 2007; *Ex. #76*).

While regulatory processes lacking a robust assessment of alternatives can result in substitution that is equally detrimental to human health or the environment, regulatory efforts that require planning processes and provide guidance and technical assistance on preferred alternatives can minimize risk trade-offs and protect workers, consumers, and the environment. For example, in Massachusetts, facilities using specific toxic chemicals in certain quantities are required to undertake a toxics use reduction planning process. Agencies provide various resources to encourage and facilitate the voluntary adoption of alternatives. In the case of trichloroethylene, the Massachusetts Office of Technical Assistance and the Toxics Use Reduction Institute provided technical assistance, educational workshops, a database of safer alternatives, and performance evaluations of alternatives (Toxics Use Reduction Institute, 2011a; *Ex. #78;* Toxics Use Reduction Institute, 2011b; *Ex. #79;* Toxics Use Reduction Institute, 2011c; *Ex. #80*). Through these efforts, Massachusetts companies reduced the use of trichloroethylene by 77 percent since 1990, moving to a number of safer alternatives in the process (Toxics Use Reduction Institute, 2011d; *Ex. #81*).

These cases demonstrate that the transition to safer chemicals, materials, products, and processes will be best facilitated not through restrictions or bans of chemicals, but rather through the integration of informed substitution and guidance on preferred alternatives into regulatory efforts.

b. Benefits of a Preference for Primary Prevention Strategies

The reduction or elimination of a hazard at the source, as traditionally embraced by health and safety professionals, is not only the most reliable and effective control approach, but also provides a number of benefits for workers and businesses.

Preferring primary prevention strategies (*i.e.* elimination and substitution) can result in the ''total elimination of exposure to hazardous chemicals, less reliance on worker compliance or equipment maintenance for success, elimination of the potential for accidental or non-routine overexposures, prevention of dermal exposures, and process and environmental improvements not

related to worker health'' (Roelofs et al., 2003; *Ex. #82*).

Additionally, making process improvements designed to reduce or eliminate workers' exposures to hazardous chemicals often results in significant business improvements or savings. A 2008 study by the American Industrial Hygiene Association (AIHA) demonstrated the relationship between the application of the hierarchy of controls and financial benefits. The study found that the greatest cost savings and other benefits tended to be associated with hazard elimination and the elimination of personal protective equipment (PPE) usage. It also highlighted the ability of material substitution to result in very large payoffs due to the creation of efficiencies throughout the business process (American Industrial Hygiene Association, 2008; *Ex. #83*). For example:

- A foundry making automatic diesel engine blocks enhanced and aggressively enforced a purchasing specification program to eliminate supplied scrap metal contaminated with lead. By eliminating lead from its supply chain, the company not only achieved high levels of employee protection, but also enhanced the quality of its products and realized nearly $20 million in savings for the facility.
- An aircraft manufacturing company, struggling to comply with the OSHA PEL for hexavalent chromium, transitioned from chromate-based primers to non-chromate based primers, resulting not only in the elimination of worker exposure to chromate dusts from rework sanding, but also in quality improvements of its products, increased customer satisfaction, productivity gains, avoidance of costly changes to their exhaust ventilation system, and a savings of $504,694 over the 5-year duration of the project.

c. Informed Substitution

In order to truly protect workers from chemical hazards, it is important that OSHA not only develop health standards for hazardous chemicals, but also understand alternatives to regulated chemicals and support a path forward that is less hazardous, technically feasible, and economically viable. Informed substitution provides a framework for meeting this goal.

As previously described, informed substitution is the considered transition from a potentially hazardous chemical, material, product, or process to safer chemical or non-chemical alternatives. The goals of informed substitution are to minimize the likelihood of unintended consequences, which can result from a precautionary switch away from a hazardous chemical without fully understanding the profile of potential alternatives, and to enable a course of action based on the best information that is available or can be estimated. Informed substitution approaches focus on identifying alternatives and evaluating their health, safety, and environmental hazards, potential trade-offs, and technical and economic feasibility.

Substitution is not limited to substitution of one chemical with another. It can also occur at the production process or product level. At the product level, substitution may involve a design change that takes advantage of the characteristics of new or different materials. A chemical process design change may eliminate several production steps thereby avoiding or reducing the use of high hazard chemicals. In some cases, a particular chemistry or the function it serves may be determined to be unnecessary.

As implementation of chemical substitution and product and process changes can be quite complicated, a variety of processes, tools, and methods are critical to achieving informed substitution.

Substitution planning, similar to facility planning for pollution prevention and source reduction, establishes practical steps for evaluating substitution as a workplace risk reduction measure. This type of planning process supports informed substitution by encouraging chemical users to: Systematically identify hazardous chemicals; set goals and priorities for the elimination or reduction of hazardous chemicals; evaluate alternatives; identify preferred alternatives; and promote the adoption of identified alternatives.

Alternatives assessment is a process of identifying and comparing potential chemical and non-chemical alternatives that could replace chemicals or technologies of concern on the basis of their hazards, performance, and economic viability. A variety of alternatives assessment processes have been developed to date (Lavoie et al., 2010; *Ex. #84;* Toxics Use Reduction Institute, 2006; *Ex. #85;* Rossi et al., 2006; *Ex. #86;* Raphael et al., 2011; *Ex. #87*). Various tools and methods have been developed to evaluate hazard, performance, and cost when assessing alternatives. For example, comparative chemicals hazard assessments compare potential alternatives based on a variety of hazard endpoints in order to select a safer alternative. Some examples of comparative chemicals hazard assessment tools include the GreenScreen (Clean Production Action, 2012; *Ex. #88*) and Design for the Environment (DfE) Safer Product Labeling Program (U.S. EPA, 2011a; *Ex. #89*). Other existing methods for chemical comparison include the Column Model (Institut für Arbeitsschutz der Deutschen Gesetzlichen Unfallversicherung, 2011; *Ex. #90*) and QuickScan (Netherlands Ministry of Infrastructure and the Environment, 2002; *Ex. #91*). Tools and methods for evaluating performance and cost attributes, while less well developed, are also critical for the selection of a preferred alternative.

d. Substitution at OSHA

Substitution is not new for OSHA. Historically, OSHA attempted to encourage substitution by setting a ''no occupational exposure level'' for certain potential carcinogens where suitable substitutes that are less hazardous to humans existed for particular uses (45 FR 5257–58; *Ex. #92*). Although this requirement was never fully implemented, the final rule detailed a process for the Agency to analyze the feasibility of substitutes, which required the consideration of: (1) the safety of the substitute, including the comparative acute and chronic toxicity of the carcinogenic chemical and the substitute, and other relevant factors, such as environmental factors; (2) the technical feasibility of the substitute, including its relative effectiveness; and (3) the economic cost of substitution (45 FR 5258; *Ex. #92,* 29 CFR 1990.111(k); *Ex. #93,* see also 1990.132(b)(6); *Ex. #94,* 1990.146(k); *Ex. #95*).

OSHA health standards also identify substitution as a preferred exposure control. For example, in the 1989 Air Contaminants Standard, the Agency refers to substitution, when properly applied, as ''a very effective control technique'' and ''the quickest and most effective means of reducing exposure'' (54 FR 2727, 2789; *Ex. #7*). In addition, the Agency's respiratory protection standard mandates the use of accepted engineering control measures, including the substitution of less toxic materials, as far as feasible, before using respirators to control occupational diseases caused by breathing contaminated air (29 CFR 1910.134(a); *Ex. #96*). Despite this, when complying with PELs and other health standards in practice, employers are required to select and implement administrative or engineering controls before using personal protective equipment, but are not specifically required or encouraged to consider elimination or substitution

before other engineering or administrative controls. (See 29 CFR 1910.1000(e); *Ex. #97*). Thus, substitution may be often overlooked in favor of other approaches, such as ventilation and isolation, when employers are controlling exposures to hazardous chemicals.

OSHA also considers substitution during the development of PELs. While OSHA does not solely rely on substitution to make its required feasibility findings (62 FR 1494, 1576; *Ex. #98;* 71 FR 10099, 10260; *Ex. #99*), the Agency, as part of PEL rulemaking efforts, develops and evaluates information about substitution in its technological and economic feasibility analysis, highlighting options available for eliminating or reducing the regulated chemical's use in various industries and applications. For example, the feasibility analysis for methylene chloride describes numerous substitute chemicals and processes, including a detailed table of substitute paint removal methods for 16 applications, and evaluates the relative risks for seven of the more common substitutes for methylene chloride (OSHA, 1996; *Ex. #100*). However, the analysis of substitutes has varied widely from regulation to regulation. For example, the feasibility analysis for hexavalent chromium identifies specific substitute chemicals and processes in many industries, but does not discuss the health or safety hazards of the substitutes (OSHA, 2006a; *Ex. #101*), while the feasibility analysis for formaldehyde includes only a mention of the availability of one identified substitute for a few industry sectors (OSHA, 1987; *Ex. #102*) and the feasibility analysis for ethylene oxide does not contain any discussion of substitutes (OSHA, 1984; *Ex. #103*).

OSHA has also included information on substitutes in a variety of non-regulatory documents. New information about available substitutes and substitution trends is included in lookback reviews of existing standards conducted by the Agency (*e.g.,* lookback review of the ethylene oxide standard, lookback review of the methylene chloride standard) (OSHA, 2005; *Ex. #104;* OSHA, 2010; *Ex. #105*). In some cases, OSHA has also developed information on substitution, even where a PEL has not been established. For example, the OSHA guidance document on the best practices for the safe use of glutaraldehyde in health care includes information about drop-in replacements and alternative processes available to reduce or eliminate the use of the chemical (OSHA, 2006b; *Ex. #106*).

In October 2013, OSHA launched an effort to encourage employers, workers, and unions to proactively reduce the use of hazardous chemicals in the workplace and achieve chemical use that is safer for workers and better for business. As part of this effort, the Agency developed a web toolkit that guides employers and workers in any industry through a seven-step process for transitioning to safer chemicals (OSHA, 2013a; *Ex. #107*). Each step contains information, resources, methods, and tools that will help users eliminate hazardous chemicals or make informed substitution decisions in the workplace by finding a safer chemical, material, product, or process.

e. Possible Opportunities for Integrating Informed Substitution Approaches Into OSHA Activities

There are a variety of existing regulatory and non-regulatory models for incorporating informed substitution into chemical management activities. The following are some examples of entities that have developed and utilized informed substitution approaches as part of regulatory efforts; guidance and policy development; education, training, and technical assistance activities; and data development and research efforts.

i. Models for Regulatory Approaches

Some regulations and voluntary standards require risk reduction through the implementation of a hierarchy of controls that clearly delineates elimination and substitution as preferred options to be considered and implemented, where feasible, before other controls. For example, the ANSI/AIHA Z10–2005 standard for Occupational Health and Safety Management Systems, a voluntary national consensus standard, requires organizations to implement and maintain a process for achieving feasible risk reduction based upon the following preferred order of controls: A. Elimination; B. Substitution of less hazardous materials, processes, operations, or equipment; C. Engineering controls; D. Warnings; E. Administrative Controls; and F. Personal protective equipment (ANSI/AIHA Z10–2005, 2005; *Ex. #108*). European Union Directives 98/24/EC and 2004/37/EC require employers to eliminate risks by substitution before implementing other types of protection and prevention measures (98/24/EC, 1998; *Ex. #109,* 2004/37/EC, 2004; *Ex. #110*).

Some existing laws require firms to undertake planning processes for the reduction of identified hazardous chemicals. For example, the Massachusetts Toxics Use Reduction Act requires entities that use listed hazardous chemicals in certain quantities to undertake a planning process for reducing the use of those chemicals (Massachusetts Department of Environmental Protection, n.d.; *Ex. #77*).

Existing regulations in the European Union place a duty on employers to replace the use of certain hazardous chemicals with safer substitutes, if technically possible. For example, Directive 2004/37/EC requires the substitution of carcinogens and mutagens with less harmful substances where technically feasible (2004/37/EC, 2004) and Directive 98/24/EC requires employers to ensure that risks from hazardous chemical agents are eliminated or reduced to a minimum, preferably by substitution (98/24/EC, 1998; *Ex. #109*).

Other regulations require the use of acceptable substitutes where the uses of certain hazardous chemicals are phased-out. This type of approach is currently implemented by U.S. EPA in the context of phasing-out ozone depleting substances. The Clean Air Act requires that these substances be replaced by others that reduce risks to human health and the environment. Under the Significant New Alternatives Policy (SNAP) program, EPA identifies and publishes lists of acceptable and unacceptable substitutes for ozone-depleting substances (Safe Alternatives Policy, 2011; *Ex. #111*).

Some chemical management frameworks require the assessment of substitutes before making decisions to limit or restrict the use of a hazardous chemical. For example, the European Union REACH Regulation (Registration, Evaluation, Authorization and Restriction of Chemicals) requires that an analysis of alternatives, the risks involved in using any alternative, and the technical and economic feasibility of substitution be conducted during applications of authorization for substances of very high concern (EC 1907/2006, 2006; *Ex. #70*).

Other efforts to spur the transition to safer chemicals, products, and processes are based on the development of criteria-based standards for functions or processes that rely on hazardous chemicals. For example, the EPA DfE Safer Product Labeling Program is a nonregulatory program that recognizes safe products using established criteria-based standards. In order to receive DfE recognition, all chemicals in a formulated product must meet Master Criteria (*i.e.,* toxicological thresholds for attributes of concern, including: acute

mammalian toxicity; carcinogenicity; genetic toxicity; neurotoxicity; repeated dose toxicity; reproductive and developmental toxicity; respiratory sensitization; skin sensitization; environmental toxicity and fate; and eutrophication), as well as relevant functional-class criteria (*i.e.,* additional toxicological thresholds for attributes of concern for surfactants, solvents, direct-release products, fragrances, and chelating and sequestering agents), established by the EPA (U.S. EPA, 2011a; *Ex. #89*).

While there are a number of ways in which OSHA could consider integrating substitution and alternatives assessment into its regulatory efforts, the Agency, in order to promulgate any such standard, would need to make the significant risk, technological feasibility, and economic feasibility findings required under the OSH Act. However, even without regulation, it is important to consider voluntary models for incorporating informed substitution into chemical management activities.

ii. Models for Guidance Development

Some entities have developed guidance to promote the transition to safer alternatives. The European Union, in order to support legislative substitution mandates, developed guidance on the process of substitution, including setting goals, identifying priority chemicals, evaluating substitutes, selecting safer alternatives, and implementing chemical, material, and process changes. The guidance establishes and describes a seven step substitution framework, providing workplaces with a systematic process for evaluating chemical risk and identifying chemicals that could or should be substituted (European Commission, 2012; *Ex. #113*). The steps include: Assessing the current level of risk; deciding on risk reduction needs; assessing the margins of change; looking for alternatives; checking the consequences of a change; deciding on change; and deciding on how and when to implement change.

Similarly, the German Federal Institute for Occupational Safety and Health (BAuA) established guidance to support the employer's duty, as mandated in the German Hazardous Substances Ordinance, to evaluate substitutes to hazardous substances and implement substitution where less hazardous alternatives are identified (German Federal Institute for Occupational Safety and Health, 2011; *Ex. #114*). The guidance, TRGS 600, includes a framework for identifying and evaluating substitutes and establishes criteria for assessing and comparing the health risks, physicochemical risks, and technical suitability of identified alternatives (German Federal Institute for Occupational Safety and Health, 2008; *Ex. #115*).

The German Environment Agency has also developed guidance on sustainable chemicals. The guide assists manufacturers, formulators, and end users of chemicals in the selection of sustainable chemicals by providing criteria to distinguish between sustainable and non-sustainable substances (German Environment Agency, 2011; *Ex. #116*).

OSHA considered developing guidance on safer substitutes to accompany individual chemical exposure limit standards in its 2010 regulatory review of methylene chloride. Due to the increased use of other hazardous substitutes after methylene chloride was regulated in 1998, the Agency considered establishing guidance recommending that firms check the toxicity of alternatives on the EPA and NIOSH Web sites before using a substitute (OSHA, 2010; *Ex. #105*).

iii. Models for Education, Training, and Technical Assistance

Other entities have developed outreach, training, and technical assistance efforts for substitution planning and the assessment of substitutes for regulated chemicals. The Massachusetts Toxics Use Reduction Act, which established a number of structures to assist businesses, provides a good example of such efforts. The Massachusetts Office of Technical Assistance and Technology (OTA) provides compliance assistance and on-site technical support that helps facilities use less toxic processes and boost economic performance. The Massachusetts Toxics Use Reduction Institute provides training, conducts research, and performs alternatives assessments in order to educate businesses on the existence of safer alternatives and promote the on-the-ground adoption of these alternatives. Toxics Use Reduction Planners (TURPs), certified by the Massachusetts Department of Environmental Protection (MA DEP), prepare, write and certify the required toxics use reduction plans and are continually educated about best practices in toxics use reduction. Taken together, these services provide a robust resource for regulated businesses on the transition to safer alternatives (Massachusetts Department of Environmental Protection, n.d.; *Ex. #77*).

iv. Models for Data Development

Several efforts, at both the federal and international levels, attempt to support the transition to safer alternatives through research and data development. For example, EPA, in collaboration with the non-governmental organization GreenBlue and industry stakeholders, jointly developed a database of cleaning product ingredient chemicals (surfactants, solvents, fragrances, and chelating agents) that meet identified environmental and human health criteria (GreenBlue, 2012; *Ex. #117*). In Spain, the Institute of Work, Environment, and Health (ISTAS) has developed a database that is a repository of information on substitute chemicals. The database can be searched for chemical substances, uses/products, processes, or sectors to display information on substitutes and hazards associated with those substitutes (ISTAS, 2012; *Ex. #118*). In addition, the European Union SUBSPORT project has begun to create a Substitution Support Portal, a state-of-the-art resource on safer alternatives to the use of hazardous chemicals. The resource is intended to provide not only information on alternative substances and technologies, but also tools and guidance for substance evaluation and substitution management (SUBSPORT, 2012; *Ex. #119*).

Other efforts focus on the completion of alternatives assessments for priority chemicals and uses. Currently, EPA's Design for the Environment Program, as well as the Massachusetts Toxics Use Reduction Institute, has conducted alternatives assessments for priority chemicals and functional uses, making this information publicly available in the process (U.S. EPA, 2012c; *Ex. #120;* Toxics Use Reduction Institute, 2006; *Ex. #85*).

In addition, some research efforts attempt to fill data gaps with regards to the toxicological properties of existing chemicals. While some efforts to conduct toxicity testing for chemicals is taking place at the federal level (U.S. EPA, 2011b; *Ex. #121,* U.S. EPA, 2012d; *Ex. #122*), there have not been systematic efforts to conduct targeted toxicology studies for specific substitutes of interest.

Question V.B.1: To what extent do you currently consider elimination and substitution for controlling exposures to chemical hazards?

Question V.B.2: What approaches would most effectively encourage businesses to consider substitution and adopt safer substitutes?

Question V.B.3: What options would be least burdensome to industry,

especially small businesses? What options would be most burdensome?

Question V.B.4: What information and support do businesses need to identify and transition to safer alternatives? What are the most effective means to provide this information and support?

Question V.B.5: How could OSHA leverage existing data resources to provide necessary substitution information to businesses?

v. Effectively Implementing Informed Substitution Approaches

The goals of informed substitution cannot be achieved without the development and application of tools and methods for identifying, comparing, and selecting alternatives. Existing tools and methods range in complexity, from quick screening tools to detailed comparative hazard assessment methodologies to robust frameworks for evaluating alternatives based on hazard, performance, and economic feasibility. Illustrative examples, which represent the range of tools available, are described below.

Some assessment tools provide methods for rapid evaluation of chemical hazards based on readily available information. These types of tools are critical for small and medium-sized businesses, which often lack resources and expertise to evaluate and compare chemical hazards. In the state of Washington, the Department of Ecology (DOE) has developed the Quick Chemical Assessment Tool (QCAT) to allow businesses to identify chemicals that are not viable alternatives to a chemical of concern by assigning an appropriate grade for the chemical based on nine high priority hazard endpoints (Washington Department of Ecology, 2012; *Ex. #123*). Similarly, the Institute for Occupational Safety and Health of the German Federation of Institutions for Statutory Accident Insurance and Prevention (IFA) developed the Column Model as a tool for businesses to evaluate chemicals based on six hazard categories using information obtained from chemical safety data sheets (IFA, 2011; *Ex. #90*).

Other existing tools provide more detailed methodologies for conducting a comparative hazard assessment, which require greater expertise, data, and resources to complete. The GreenScreen, created by Clean Production Action, provides a methodology for evaluating and comparing the toxicity based on nineteen human and environmental hazard endpoints, assigning a level of concern of high, moderate, or low for each endpoint based on various established criteria (Clean Production Action, 2012; *Ex. #88*).

A number of robust frameworks have also been developed to assess the feasibility of adopting alternatives for hazardous chemicals based on environmental, performance, economic, human health, and safety criteria. The Massachusetts Toxics Use Reduction Institute developed and implemented a methodology for assessing alternatives to hazardous chemicals based on performance, technical, financial, environmental, and human health parameters (TURI, 2006; *Ex. #85*). Similarly, the U.S. EPA DfE program has also developed and implemented an alternatives assessment framework to characterize alternatives based on the assessment of chemical hazards as well as the evaluation of availability, functionality, economic, and life cycle considerations (Lavoie et al., 2010; *Ex. #84,* U.S. EPA, 2012c; *Ex. #120*).

Although some tools and methods exist, as discussed above, further research and development in this area is critical for the effective implementation of informed substitution.

Question V.B.6: What tools or methods could be used by OSHA and/or employers to conduct comparative hazard assessments? What criteria should be considered when comparing chemical hazards?

Question V.B.7: What tools or methods could be used by OSHA and/or employers to evaluate and compare the performance and cost attributes of alternatives? What criteria should be considered when evaluating performance and cost?

2. Hazard Communication and the Globally Harmonized System (GHS)

OSHA promulgated its Hazard Communication Standard (HCS) (29 CFR 1910.1200; *Ex. #124*) in 1983 to require employers to obtain and provide information to their employees on the hazards associated with the chemicals used in their workplaces. After thirty years of implementation, the HCS has resulted in extensive information being disseminated in American workplaces through labels on containers, safety data sheets (SDSs), and worker training programs.

On March 26, 2012, OSHA published major modifications to the HCS. (77 FR 17574–17896; *Ex. #125).* These modifications are being phased in over several years, and will be completely implemented in June 2016. Referred to as HazCom 2012, the revised rule incorporates a new approach to assessing the hazards of chemicals, as well as conveying information about them to employees. The revised rule is based on the United Nations' Globally Harmonized System for the Classification and Labeling of Chemicals (GHS), which established an international, harmonized approach to hazard communication.

The original HCS was a performance-oriented rule that prescribed broad rules for hazard communication but allowed chemical manufacturers and importers to determine how the information was conveyed. In contrast, HazCom 2012 is specification-oriented. Thus, while the HCS requires chemical manufacturers and importers to determine the hazards of chemicals, and prepare labels and safety data sheets (SDSs), HazCom 2012 goes further by specifying a detailed scheme for hazard classification and prescribing harmonized hazard information on labels. In addition, SDSs must follow a set order of information, and the information to be provided in each section is also specified.

Hazard classification means that a chemical's hazards are not only identified, they are characterized in terms of severity of the effect or weight of evidence for the effect. Thus, the assessment of the hazard involves identifying the ''hazard class'' into which a chemical falls (*e.g.,* target organ toxicity), as well as the ''hazard category''—a further breakdown of the hazardous effect generally based on either numerical cut-offs, or an assessment of the weight of the evidence. For target organ toxicity, for example, chemicals for which there is human evidence of an effect are likely to be classified under Category 1, the most hazardous category, thus indicating the highest classification for the effect. If the only data available are animal studies, the chemical may fall in Category 2—still potentially hazardous to humans, but lower in terms of the weight of evidence for the effect. Table-I illustrates how such a chemical hazard classification may be assigned by hazard class and hazard category

Table-I

Health Hazards

Hazard Class	Hazard Category			
Acute Toxicity	1	2	3	4
Skin Corrosion/Irritation	1A	1B	1C	2
Serious Eye Damage/ Eye Irritation	1	2A	2B	
Respiratory or Skin Sensitization	1			
Germ Cell Mutagenicity	1A	1B	2	
Carcinogenicity	1A	1B	2	
Reproductive Toxicity	1A	1B	2	Lactation
STOT – Single Exposure	1	2	3	
STOT – Repeated Exposure	1	2		
Aspiration	1			
Simple Asphyxiants	Single Category			

OSHA, 1910.1200, Appendix A

The process of classifying chemicals under HazCom 2012 means that all chemicals will be fully characterized as to their hazards, as well as degree of hazardous effect, using a standardized process with objective criteria. Thus, OSHA could use this system to select certain hazard classes and categories to set priorities. For example, the Agency could decide to identify substances that are characterized as Class 1 Carcinogens or as Reproductive Toxicants as its priorities. Then chemicals that fall into those hazard categories could be further investigated to determine other relevant factors, such as numbers of employees exposed, use of the chemical, risk assessment, etc. The HazCom 2012 information could lead to a more structured and consistent priority system than previously attempted approaches. (*Ex. #126)* OSHA could also investigate whether the hazard categories lend themselves to establishing regulatory provisions for hazard classes and categories rather than for individual substances. The availability of specific hazard categorization for chemicals could allow this to be done on a grouping basis—either in regulation, or in guidance.

Once a chemical is placed into a hazard class and hazard category, HazCom 2012 (and the GHS) specifies the harmonized information that must appear on the label. Referred to as ''label elements,'' these include a pictogram, signal word, hazard statement(s), and precautionary statement(s). In addition, the label must have a product identifier and supplier contact information. The use of standardized label elements will help to ensure consistency and comprehensibility of the information, which will make HazCom 2012 more effective in terms of conveying information to employees and employers. The approach taken in the GHS strengthens the protections of the OSHA HCS in several ways, and introduces the possibility of the Agency using the information generated under HazCom 2012 to help frame a more comprehensive approach to ensuring occupational chemical safety and health.

3. Health Hazard Banding

''Health hazard banding'' can be defined as a qualitative framework to develop occupational hazard assessments given uncertainties caused by limitations in the human health or toxicology data for a chemical or other agent. Health hazard banding presumes it is possible to group chemicals or other agents into categories of similar toxicity or hazard characteristics.

Health hazard banding assigns chemicals with similar toxicities into hazard groups (or bands. The occupational health professional can use this classification or hazard band, along with information on worker exposures to the substance, to do exposure risk assessment. Hazard banding, along with exposure information, is a useful risk assessment tool, particularly in situations where toxicity data are sparse. Hazard banding can also aid in the prioritization and hazard ranking of chemicals in the workplace. NIOSH is working with OSHA and a variety of stakeholder groups (federal agencies, industry, labor organizations, and professional associations) to develop guidance on establishing the technical criteria, decision logic, and minimum dataset for the hazard band process.

4. Occupational Exposure Banding

NIOSH has proposed an approach, occupational exposure banding, which would sort chemicals into five bands (A

through E), with each band representing a different hazard level. Chemicals with the lowest toxicity would be grouped in Band A, while the moist toxic chemicals would be grouped in Band E. The proposed process includes a three-tiered evaluation system based on the availability of toxicological data to define a range of concentrations for controlling chemical exposures. A Tier 1 evaluation relies on hazard codes and categories from GHS, and intended for chemicals for which little information exists. Therefore, a chemical in Band D or E in the Tier 1 process is a bad actor and should be targeted for elimination and or substitution. Tier 2 and 3 require professional expertise. Once NIOSH completes their validation work of the three tiers, they plan to develop tools to facilitate evaluating hazard data and assigning chemicals to hazard bands as well as educational materials for health and safety professionals, managers, and workers. (*Exs. #127 & #128)*

5. Control Banding

Control banding is a well-established approach of using the hazard statements from a label and/or safety data sheet (SDS) to lead an employer to recommended control measures. This approach has been used successfully in a number of countries, particularly in Europe where such as system of hazard classification has been in use for some time. HazCom 2012 opens up the possibility that control banding can be further developed and refined in the U.S., either as guidance or regulatory provisions. It is a particularly useful way to provide information for small businesses to effectively control chemicals without necessarily going through the process of exposure monitoring and other technical approaches to ensuring compliance. It also will give employers better information to conduct risk assessments of their own workplaces, and thus select better control measures.

Health hazard banding can be used in conjunction with control banding to use the information available on the hazard to guide the assessment and management of workplace risks. In fact, health hazard banding is the first step in the control banding process. Control banding determines a control measure (for example dilution ventilation, engineering controls, containment, etc.) based on a range or ''band'' of hazards (such as skin/eye irritant, very toxic, carcinogenic, etc.), and exposures (small, medium, or large exposure). This approach is based on the fact that there are a limited number of control approaches, and that many chemical exposure problems have been met and solved before. Control banding uses the solutions that experts have developed previously to control occupational chemical exposures, and suggests them for other tasks with similar exposure situations. It focuses resources on exposure controls, and describes how strictly a risk needs to be managed.

Control banding is a more comprehensive qualitative risk characterization and management strategy that goes further in assigning prescribed control methods to address chemical hazards. It is designed to allow employers to evaluate the need for exposure control in an operation and to identify the appropriate control strategy given the severity of the hazard present and magnitude of exposure. The strength of control banding is that it is based on information readily available to employers on safety data sheets (SDSs), without the need for exposure measurements or access to occupational health expertise (except in certain circumstances). Control banding involves not only the grouping of workplace substances into hazard bands (based on combinations of hazard and exposure information) but also links the bands to a suite of control measures, such as general dilution ventilation, local exhaust ventilation, containment, and use of personal protective equipment (PPE).

Under control banding, one must consider the chemical's hazardous properties, physical properties, and exposure potential in order to determine the level of exposure control desired. The criteria used for categorizing chemicals include hazard information such as flammability, reactivity, and the nature of known health effects. These characteristics are associated with defined hazard phrases (*e.g.,* ''Causes severe skin burns and eye damage'' or ''Causes liver damage,'' or ''Reproductive hazard''). These standardized phrases have been familiar in the EU as ''R-phrases'' and are found on SDSs.

Different hazard bands exist along a continuum ranging from less hazardous chemicals to more hazardous chemicals. Once the appropriate hazard group has been determined from the hazard statements (*e.g.,* ''Hazard Group B''), exposure potential is evaluated based on the quantity in use, volatility (for liquids), or particulate nature (for solids). After evaluating these properties and categorizing the chemical into hazard and exposure bands, the chemicals are matched, based on their band categorization, to the appropriate control strategy, with more stringent controls applied for substances that are placed in high-toxicity bands.

The Control of Substances Hazardous to Health (COSHH) guidance issued by the Safety Executive (HSE) of the United Kingdom is one model of control banding (Health and Safety Executive, 2013; *Ex. #129*). Under the 2002 COSHH regulation, employers must conduct a risk assessment to decide how to prevent employees from being exposed to hazardous substances in the workplace. COSHH principles first require that exposure is prevented by employers, to the extent possible, by means of:

- Changing the way tasks are carried out so that exposures aren't necessary anymore;
- Modifying processes to cut out hazardous by-products or wastes; or
- Substituting a non-hazardous or less hazardous substance for a hazardous substance with new substances (or use the same substance in a different form) so that there is less risk to health.

If exposures to hazardous substances cannot be prevented entirely, then COSHH requires employers to adequately control them (Control of Substances Hazardous to Health Regulations, 2002; *Ex. #130*). Recognizing that many small employers may not have access to the required expertise, and also to reduce the need for a professional and to promote consistency in the assessment process, the HSE developed an approach to assessment and control of chemical hazards using control banding methodologies spelled out in the 2002 regulation. This control banding approach is described in detail in COSHH Essentials. Employers may use the guidance spelled out in the COSHH Essentials guide to determine the appropriate control approach for the chemical hazard in question. Each control approach covers a range of actions that work together to reduce exposure: (1) General Ventilation, (2) Engineering Controls, (3) Containment, and lastly, (4) Special—a scenario where employers should seek expert advice to select appropriate control measures.

The first step outlined under the COSHH Essentials guidance is to consult the safety data sheet for each chemical in use. Employers must record the date of assessment, the name of the chemical being assessed, the supplier of the chemical, and the task(s) for which the chemical is used.

Step two involves the determination of the health hazard. Employers ascertain the hazard by assessing the possible health effects from the hazard statements provided on the SDS, the amount in use, and the dustiness or volatility of the chemical in use.

Employers reference the hazard statements found on chemical safety data sheets against a table of COSHH hazard groups in order to categorize them into the appropriate hazard group (''A'' through ''E'', and possibly ''S''). Chemicals in Group A tend to be regarded as less harmful and may, for example, cause temporary irritation. Chemicals in Group E are the most hazardous and include known carcinogens. Group S encompasses substances that have special considerations for damage caused via contact with the eyes or skin.

Additionally, Step two requires employers to make some determinations about the quantity and physical state of chemicals in use. They must decide if the amount of chemical in use would be described as ''small'' (grams or milliliters), ''medium'' (kilograms or liters), or ''large'' (tons or cubic meters). When in doubt, COSHH Essentials principles encourage employers to err on the side of the larger quantity in making their determination. Additionally, the physical state of chemicals effect how likely they are to get into the air and this affects the control approach to be utilized. For solids, COSHH Essentials guides employers to make a determination of either ''Low'', ''Medium'', or ''High'' dustiness based upon visible criteria observed during the use of these chemicals. Employers may also use look-up tables provided in the COSHH Essentials guide to make a determination of whether liquids have ''low'', ''medium'', or ''high'' volatility based upon the chemical's boiling point and ambient or process operating temperatures.

In Step three of the COSHH Essentials guide, employers identify the appropriate control approach. Tables provided by the COSHH Essentials guide show the control approaches for hazard groups ''A'' through ''E'' according to quantity of chemical in use and its dustiness/volatility. Table-II illustrates how the control approaches are assigned. The control approaches referred to by number in the table are: 1) General Ventilation, 2) Engineering Control, 3) Containment, and 4) Special. (Health and Safety Executive, 2009; *Ex. #131*).

TABLE-II

Look-up table to select Control Approach according to Hazard Group, amount, and dustiness or volatility (reproduced from HSG193)[1]

Amount used	Low volatility or dustiness	Medium volatility	Medium dustiness	High volatility or dustiness
	Hazard Group A substances			
Small	1	1	1	1
Medium	1	1	1	2
Large	1	1	2	2
	Hazard Group B substances			
Small	1	1	1	1
Medium	1	2	2	2
Large	1	2	3	3
	Hazard Group C substances			
Small	1	2	1	2
Medium	2	3	3	3
Large	2	4	4	4
	Hazard Group D substances			
Small	2	3	2	3
Medium	3	4	4	4
Large	3	4	4	4
	Hazard Group E substances			
All amounts	4	4	4	4

Note: the values in the box give the Control Approach: Exposure Predictor Band

Source: (HSE, 2009)

Additionally, the COSHH Essentials guide provides detailed control guidance sheets for a range of common tasks. Consultation of these task-specific guidance sheets constitutes Step four under COSHH Essentials. Step five of COSHH Essentials involves the employer deciding on how best to implement control measures as prescribed. COSHH Essentials principles also stress the importance of employers reviewing their assessments regularly, especially if there is a significant change in workplace processes or environment. Employers are encouraged to incorporate exposure level monitoring, health surveillance, and relevant training.

A number of European Union nations (*e.g.,* United Kingdom, Germany, France, Netherlands, Norway, and Belgium) and Asian nations (Singapore and Korea) already utilize control banding methods comparable to COSHH Essential methods for management of a variety of chemical exposures in the workplace.

A number of studies have been conducted to assess the validity of a control banding model for control of exposure to chemicals. Jones and Nicas (2006; *Ex. #132*) reviewed the COSHH Essentials model for hazard-banding in vapor degreasing and bag-filling tasks. Their study showed that the model did not identify adequate controls in all scenarios with approximately eighteen percent of cases leaving workers potentially under-protected. However, in a similar study, Hashimoto *et al.* (2007; *Ex. #133*) showed that hazard-banding tended to overestimate the level of control and therefore was more protective. In 2011, Lee *et al.* (*Ex. #134)* found that for a paint manufacturing facility using mixtures of chemicals with different volatilities, exposure to the chemicals with higher volatility had a higher likelihood to exceed the predicted hazard-band. Lee also recommended further research for more precise task identification to better enable implementation of task-specific control measures.

NIOSH provides a thorough review and critical analysis of the concepts, protective nature, and potential barriers to implementation of control banding programs (NIOSH, 2009; *Ex. #135*). NIOSH concluded that control banding can be used effectively for performing workplace risk assessments and implementing control solutions for many, but not all occupational hazards. Additionally, NIOSH found that while in some situations in which control banding cannot provide the precision and accuracy necessary to protect worker health, and in some cases control banding will provide a higher level of control than is necessary.

COSHH Essentials and other control banding concepts developed in Europe were based initially on the European Union's pre-GHS classification and labeling system. Since the European Union has adopted the GHS in its classification and labeling rules, these risk phrases will no longer be available. Control banding approaches are now based on the hazard statements in the GHS. OSHA's adoption of the GHS to modify the HCS opens up the opportunity to use a control banding approach to chemical exposures in American workplaces based on the hazard classification system. This would be an alternative to focusing on PELs that could achieve the goal of risk management for many chemicals and operations in workplaces.

OSHA is interested in exploring how it might employ these non-OEL approaches in a regulatory framework to address hazardous substances where the available hazard information does not yet provide a sufficient basis for the Agency's traditional approach of using risk assessment to establish a PEL. OSHA believes that a hazard banding approach could allow the Agency to establish specification requirements for the control of chemical exposures more efficiently, offering additional flexibility to employers, while maintaining the safety and health of the workforce. Although health hazard banding and control banding show some promise as vehicles for providing guidance to occupational health professionals for controlling exposures to workers, their use in a regulatory scheme presents challenges. For example, the agency would need to consider how, if it were to require such approaches, the OSH Act's requirement that standards that reduce significant risk to the extent feasible might be satisfied.

OSHA is also interested in exploring the development of voluntary guidelines for incorporation of control banding into safety and health management programs in U.S. workplaces. These efforts might include the development and dissemination of compliance assistance materials (publications, safety and health topic Web pages, computer software and smartphone apps, e-Tools) as well as consultation services to assist small businesses.

Question V.B.8: How could OSHA use the information generated under HazCom 2012 to pursue means of managing and controlling chemical exposures in an approach other than substance-by-substance regulation?

Question V.B.9: How could such an approach satisfy legal requirements to reduce significant risk of material impairment and for technological and economic feasibility?

Question V.B.10.: Please describe your experience in using health hazard and/or control banding to address exposures to chemicals in the workplace.

Question V.B.11.: Are additional studies available that have examined the effectiveness of health hazard and control banding strategies in protecting workers?

Question V.B.12.: How can OSHA most effectively use the concepts of health hazard and control banding in developing health standards?

V.B.13.: How might OSHA use voluntary guidance approaches to assist businesses (particularly small businesses) with implementing the principles of hazard banding in their chemical safety plans? Could the GHS chemical classifications be the starting point for a useful voluntary hazard banding scheme? What types of information, tools, or other resources could OSHA provide that would be most effective to assist businesses, unions, and other safety and health stakeholders with operationalizing hazard banding principles in the workplace?

Question V.B.14.: Should OSHA consider greater use of specification standards or guidance as an approach to developing health standards? If so, for what kinds of operations are specification approaches best suited?

6. Task-based Exposure Assessment and Control Approaches

Job hazard analysis is a safety and health management tool in which certain jobs, tasks, processes or procedures are evaluated for potential hazards or risks, and controls are implemented to protect workers from injury and illness. Likewise, task-based assessment and control is a system that categorizes the task or job activity in terms of exposure potential and requirements for specific actions to control the exposure are implemented, regardless of occupational exposure limits. Tasks are isolated from the deconstruction of a larger process that is in turn part of an overall operation or project in an industrial setting. As industrial engineering explores the optimization of complex processes or systems through an evaluation of the integrated system of people, equipment, materials, and other components, the task-based system attempts to evaluate work activities to define uniform exposure scenarios and their variables and establish targeted control strategies.

Task-based exposure potential can be defined using readily available data including process operating procedures, task observation and analysis, job activity description, chemical inventory and toxicity information (hazard communication), historical exposure data, existing exposure databases, employee surveys, and current exposure data. Based on this exposure assessment, the task is matched with specific requirements for exposure control. Control specifications can draw on a broad inventory of exposure controls and administrative tools to reduce and prevent worker exposure to the identified hazardous substances.

OSHA is interested in exploring task-based control approaches as a technique for developing specification standards for the control of hazardous substances in the workplace as an alternative or supplement to PELs. Such an approach may offer the advantage of providing employers with specific guidance on how to protect workers from exposure and reduce or eliminate the need for conducting regular exposure assessments to evaluate the effectiveness of exposure control strategies. OSHA has developed specification-oriented health standards in the past, in particular, those for lead and asbestos in construction.

More recently, OSHA developed a control-specification-based approach for controlling exposures to crystalline silica dust in construction operations (OSHA, 2009; *Ex. #136,* OSHA, 2013b; *Ex. #137*). Construction operations are particularly amenable to specification standards due to the task-based nature of the work. The National Institute for Occupational Safety and Health (NIOSH), the Center to Protect Workers' Rights—a research arm of the Building and Construction Trades Department, AFL-CIO—has developed and used a ''Task-Based Exposure Assessment Model (T–BEAM)'' for construction. The characteristic elements of T–BEAM are: (1) an emphasis on the identification, implementation, and evaluation of engineering and work practice controls; and (2) use of experienced, specially trained construction workers (construction safety and health specialists) in the exposure assessment process. A task-based approach was used because tasks, or specialized skills, form the single greatest thread of continuity in the dynamic environment of construction (Susi et al., 2000; *Ex. #138*).

A new American National Standards Institute Standard (ANSI A10.49) based on GHS health hazard categories and utilizing a task-based approach is also being developed to address chemical hazards in construction (ASSE, 2012; *Ex. #139*). The standard requires employers to first identify tasks involving the use of chemicals and create a hazard communication inventory for these tasks. Then the employer must determine the hazard level and exposure level, and finally develop a control plan based on the hazard and exposure classifications. If the chemicals used in the task are low hazard and the task is low exposure, then the control plan requires following the SDS and label precautions. If, however, the task involves greater than minimal hazard or exposure, a more protective control plan must be developed.

However, developing specification standards governing exposure to health standards for general industry operations presents a different challenge. Given the diversity in the nature of industrial operations across a range of industry sectors that might be affected by a chemical standard, OSHA is concerned that it will be more difficult to develop specification standards for exposure controls that are specific enough to clearly delineate obligations of employers to protect employees, and yet are general enough to provide employers flexibility to implement controls that are suitable for their workplaces and that allow for future innovation in control technologies.

Question V.B.15: OSHA requests comment on whether and how task-based exposure control approaches might be effectively used as a regulatory strategy for health standards.

VI. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, directed the preparation of this notice. OSHA is issuing this notice under 29 U.S.C. 653, 655, 657; 33 U.S.C. 941; 40 U.S.C. 3704 *et seq.;* Secretary of Labor's Order 1–2012 (77 FR 3912, 1/25/2012); and 29 CFR Part 1911.

Signed at Washington, DC, on September 30, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Appendix A: History, Legal Background, and Significant Court Decisions

I. Background

Since the OSH Act was enacted in 1970, OSHA has made significant achievements toward improving the health and safety of America's workers. The OSH Act gave ''every working man and woman in the Nation'' for the first time, a legal right to ''safe and healthful working conditions.'' OSH Act § 2(a); 29 U.S.C. 651. (*Ex. #9*) Congress recognized that ''the problem of assuring safe and healthful workplaces for our men and women ranks in importance with any that engages the national attention today.'' S. Rep. 91–1282 at 2 (1970; *Ex. #17*). Indeed, when establishing the OSH Act, Congress was concerned about protecting workers from known hazards as well as from the numerous new hazards entering the workplace:

Occupational diseases which first commanded attention at the beginning of the industrial revolution are still undermining the health of workers. . . . Workers in dusty trades still contract various respiratory diseases. Other materials long in industrial use are only now being discovered to have toxic effects. In addition, technological advances and new processes in American industry have brought numerous new hazards to the workplace. S. Rep. 91–1282 at 2.

Many of the occupational diseases first discovered during the industrial revolution, and which later spurred Congress to create OSHA, still pose a significant harm to U.S. workers. While the number of hazardous chemicals to which workers are exposed has increased exponentially due to new formulations of chemical mixtures, OSHA has not been successful in establishing standards that adequately protect workers from hazardous chemical exposures, even from the older, more familiar chemicals.

OSHA's PELs are mandatory limits for air contaminants above which workers must not be exposed. OSHA PELs generally refer to differing amounts of time during which the worker can be exposed: (1) Time weighted averages (TWAs) which establish average limits for eight-hour exposures; (2) short-term limits (STELs) which establish limits for short term exposures; and (3) ceiling limits, which set never-to-be exceeded maximum exposure levels.

OSHA's PELs have existed nearly as long as the agency itself. Most of OSHA's current PELs were adopted by the agency in 1971. OSHA currently has PELs for approximately 470 hazardous substances, which are included in the Z-Tables in general industry at 29 CFR part 1910.1000 (*Ex. #4*) and in three maritime subsectors: Part 1915.1000 (Shipyard Employment; *Ex. #5*); part 1917 (Marine Terminals; *Ex. #140*); and part 1918 (Longshoring; *Ex. #141*). Z-Tables that apply in construction are found at part 1926.55 (*Ex. #6*). There are inconsistencies in the PELs that apply across industry sectors which resulted from the regulatory history of each divergent industry sector.

As discussed in further detail below, the Agency attempted to update the general industry PELs in 1989, but that revision was vacated by judicial decision in 1992. As such, the 1971 PELs remain the exposure limits with which most U.S. workplaces are required to comply. The Agency also promulgates ''comprehensive'' substance-specific standards (*e.g.,* lead, methylene chloride) which, in addition to PELs, require additional ancillary provisions such as housekeeping, exposure monitoring, and medical surveillance.

II. OSHA's Statutory Authority, Adoption of the PELs in 1971, and the 1989 Attempted Revision

A. The Purpose of the OSH Act and OSHA's Authority To Regulate Hazardous Chemicals

The OSH Act vests the Secretary of Labor with the power to ''promulgate, modify, or revoke'' mandatory occupational safety and health standards. OSH Act section 6(b), 29 U.S.C. 655(b). An ''occupational safety and health standard,'' as defined by section 3(8) of the OSH Act, is a ''standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' OSH Act section 3(8), 29 U.S.C. 652(8). (*Ex. #9)*

The OSH Act provides three separate approaches for promulgating standards. The first approach, in section 6(a) of the OSH Act, provided OSHA with an initial two-year window in which to adopt standards without hearing or public comment. Additionally, sections 6(b) and 6(c) provide methods currently available to the agency for promulgating health standards. Section 6(b) allows OSHA to create and update standards through notice and comment rulemaking, and section 6(c) provides OSHA with the authority to set emergency temporary standards. OSHA has not successfully adopted an emergency temporary standard for over thirty years, and it is not discussed further here.

B. The Adoption of the PELs Under Section 6(a)

Under section 6(a), OSHA was permitted to adopt ''any national consensus standard and any established Federal standard'' so long as the standard ''improved safety or health for specifically designated employees.'' 29 U.S.C. 655(a). The purpose of providing OSHA with this two-year window ''was to establish as rapidly as possible national occupational safety and health standards with which industry is familiar.'' S. Rep. 91–1282 at 6. When establishing this fast track to rulemaking, Congress emphasized the temporary nature of the approach, noting that these ''standards may not be as effective or up to date as is desirable, but they will be useful for immediately providing a nationwide minimum level of health and safety.'' S. Rep. 91–1282 at 6. (*Ex. #17*)

Establishing PELs was one of the first actions taken by OSHA. Most of the PELs contained in the Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000 (*Ex. #4*) for general industry, as well as those in construction and maritime were adopted during the initial two-year window under section 6(a). OSHA adopted approximately 400 occupational exposure limits for general industry that were based on the American Conference of Governmental Industrial Hygienist's (ACGIH) 1968 list of Threshold Value Limits (TLVs). In addition, about 25 additional exposure limits recommended by the American Standards Association (presently called the American National Standards Institute) (ANSI), were adopted as national consensus standards. 36 FR 10466 (*Ex. #142*). Currently the exposure limits that apply to construction were derived from the 1970 ACGIH TLVs and certain substance specific Sec. 6(b) standards.

The industry sector that is referred to today as ''Maritime'' has a long and somewhat confusing history. The Department of Labor has had some authority since 1958 for the maritime industry under the Longshore and Harbor Workers Compensation Act (33 U.S.C. 901 *et seq.*). Specifically authority was granted under Public Law 89–742 for the Secretary of Labor to issue regulations to protect the health and safety of longshoremen, marine terminal workers, ship repairers, shipbuilders, and ship breakers. Under Section 4(b)(2) of the OSH Act, 33 U.S.C. 941 (*Ex. #143*) became OSHA standards in 1971.

At that time, the Shipyard standards were in three parts of 29 CFR; part 1915 for ship repairing, part 1916 for shipbuilding and part 1917 for shipbreaking. In 1982 parts 1915, 1916 and 1917 were consolidated into a new part 1915, Shipyards. As a consequence of their history, the PELs applicable to the new part 1915, Shipyards, are complex. Depending upon the specific operation, either the 1970 TLVs or 1971 PELS (originally 1968 TLVs) apply. See §§ 1915.11, 1915.12, 1915.32 and 1915.33 (*Ex. #144*). Additionally, several of the OSHA single-substance standards apply.

Pursuant to the Longshoremen and Harbor Worker Compensation Acts of 1958 amendments, in 1960 OSHA issued regulations protecting longshore employees, along with marine terminal employees. These regulations were adopted as OSHA standards and later recodified. In 1983, OSHA issued a final standard specifically covering marine terminals (29 CFR part 1917) separately from longshoring. The Marine Terminal Standard basically requires that no employee be exposed to air contaminants over the limits set in the 1971 Z-Tables. See §§ 1917.2, 1917.22, 23, 25. (*Ex. #140*)

Longshoring operations continue to be regulated by 29 CFR Part 1918 *(Ex. #141).* OSHA has consistently interpreted that the air contaminant exposure limits set forth in 1910.1000 (*Ex. #4*) are applicable pursuant to 1910.5(c) to longshoring because no quantitative exposure limits are set forth for air contaminants, other than carbon monoxide.

As discussed above, the Agency was given authority to adopt standards to provide initial protections for workers from what the Congress deemed to be the most dangerous workplace threats. Congress felt that it was ''essential that such standards be constantly improved and replaced as new knowledge and techniques are developed.'' S. Rep. 91–1282 at 6. (*Ex. #17*) However, because OSHA has been unable to update the PELs, they remain frozen at the levels at which they were initially adopted. OSHA's PELs are largely based on acute health effects and do not take into consideration newer research regarding chronic effects occurring at lower occupational exposures. Thus, although there have been radical changes in our understanding of airborne contaminants, updates in technology, and changes to industry practices, OSHA's PELs are still based on research performed during the 1950s and 1960s. In contrast, the ACGIH annually reviews chemical substances and updates its list of TLVs®. Where OSHA currently has PELs for approximately 470 chemical hazards, the ACGIH recommends TLVs® for more than 700 chemical substances and physical agents, approximately 200 of which have been updated since 1971. (FACOSH, 2012; *Ex. #145*).

C. Section 6(b) Notice and Comment Rulemaking

Section 6(b) of the OSH Act provides OSHA with the authority to promulgate health standards. OSHA promulgates two main types of health standards: (i) PELs, and (ii) comprehensive standards, which, as the name implies, consist of provisions to protect workers in addition to PELs. Section 6(b)(5) imposes specific requirements governing the adoption of health standards:

[T]he Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

29 U.S.C. 655(6)(b)(5). (*Ex. #9*)

The courts have elaborated on the findings OSHA must make before adopting a 6(b)(5) standard. One such case, *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980) (the *Benzene* case; *Ex. #10*), has had a major impact on OSHA rulemaking by establishing a threshold requirement that before the agency can promulgate a health standard it must show that a significant risk of material impairment exists, which can be eliminated or lessened by a change in practices. Additionally, the phrase ''to the extent feasible'' in section 6(b)(5) has been interpreted by the courts to require that OSHA show that a standard is both economically and technologically feasible. *American Textile* v. *Donovan,* 452 U.S. 490 (1981) (the *Cotton Dust* case; *Ex. #15*); *United Steelworkers* v. *Marshall,* 647 F.2d 1189, 1264 (D.C. Cir. 1980) (the *Lead I* case; *Ex. #12*). These cases will be discussed in greater detail in Section III of this Appendix.

D. 1989 Air Contaminants Standard

In 1989, OSHA published the Air Contaminants final rule, which remains the Agency's most significant attempt at

updating the PELs. Unlike typical substance-specific rulemakings, where OSHA develops a comprehensive standard, the Air Contaminants final rule was only intended to update existing PELs and to add new PELs for substances not currently regulated. As such, the final rule did not include ancillary provisions (e.g. exposure monitoring, medical surveillance, requirements for personal protective equipment, or labeling) because OSHA determined that these provisions would delay and unnecessarily complicate the PELs update. Appendix B. to this Request for Information contains the table of PELs from the 1989 Air Contaminants Final Rule. The table includes both PELs originally adopted by OSHA in 1971 and the PELs established under the 1989 final rule.

In order to determine a starting point for updating the general industry PELs for chemicals on Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000 (*Ex. #4*), and for creating new PELs for some substances not listed in those tables, OSHA analyzed existing databases and lists of occupational exposure limits (OELs) to determine the scope of the rulemaking. After extensive review of all available sources of OELs, including the National Institute for Occupational Safety and Health (NIOSH) Recommended Exposure Levels (RELs), the American Conference of Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs®), the American Industrial Hygiene Association (AIHA) Workplace Environmental Exposure Levels (WEELs), and limits from other countries, OSHA ultimately selected the ACGIH's 1987–88 TLVs to identify the basis for which substances and corresponding exposure values that would be included in the proposed rule. 53 FR 20977. The TLVs were selected as a reference point because of the number of substances they covered, the availability of written documentation on how the TLVs were selected, and the general acceptance of the TLVs by industrial hygienists, other occupational health professionals, and industry. (53 FR 20967; *Ex. #18,* 54 FR 2375; *Ex. #7*)

After determining the scope of hazardous chemicals to be included in the rulemaking, OSHA began the process of identifying the most appropriate new PELs to be proposed. OSHA considered both the ACGIH TLVs and the NIOSH RELs as a starting point. (53 FR 20966–67; *Ex. #18*) When the TLV and REL were similar, OSHA reviewed both the ACGIH documentation and the NIOSH recommendation. Where the TLV and REL ''differed significantly,'' OSHA reviewed the studies and reasoning upon which the NIOSH and ACGIH recommendations were based to determine which was more appropriate. OSHA presumed that a significant difference did not exist between the TLV and the REL for a chemical when:

(a) The TLV and REL values are the same;

(b) TLV and REL values differ by less than 10 percent;

(c) The TLV and REL Time Weighted Averages (TWA) are the same, but there are differences in the Short Term Exposure Limit (STEL) or Ceiling (C); or

(d) The TWA in one data base is the same, or one-half, the STEL/C in the other data base. 53 FR 20977.

In reviewing the evidence, OSHA first determined whether the studies and analyses were valid and of reasonable scientific quality. Second, it determined, based on the studies, if the published documentation of the REL or TLV would meet OSHA's legal requirements for setting a PEL. Thus, OSHA reviewed the evidence of significant risk at the existing PEL or, if there was no PEL, at exposures which might exist in the workplace in the absence of any limit. Third, OSHA reviewed the studies to determine if the new PEL would lead to substantial reduction in significant risk. 54 FR 2372.

OSHA's determination of where the new PEL should be set was based on its review and analysis of the information found in these sources. OSHA set the new PELs based on a review of the available evidence. 54 FR 2402. Safety factors were applied on a case-by-case basis. (54 FR 2365, 2399; *Ex. #7*). Based on the analysis discussed above, OSHA summarized the health evidence for each individual substance and determined when and at what level a new limit was necessary to substantially reduce a significant risk of material impairment of health or functional capacity among American workers. The following example illustrates the type of analysis that OSHA conducted for each substance:

OSHA had no former limit for potassium hydroxide. A ceiling limit of 2 mg/m(3) was proposed by the Agency based on the ACGIH recommendation, and NIOSH (Ex. 8–47, Table N1) concurred with this proposal. OSHA has concluded that this limit is necessary to afford workers protection from irritant effects and is establishing the 2-mg/m(3) ceiling limit for potassium hydroxide in the final rule.

[One commenter] (Ex. 3–830) commented that there was no basis for establishing an occupational limit for potassium hydroxide. OSHA disagrees and notes that the irritant effects of potassium hydroxide dusts, mists, and aerosols have been documented (ACGIH 1986/Ex. 1–3, p. 495; Karpov 1971/Ex. 1–1115). Although dose-response data are lacking for this substance, it is reasonable to expect potassium hydroxide to exhibit irritant properties similar to those of sodium hydroxide, a structurally related strong alkali. In its criteria document, NIOSH (1976k/Ex. 1–965) cites a personal communication (Lewis 1974), which reported that short-term exposures (2 to 15 minutes) to 2 mg/m(3) sodium hydroxide caused ''noticeable'' but not excessive upper respiratory tract irritation. Therefore, OSHA finds that the 2-mg/m(3) ceiling limit will provide workers with an environment that minimizes respiratory tract irritation, which the Agency considers to be material impairment of health. To reduce these risks, OSHA is establishing a ceiling limit of 2 mg/m(3) for potassium hydroxide. (54 FR 2332 et seq.*)*

OSHA proposed making 212 PELs more protective and setting new PELs for 164 substances not previously regulated by OSHA. Substances for which the PEL was already aligned with a newer TLV were not included.

In order to determine whether the Air Contaminants rule was feasible, OSHA prepared the regulatory impact analysis in two phases. The first phase of its feasibility analyses involved using secondary databases to collect information on the chemicals to be regulated and the industries in which they were used. These databases provided information on the toxicity and health effects of exposure to chemicals covered by the rulemaking, on engineering controls, and on emergency response procedures. (54 FR 2725; *Ex. #7*).

Two primary databases were used to collect information on the nature and extent of employee exposures to the substances covered by the rule. One database was the 1982 NIOSH National Occupational Exposure Survey (NOES), which collected information from 4,500 businesses on the number of workers exposed to hazardous substances. The second database was OSHA's Integrated Management Information System (IMIS) which contains air samples taken since 1979 by OSHA industrial hygienists during compliance inspections. OSHA also consulted industrial hygienists and engineers who provided information about the exposure controls in use, the number and size of plants that would be impacted by the rulemaking, and the estimated costs associated with meeting the new PELs. (54 FR 2373, 2725, 2736; *Ex. #7*).

As part of the second phase of its feasibility analyses, OSHA performed an industry survey and site visits. The survey was the largest survey ever conducted by OSHA and included responses from 5,700 firms in industries believed to use chemicals included in the scope of the Air Contaminants proposal. It was designed to focus on industry sectors that potentially had the highest compliance costs, identified through an analysis of existing exposure data at the four-digit SIC (Standards Industrial Classification) code level. 54 FR 2843. The survey gathered data on chemicals, processes, exposures and controls currently in use, which ''permitted OSHA to refine the Phase I preliminary estimates of technical and economic feasibility. Site visits to 90 firms were conducted to verify the data collected on chemicals, processes, controls, and employee exposures.'' 54 FR 2725; see also 54 FR 2736–39, 2768, 2843–69.

OSHA analyzed the data collected in phases I and II to determine whether the updated PELs were both technologically and economically feasible for each industry sector covered. 54 FR 2374.

For technological feasibility, OSHA evaluated engineering controls and work practices available within industry sectors to reduce employee exposures to the new PELs. In general, it found three types of controls might be employed to reduce exposures: Engineering controls, work practice and administrative controls, and personal protective equipment. Engineering controls included local exhaust ventilation, general ventilation, isolation of the worker and enclosure of the source of the emission, and product substitution. Work practice controls included housekeeping, material handling procedures, leak detection, training, and personal hygiene. Personal protective equipment included respirators, and where the chemicals involved presented skin

hazards, protective gloves and clothing. 54 FR 2789–90, 2840.

OSHA found that many processes required to reduce exposure were ''relatively standardized throughout industry and are used [to control exposures] for a variety of substances.'' 54 FR 2373–74. It ''examined typical work processes found in a cross section of industries'' and had industry experts identify the major processes that had the potential for hazardous exposures above the new PELs, requiring new controls. For each affected industry group, OSHA reviewed the data it had collected to ''identify examples of successful application of controls to these processes.'' 54 FR 2790. Based on its review OSHA found that ''engineering controls and improved work practices [were] available to reduce exposure levels in almost all circumstances.'' 54 FR 2727. In some cases, it found respirators or other protective equipment was necessary. 54 FR 2727, 2813–15, 2840. For each relevant industry sector (which was at the 2, 3, or 4 digit SIC code level, depending on the processes involved). As the court explained in Air Contaminants, 965 F.2d at 981 (*Ex. #8):*

The SIC codes classify by type of activity for purposes of promoting uniformity and comparability in the presentation of data. As the codes go from two and three digits to four digits, the groupings become progressively more specific. For example, SIC Code 28 represents ''Chemicals and Allied Products,'' SIC Code 281 represents ''Industrial Inorganic Chemicals,'' and SIC Code 2812 includes only ''Alkalies and Chlorine.''

OSHA prepared a list of the processes identified and the engineering controls and personal protective equipment (PPE) required to reach the new PELs. 54 FR 2814–39. In almost all cases, the OSHA list showed that the new PELs could be reached through a combination of ventilation and enclosure controls. 54 FR 2816–39. OSHA received and addressed numerous comments on the controls it proposed for use in various industries. 54 FR 2790–2813. OSHA found that ''in the overwhelming majority of situations where air contaminants [were] encountered by workers, compliance [could] be achieved by applying known engineering control methods, and work practice improvements.'' 54 FR 2789.

To assess economic feasibility, OSHA ''made estimates of the costs to reduce exposure based on the scale of operations, type of process, and degree of exposure reduction needed'' based primarily on the results of the survey. 54 FR 2373, 2841–51. For each survey respondent, OSHA identified the processes employed at the plant and made a determination about whether workers would be exposed to a chemical in excess of a new PEL. 54 FR 2843–47. For those processes where the new PEL would be exceeded, OSHA estimated the cost of controls necessary to meet the PEL. 54 FR 2947–51. Process control costs were then summed by establishment and costs ''for the survey establishment were then weighted (by SIC and size) to represent compliance costs for the universe of affected plants.'' 54 FR 2851. OSHA received and addressed many comments on its cost approach and assumptions. (54 FR 2854–62; *Ex. #7).*

Based on the survey, OSHA determined that 74 percent of establishments with hazardous chemicals had no exposures in excess of the new PELs and would incur no costs, 22 percent would incur costs to implement additional engineering controls, and 4 percent would be required to provide personal protective equipment only for maintenance workers. 54 FR 2851. OSHA estimated the total compliance cost to be $788 million per year annualized over ten years at a ten percent discount rate. 54 FR 2851. OSHA assessed the economic impact of the standard on industry profits on the two-digit SIC level. Assuming industry would not be able to pass the additional costs on to customers, the average change in profits was less than one percent, with the largest change in SIC 30 (Rubber and Plastics) of 2.3 percent. 54 FR 2885, 2887. Alternatively, assuming that industry could pass on all costs associated with the rule to its customers, OSHA determined that for no industry sector would prices increase on average more than half of a percent. 54 FR 2886, 2887. In neither case was the economic impact significant, OSHA found, and the new standard was therefore considered by the Agency to be economically feasible. (54 FR 2733, 2887; *Ex. #7)*

The Air Contaminants final rule was published on January 19, 1989. In the final rule, OSHA summarized the health evidence for each individual substance, discussed over 2,000 studies, reviewed and addressed all major comments submitted to the record, and provided a rationale for each new PEL chosen. The final rule differed from the proposal in a number of ways as OSHA changed many of its preliminary assessments presented in the proposal based on comments submitted to the record.

Ultimately, the final rule adopted more protective PELs for 212 previously regulated substances, set new PELs for 164 previously unregulated substances, and left unchanged an additional 52 substances, for which lower PELs were initially proposed. OSHA estimated over 21 million employees were potentially exposed to hazardous substances in the workplace and over 4.5 million employees were currently exposed to levels above the old PELs or in the absence of a PEL. OSHA projected the final rule would result in potential reduction of over 55,000 lost workdays due to illnesses per year and annual compliance with this final rule would prevent an average of 683 fatalities annually from exposures to hazardous substances. 54 FR 2725.

The update to the Air Contaminants standard generally received wide support from both industry and labor. However, there was dissatisfaction on the part of some industry representatives and union leaders, who brought petitions for review challenging the standard. For example, some industry petitioners argued that OSHA's use of generic findings, the inclusion of so many substances in one rulemaking, and the allegedly insufficient time provided for comment by interested parties created a record inadequate to support the new set of PELs. In contrast, the unions challenged the generic approach used by OSHA to promulgate the standard and argued that several PELs were not protective enough. The unions also asserted that OSHA's failure to include any ancillary provisions, such as exposure monitoring and medical surveillance, prevented employers from ensuring the exposure limits were not exceeded and resulted in less-protective PELs.

Fifteen of the twenty-five lawsuits were settled; of the remaining suits, nine were from industry groups challenging seven specific exposure limits, and one was from the unions challenging 16 substances. Pursuant to 28 U.S.C. 2112(a), all petitions for review were consolidated for disposition and transferred to the Eleventh Circuit Court of Appeals. *AFL–CIO* v. *OSHA,* 965, F.2d 962, 981–82 (11th Cir. 1992) (*Air Contaminants*). Although only 23 of the new PELs were challenged, the court ultimately decided to vacate the entire rulemaking, finding that ''OSHA [had] not sufficiently explained or supported its threshold determination that exposure to these substances at previous levels posed a significant risk of these material health impairments or that the new standard eliminates or reduces that risk to the extent feasible.'' *Air Contaminants,* 965 F.2d at 986–987; *Ex. #8.*

After publishing the Air Contaminants Final Rule for general industry, OSHA proposed amending the PELs for the maritime and construction industry sectors and establishing PELs to cover the agriculture industry sector. OSHA published a Notice of Proposed Rulemaking (NPRM) on June 12, 1992, which included more protective exposure limits for approximately 210 substances currently regulated in the construction and maritime industries and added new exposure limits for approximately 160 chemicals to protect these workers. (57 FR 26002; *Ex. #146*). The notice also proposed approximately 220 PELs to cover the agriculture industry. OSHA extended the comment period indefinitely while it considered possible responses to the *Air Contaminants* court decision. Once it became clear that an appeal would not be pursued, the Agency halted work on the project.

III. Significant Court Decisions Shaping OSHA's Rulemaking Process and OSHA's Approach to Updating Its Permissible Exposure Limits

OSHA's Air Contaminants final rule is the agency's most significant attempt to move away from developing individual, substance-specific standards. As discussed above in Section II, this rule attempted to establish or revise 376 exposure limits for chemicals in a single rulemaking. OSHA's efforts in reducing occupational illnesses and the mortality associated with hazardous chemical exposure has largely been through developing substance specific standards, such as *Hexavalent Chromium* general industry (29 CFR 1910.1026; *Ex. #26*), shipyards (29 CFR 1915.1026), and construction (29 CFR 1926.1026) and *Methylene Chloride* (29 CFR 1910.1052; *Ex. #27*). These standards, in addition to setting PELs, establish other provisions to help reduce risk to workers, such as requirements to monitor exposure, train workers and conduct medical surveillance, if appropriate.

However, due to the associated time and costs, promulgating comprehensive rules for individual chemical hazards is an ineffective approach to address all chemical hazard exposures because of the sheer number of chemicals and mixtures to which workers are exposed on a daily basis. To date, only 30 comprehensive individual standards have been successfully published by the Agency to address hazardous chemicals in the workplace.

The courts have had a significant impact on OSHA's rulemaking process by articulating specific burdens OSHA must meet before promulgating a standard. It was because the *Air Contaminants* court found that OSHA had failed to meet some of these burdens that the court vacated OSHA's attempt to update the PELs. This section discusses the important cases laying out OSHA's burdens under the OSH Act, and summarizes the reasons the *Air Contaminants* court gave for finding that OSHA had not satisfied those burdens. These cases influence what steps OSHA may take in the future to update the PELs.

A. The Substantial Evidence Test: OSHA's Burden of Proof for Promulgating Health Standards

The test used by the courts to determine whether OSHA has reached its burden of proof is the ''substantial evidence test.'' This test, which applies to policy decisions as well as factual determinations, is set forth in section 6(f) of the OSH Act, which states: ''the determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.'' 29 U.S.C. 655(f). ''Substantial evidence'' has been defined as ''such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'' *Cotton Dust,* 452 U.S. at 522; *Ex. #15* (quoting *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 477 (1951) *Ex. #16*).

Although the substantial evidence test requires OSHA to show that the record as a whole supports the final rule, OSHA is not required to wait for ''scientific certainty'' before promulgating a health standard. *Benzene,* 448 U.S. at 656 (*Ex. #10*). Rather, to meet its burden of proof under the ''substantial evidence test,'' the agency need only ''identify relevant factual evidence, to explain the logic and the policies underlying any legislative choice, to state candidly any assumptions on which it relies, and to present its reasons for rejecting significant contrary evidence and argument.'' *Lead I,* 647 F.2d. at 1207; *Ex. #12*.

B. The Air Contaminants Case

OSHA published the Air Contaminants final rule on January 19, 1989. As discussed in Section II, the standard adopted more protective PELs for 212 previously regulated substances, set new PELs for 164 previously unregulated substances, left unchanged the PELs for 52 substances for which lower limits had been proposed, and raised the PEL for one substance. 54 FR 2332. The rule was challenged by both industry and labor groups, which both raised a series of issues regarding the validity of the final rule.

The first issue addressed by the court was whether OSHA's ''generic'' approach to rulemaking used to update or create new PELs for 376 chemicals in a single rulemaking was permissible under the OSH Act. Although the Eleventh Circuit determined that the Air Contaminants final rule did not fit within the classic definition of a generic rulemaking, the court upheld the format used by OSHA to update the PELs. *Air Contaminants,* 965 F.2d at 972. The court, in so holding, reasoned ''nothing in the OSH Act prevented OSHA from addressing multiple substances in a single rulemaking.'' *Air Contaminants,* 965 F.2d at 972. The court also upheld OSHA's statutory authority to select the substances and determine the parameters of its rules. However, the court stated that even though OSHA was permitted to promulgate multi-substance rules, each substance was required to ''stand independently, *i.e.,* . . . each PEL must be supported by substantial evidence in the record considered as a whole and accompanied by adequate explanation.'' *Air Contaminants,* 965 F.2d at 972; *Ex. #8*.

C. Significant Risk of a Material Impairment

1. The Benzene Case and Significant Risk

The significant risk requirement was first articulated in 1980 in a plurality decision of the Supreme Court in *Benzene,* 448 U.S. 607. The petitioners in *Benzene* challenged OSHA's rule lowering its PEL for benzene from 10 ppm to 1 ppm. In support of the new PEL, OSHA found that benzene caused leukemia and that the evidence did not show that there was a safe threshold exposure level below which no excess leukemia would occur. Applying its policy to treat carcinogens as posing a risk at any level of exposure where such a threshold could not be established, OSHA chose the new PEL of 1 ppm based on its finding that it was the lowest feasible exposure level. This was because Section 6(b)(5) of the OSH Act requires standards to be set at the most protective level that is feasible. *See Benzene,* 448 U.S. at 633–37; *Ex. #10*.

The *Benzene* Court rejected OSHA's approach. First, it found that the OSH Act did not require employers to ''eliminate all risks of harm from their workplaces.'' The OSH Act defines ''occupational safety and health standard'' to be standard that require the adoption of practices which are ''reasonably necessary or appropriate to provide safe or healthful employment and places of employment''. OSH Act § 3(8), 29 U.S.C. 652(8); *Ex. #9*.

Relying on this definition, the Court found that the Act only required that employers ensure that their workplaces are safe, that is, that their workers are not exposed to ''significant risk[s] of harm.'' 448 U.S. at 642. Second, the Court made clear that it is OSHA's burden to establish that a significant risk is present at the current standard before lowering a PEL. The burden of proof is normally on the proponent, the Court noted, and there was no indication in the OSH Act that Congress intended to change this rule. 448 U.S. at 653, 655. Thus, the Court held that, before promulgating a health standard, OSHA is required to make a ''threshold finding that a place of employment is unsafe– in the sense that significant risks are present and can be eliminated or lessened by a change in practices'' before it can adopt a new standard. *Benzene,* 448 U.S. at 642; *Ex. #10*.

Although the Court declined to establish a set test for determining whether a workplace is unsafe, it did provide guidance on what constitutes a significant risk. The Court stated a significant risk was one that a reasonable person would consider significant and ''take appropriate steps to decrease or eliminate.'' *Benzene,* 448 U.S. at 655 (*Ex. #10*). For example, it said, a one in a 1,000 risk would satisfy the requirement. However, this example was merely an illustration, not a hard line rule. The Court made it clear that determining whether a risk was ''significant'' was not a ''mathematical straitjacket'' and did not require the Agency to calculate the exact probability of harm. 448 U.S. at 655. OSHA was not required to support a significant risk finding ''with anything approaching scientific certainty'' and was free to use ''conservative assumptions'' in interpreting the evidence. 448 U.S. at 656. Still, because OSHA had not made a significant risk finding at the 10 ppm level (indeed, the Court characterized the evidence of leukemia in the record at the 10 ppm level as ''sketch[y]''), the Court vacated the new PEL and remanded the matter to OSHA.

2. OSHA's Post-Benzene Approach to Significant Risk and Air Contaminants

In past rulemakings involving hazardous chemicals, OSHA satisfied its requirement to show that a significant risk of harm is present by estimating the risk to workers subject to a lifetime of exposure at various possible exposure levels. These estimates have typically been based on quantitative risk assessments. As a general policy, OSHA has considered a lifetime excess risk of one death or serious illness per 1000 workers associated with occupational exposure over a 45 year working life as clearly representing a significant risk. However, as noted above, *Benzene* does not require OSHA to use such a rigid or formulaic criterion. Nevertheless, OSHA has taken a conservative approach and has used the 1:1,000 example as a useful benchmark for determining significant risk. This approach has often involved the use of the quantitative risk assessment models OSHA has employed in developing substance-specific health standards.

In the Air Contaminants rule, OSHA departed from this approach. Rather, as noted above, it looked at whether studies showed excess effects of concern at concentrations lower than allowed under OSHA's existing standard. Where they did, OSHA made a significant risk finding and either set a PEL (where none existed previously) or lowered the existing PEL. These new PELs were based on agency judgment, taking into account the existing studies, and as appropriate, safety factors. Both industry and union petitioners challenged aspects of OSHA's approach to making its significant risk determinations. The AFL–CIO argued that OSHA's rule was ''systematically under protective,'' and asserted that 16 of the exposure limits in the final rule were too high. For example, the AFL–CIO argued that OSHA had made a policy determination not to lower the PELs for carbon tetrachloride and vinyl bromide even though the exposure limits chosen

would continue to pose a residual risk in excess of 3.7 deaths per 1,000 workers exposed over the course of their working lifetime. The court agreed with the AFL–CIO, finding that OSHA failed to provide adequate evidence to support the higher PEL chosen by the agency. The court found that some of the PELs chosen by the Agency were at levels that would continue to pose a significant risk of material health impairment, and concluded that OSHA's decision was due to time and resource constraints, rather than legitimate considerations, such as feasibility. *Air Contaminants,* 965 F.2d at 976–77; *Ex. #8.*

Conversely, the American Iron and Steel Institute (AISI; *Ex. #147*) argued that OSHA set the PELs for certain substances below the level substantiated by the evidence. AISI argued that OSHA failed to quantify the risk of material health impairment at present exposure levels posed by individual substances and instead relied on assumptions in order to select its updated PELs. The court agreed with the AISI, finding that although OSHA summarized the studies on health effects in the final rule, it did not explain why the ''studies mandated a particular PEL chosen.'' *Air Contaminants,* 965 F.2d at 976. Specifically, the court stated that OSHA failed to quantify the risk from individual substances and merely provided conclusory statements that the new PEL would reduce a significant risk of material health effects. *Air Contaminants,* 965 F.2d at 975.

OSHA argued to the court that it relied on safety factors in setting PELs. Safety or uncertainty factors are used to ensure that exposure limits for a hazardous substance are set sufficiently below the levels at which adverse effects have been observed to assure adequate protection for all exposed employees. As explained in the 1989 Air Contaminants rule, regulators use safety factors in this context to account for statistical limitations in studies showing no observed effects, the uncertainties in extrapolating effects observed in animals to humans, and variation in human responses. The size of the proper safety factor is a matter of professional judgment. 54 FR 2397–98

The Eleventh Circuit rejected OSHA's use of safety factors in the Air Contaminants rule, however. While noting that the *Benzene* case held that OSHA is permitted ''to use conservative assumptions in interpreting data . . ., risking error on the side of overprotection rather than under protection,'' *Benzene,* 448 U.S. at 656, the *Air Contaminants* court found that OSHA had not adequately supported the use of safety factors in this rule. The court observed that ''the difference between the level shown by the evidence and the final PEL is sometimes substantial,'' and assumed that though ''it is not expressly stated, that for each of those substances OSHA applied a safety factor to arrive at the final standard.'' 965 F.2d at 978. OSHA had not indicated ''how the existing evidence for individual substances was inadequate to show the extent of risk for these factors,'' and ''failed to explain the method by which its safety factors were determined.'' *Air Contaminants,* 965 F.2d at 978. ''OSHA may use assumptions but only to the extent that those assumptions have some basis in reputable scientific evidence,'' the court concluded. *Air Contaminants,* 965 F.2d at 978–979. See Section IV. A. for additional discussion of the use of safety factors in risk assessment.

Ultimately, although the Eleventh Circuit noted that OSHA ''probably established that most or all of the substances involved do pose a significant risk at some level,'' the court determined that OSHA failed to adequately explain or provide evidence to support its conclusion that ''exposure to these substances at previous levels posed a significant risk . . . or that the new standard eliminates or reduces that risk to the extent feasible.'' *Air Contaminants,* 965 F.2d at 987. Therefore, the court vacated the rule and remanded it to the agency.

3. Material Impairment

Under section 6(b)(5), OSHA must set standards to protect employees against ''material impairment of health or functional capacity.'' This requirement was uncontroversial in *Benzene,* since the effect on which OSHA regulated was leukemia. However, in *Air Contaminants,* AISI argued that not all of the health effects addressed by OSHA in the final rule were material health effects. Specifically, AISI stated that the category of ''sensory irritation,'' which OSHA used as an endpoint to set PELs for 79 substances, failed to distinguish between ''materially impairing sensory irritation and the less serious sort.'' AISI brief at page 24. The court rejected AISI's argument. It accepted OSHA's explanation that material impairments may be any health effect, permanent or transitory, that seriously threatens the health or job performance of an employee, and held that, ''OSHA is not required to state with scientific certainty or precision the exact point at which each type of sensory or physical irritation becomes a material impairment.'' *Air Contaminants,* 965 F.2d at 975. ''Section 6(b)(5) of the [OSH] Act charges OSHA with addressing all forms of 'material impairment of health or functional capacity,'' and not exclusively those causing 'death or serious physical harm' or 'grave danger' from exposure to toxic substances, the court held. *Air Contaminants,* 965 F.2d at 975; *Ex. #8.*

D. Technological and Economic Feasibility

Once OSHA makes its threshold finding that a significant risk is present at the current PEL or in the absence of a PEL and can be reduced or eliminated by a standard, the Agency considers feasibility. First, the feasibility requirement that originated in Section 6(b)(5) of the OSH Act requires that the standard be ''technologically feasible,'' which generally means an industry has to be able to develop the technology necessary to comply with the requirements in the standard. *Lead I,* 647 F.2d at 1264–65; *Ex. #12.*

Second, the standard must be ''economically feasible,'' meaning that an industry as a whole must be able to absorb the impact of the costs associated with compliance with the standard. *Id.* at 1265. OSHA has historically made determinations on technological feasibility and economic feasibility separately.

1. Technological Feasibility

A standard is technologically feasible if ''a typical firm will be able to develop and install engineering and work practice controls that can meet the PEL in most operations.'' *Lead I,* 647 F.2d at 1272. Standards are permitted to be ''technology forcing,'' meaning that OSHA can require industries to ''develop new technology'' or ''impose a standard which only the most technologically advanced plants in an industry have been able to achieve, even if only in some of their operations some of the time.'' *Lead I,* 647 F.2d at 1264; *Ex. #12.*

Technological feasibility analysis generally focuses on demonstrating that PELs can be achieved through engineering and work practice controls. However, the concept of technological feasibility applies to all aspects of the standard, including air monitoring, housekeeping, and respiratory protection requirements. Some courts have required OSHA to determine whether a standard is technologically feasible on an industry-by-industry basis, *Color Pigments Manufacturers Assoc.* v. *OSHA,* 16 F.3d 1157 (*Ex. #13),* 1162–63 (11th Cir. 1994); *Air Contaminants,* 965 F.2d at 981–82 (*Ex. #8),* while another court has upheld technological feasibility findings based on the nature of an activity across many industries rather than on a pure industry basis, *Public Citizen Health Research Group* v. *United States Department of Labor,* 557 F.3d 165,178–79 (3d Cir. 2009; *Ex. #14*).

Regardless, OSHA must show the existence of ''technology that is either already in use or has been conceived and is reasonably capable of experimental refinement and distribution within the standard's deadlines,'' *Lead I,* 647 F.2d 1272. Where the agency presents ''substantial evidence that companies acting vigorously and in good faith can develop the technology,'' the agency is not bound to the technological status quo, and ''can require industry to meet PELs never attained anywhere.'' *Lead I,* 647 F.2d 1265; *Ex. #12.*

OSHA usually demonstrates the technological feasibility of a PEL by finding establishments in which the PEL is already being met and identifying the controls in use, or by arguing that even if the PEL is not currently being met in a given operation, the PEL could be met with specific additional controls. OSHA is also concerned with determining whether the conditions under which the PEL can be met in specific plants are generalizable to an industry as whole. This approach is very resource-intensive, as it commonly requires gathering detailed information on exposure levels and controls for each affected operation and process in an industry. OSHA's inspection databases usually do not record this information, and consequently OSHA makes site visits for the specific purpose of determining technological feasibility. (See Section IV. of this Request for Information for a detailed discussion of how OSHA determines technological feasibility and possible alternatives to current methods.)

As noted above, in the Air Contaminants rule, OSHA made its feasibility determination by gathering information on work processes that might expose workers

above the new PELs, and identifying controls that had been successfully implemented to reduce the exposure to the new limits. It made these findings mainly at the two-digit SIC level, but also at the three- and four-digit level where appropriate given the processes involved. The *Air Contaminants* court rejected this approach, finding that OSHA failed to make industry-specific findings or identify the specific technologies capable of meeting the proposed limit in industry-specific operations. *Air Contaminants,* 965 F.2d at 981. While OSHA had identified primary air contaminant control methods: engineering controls, administrative controls and work practices and personal protective equipment, the agency, ''only provided a general description of how the generic engineering controls might be used in the given sector.'' *Air Contaminants,* 965 F.2d at 981. Though noting that OSHA need only provide evidence sufficient to justify a ''general presumption of feasibility,'' the court held that this ''does not grant OSHA license to make overbroad generalities as to feasibility or to group large categories of industries together without some explanation of why findings for the group adequately represents the different industries in that group.'' *Air Contaminants,* 965 F.2d at 981–82. Accordingly, the court held that OSHA failed to establish the technological feasibility of the new PELs in its final rule. *Air Contaminants,* 965 F.2d at 982. As noted below, in a subsequent rulemaking the reviewing court accepted OSHA's approach of grouping numbers of industries.

2. Economic Feasibility

With respect to economic feasibility, the courts have stated ''A standard is feasible if it does not threaten ''massive dislocation'' to . . . or imperil the existence of the industry.'' *United Steelworkers* v. *Marshall,* 647 F.2d 1189, 1265 (D.C. Cir. 1980) *Lead I,*). In order to show this, the same court suggested, OSHA should ''construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry.'' The same court noted, ''[T]he court probably cannot expect hard and precise estimates of costs. Nevertheless, the agency must of course provide a reasonable assessment of the likely range of costs of its standard, and the likely effects of those costs on the industry.'' *Lead I,* 647 F.2d at 1265; *Ex. #12.*

Economic feasibility does not entail a cost-benefit analysis of the level of protection provided by the standard. As the Supreme Court noted, Congress considered the costs of creating a safe and healthful workplace to be the cost of doing business. *Cotton Dust,* 452 U.S. at 514, 520; *Ex. #15.* Instead, standards are economically feasible if the standard will not substantially alter the industry's competitive structure. *Forging Indus. Ass'n* v. *Secretary of Labor,* 773 F.2d 1436, 1453 (4th Cir. 1985; *Ex. #148*). In order to make a determination of economic feasibility, OSHA should ''construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry,'' *Lead I,* 647 F.2d at 1272, noting that such analyses will not provide absolute certainty:

[T]he court probably cannot expect hard and precise estimates of costs. Nevertheless, the agency must of course provide a reasonable assessment of the likely range of costs of its standard, and the likely effects of those costs on the industry . . . . And OSHA can revise any gloomy forecast that estimated costs will imperil an industry by allowing for the industry's demonstrated ability to pass through costs to consumers. 647 F.2d at 1266–67.

Again, courts have required OSHA to determine whether a standard is economically feasible on an industry-by-industry basis. *See Air Contaminants,* 965 F.2d at 982 (*Ex. #8*). Both to meet requirements for any Regulatory Flexibility Act (5 U.S.C. 603, 604) analysis and to assure that standards do not threaten the competitive structure of an industry, OSHA also analyzes the economic impacts on different size classes within an industry. However, OSHA is not required to show that all companies within an industry will be able to bear the burden of compliance or ''guarantee the continued existence of individual employers.'' *Lead I,* 647 F.2d at 1265 (*Ex. #12*) (quoting *Industrial Union Dep't, AFL–CIO* v. *Hodgson,* 499 F.2d 467, 478 (D.C. Cir. 1974) *Ex. #55)*).

As discussed above, OSHA supported its economic feasibility findings for the 1989 Air Contaminants rule based primarily on the results of a survey of over 5700 businesses, summarizing the projected cost of compliance at the two-digit SIC industry sector level. It found that compliance costs would average less than one percent of profits, and, alternatively, that prices would increase by less than one half percent. Nonetheless, the Eleventh Circuit held that OSHA had failed to meet its burden. The court held that OSHA was required to show that the rule was economically feasible on an industry-by industry basis, and that OSHA had not shown that its analyses at the two-digit SIC industry sector level were appropriate to meet this burden. *Air Contaminants,* 965 F.2d at 982. OSHA argued the generic nature of the rulemaking allowed the agency ''a great latitude in grouping industries in order to estimate 'average' costs,'' and that ''the costs were sufficiently low per sector to demonstrate feasibility not only for each sector, but each sub-sector.'' *Air Contaminants,* 965 F.2d at 983. However, the court found that ''average estimates of cost can be extremely misleading in assessing the impact of particular standards on individual industries'' and observed that ''analyzing the economic impact for an entire sector could conceal particular industries laboring under special disabilities and likely to fail as a result of enforcement.'' *Air Contaminants,* 965 F.2d at 982. The court allowed that OSHA could ''find and explain that certain impacts and standards do apply to entire sectors of an industry'' if ''coupled with a showing that there are no disproportionately affected industries within the group.'' *Air Contaminants,* 965 F.2d at 982 n.28. But in this case, the court found, OSHA had not explained why its use of such a ''broad grouping was appropriate.'' *Air Contaminants,* 965 F.2d at 983; *Ex. #8.*

Ultimately, the court held that OSHA did not sufficiently explain or support its threshold determination that exposures above the new PELs posed significant risks of material health impairment, or that the new PELs eliminated or reduced the risks to the extent feasible. Finding that ''OSHA's overall approach to this rulemaking is . . . flawed,'' the court vacated the entire Air Contaminant rulemaking, rather than just the 23 chemicals that were contested by union and industry representatives. *Air Contaminants,* 965 F.2d at 987(*Ex. #8*).

The Eleventh Circuit denied OSHA's petition for rehearing. No longer having a basis to enforce the 1989 PELs, OSHA directed its compliance officers to stop enforcing the updated limits through a memo, which was followed by a **Federal Register** Notice on June 30, 1993, revoking the new limits. 58 FR 35338–35351; (*Ex. #19*).

Appendix B: 1989 PELs Table

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Acetaldehyde	75–07–0	100	180	150	270			
Acetic acid	64–19–7	10	25					
Acetic anhydride	108–24–7					5	20	
Acetone	67–64–1	750	1800	1000	24006			
Acetonitrile	75–05–8	40	70	60	105			
2-Acetylamino-fluorine; see 1910.1014	53–96–3.							
Acetylene dichloride; see 1,2-Dichloroethylene	540–59–0.							
Acetylene tetrabromide	79–27–6	1	14					
Acetylsalicylic acid (Aspirin)	50–78–2		5					
Acrolein	107–02–8	0.1	0.25	0.3	0.8			
Acrylamide	79–06–1		0.03					X

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Acrylic acid	79–10–7	10	30					X
Acrylonitrile; see 1910.1045	107–13–1							
Aldrin	309–00–2		0.25					X
Allyl alcohol	107–18–6	2	5	4	10			X
Allyl chloride	107–05–1	1	3	2	6			
Allyl glycidyl ether (AGE)	106–92–3	5	22	10	44			
Allyl propyl disulfide	2179–59–1	2	12	3	18			
alpha-Alumina	1344–28–1							
	Total dust		10					
	Respirable fraction		5					
Aluminum (as Al) Metal	7429–90–5.							
	Total dust		15					
	Respirable fraction		5					
	Pyro powders		5					
	Welding fumes		5					
	Soluble salts		2					
	Alkyls		2					
4-Aminodiphenyl; see 1910.1011	92–67–1.							
2-Aminoethanol; see Ethanolamine	141–43–5.							
2-Aminopyridine	504–29–0	0.5	2					
Amitrole	61–82–5		0.2					
Ammonia	7664–41–7			35	27			
Ammonium chloride fume	12125–02–9		10		20			
Ammonium sulfamate	7773–06–0.							
	Total dust		10					
	Respirable fraction		5					
n-Amyl acetate	628–63–7	100	525					
Sec-Amyl acetate	626–38–0	125	650					
Aniline and homologs	62–53–3	2	8					X
Anisidine (o-, p-isomers)	29191–52–4		0.5					
Antimony and compounds (as Sb)	7440–36–0		0.5					
ANTU (alpha naphthyl-thiourea)	86–88–4		0.3					
Arsenic, organic compounds (as As)	7440–38–2		0.5					
Arsenic, inorganic compounds (as As); see 1910.1018	Varies with compound.							
Arsine	7784–42–1	0.05	0.2					
Asbestos; see 1910.1001	Varies							
Atrazine	1912–24–9		5					
Azinphos-methyl	86–50–0		0.2					X
Barium, soluble compounds	7440–39–3		0.5					
Barium sulfate	7727–43–7.							
	Total dust		10					
	Respirable fraction		5					
Benomyl	17804–35–2.							
	Total dust		10					
	Respirable fraction		5					
Benzene; see 1910.1028. See Table Z–2 for the limits applicable in the operations or sectors excluded in 1910.1028.	71–43–2.							
Benzidine; see 1910.1010	92–87–5.							
p-Benzoquinone; see Quinone	106–51–4.							
Benzo(a)pyrene; see Coal tar pitch volatiles								
Benzoyl peroxide	94–36–0		5					
Benzyl chloride	100–44–7	1	5					
Beryllium and beryllium compounds (as Be)	7440–41–7	0.002		[1].005		0.025		
Biphenyl; see Diphenyl	92–52–4.							
Bismuth telluride, undoped	1304–82–1.							
	Total dust		15					
	Respirable fraction		5					
Bismuth telluride, Se-doped	1304–82–1		5					
Borates, tetra, sodium salts:								
Anhydrous	1330–43–4			10				
Decahydrate	1303–96–4			10				
Penta-hydrate	12179–04–3			10				
Boron oxide	1303–86–2.							
	Total dust		10					
	Respirable Fraction.		5					
Boron tribromide	10294–33–4					1	10	
Boron trifluoride	7637–07–2					1	3	
Bromacil	314–40–9	1	10					
Bromine	7726–95–6	0.1	0.7	0.3	2			
Bromine pentafluoride	7789–30–2	0.1	0.7					
Bromoform	75–25–2	0.5	5					X
Butadiene (1,3- Butadiene); see 1910.1051	106–99–0.							
Butane	106–97–8	800	1900					
Butanethiol; see Butyl mercaptan	109–79–5.							
2-Butanone (Methyl ethyl ketone)	78–93–3	200	590	300	885			

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
2-Butoxyethanol	111–76–2	25	120					X
n-Butyl-acetate	123–86–4	150	710	200	950			
sec-Butyl acetate	105–46–4	200	950					
tert-Butyl acetate	540–88–5	200	950					
Butyl acrylate	141–32–2	10	55					
n-Butyl alcohol	71–36–3					50	150	X
sec-Butyl alcohol	78–92–2	100	305					
tert-Butyl alcohol	75–65–0	100	300	150	450			
Butylamine	109–73–9					5	15	X
tert-Butyl Chromate (as CrO3)	1189–85–1						0.1	X
n-Butyl glycidyl ether (BGE)	2426–08–6	25	135					
n-Butyl lactate	138–22–7	5	25					
Butyl mercaptan	109–79–5	0.5	1.5					
o-sec-Butylphenol	89–72–5	5	30					X
p-tert-Butyltoluene	98–51–1	10	60	20	120			
Cadmium (all forms, as Cd); see 1910.1027 See Table Z–2 for the limits applicable in the operations or sectors excluded in 1910.1027.	7440–43–9.							
Calcium carbonate	1317–65–3.							
	Total dust		15					
	Respirable fraction		5					
Calcium cyanamide	156–62–7		0.5					
Calcium hydroxide; see particulates not otherwise regulated.	1305–62–0		5					
Calcium oxide	1305–78–8		5					
Calcium silicate	1344–95–2							
	Total dust		15					
	Respirable fraction		5					
Calcium sulfate	7778–18–9.							
	Total dust		15					
	Respirable fraction		5					
Camphor, synthetic	76–22–2.							
Camphor, synthetic	76–22–2		2					
Caprolactam	105–60–2.							
	Dust		1		3			
	Vapor	5	20	10	40			
Captafol (Difolatan®)	2425–06–1		0.1					
Captan	133–06–2		5					
Carbaryl (Sevin®)	63–25–2		5					
Carbofuran (Furadan®)	1563–66–2		0.1					
Carbon black	1333–86–4		3.5					
Carbon dioxide	124–38–9	10,000	18,000	30,000	54,000			
				0	0			
Carbon disulfide	75–15–0	4	12	12	36			X
Carbon monoxide	630–08–0	35	40			200	229	
Carbon tetrabromide	558–13–4	0.1	1.4	0.3	4			
Carbon tetrachloride	56–23–5	2	12.6					
Carbonyl fluoride	353–50–4	2	5	5	15			
Catechol (Pyrocatechol)	120–80–9	5	20					X
Cellulose	9004–34–6.							
	Total dust		15					
	Respirable fraction		5					
Cesium hydroxide	21351–79–1		2					
Chlordane	57–74–9		0.5					X
Chlorinated camphene	8001–35–2		0.5		1			X
Chlorinated diphenyl oxide	55720–99–5		0.5					
Chlorine	7782–50–5	0.5	1.5	1	3			
Chlorine dioxide	10049–04–4	0.1	0.3	0.3	0.9			
Chlorine trifluoride	7790–91–2					0.1	0.4	
Chloro-acetaldehyde	107–20–0					1	3	
alpha-Chloroaceto-phenone (Phenacy1 chloride)	532–27–4	0.05	0.3					
Chloroacetyl chloride	79–04–9	0.05	0.2					
Chlorobenzene	108–90–7	75	350					
o-Chloro-benzylidene malononitrile	2698–41–1					0.05	0.4	X
Chloro-bromomethane	74–97–5	200	1050					
2-Chloro-1,3-butadiene; see beta-Chloroprene	126–99–8							
Chloro-difluoromethane	75–45–6	1000	3500					
Chlorodiphenyl (42% Chlorine) (PCB)	53469–21–9		1					X
Chlorodiphenyl (54% Chlorine) (PCB)	11097–69–1		0.5					X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin	106–89–8.							
2-Chloroethanol; see Ethylene chlorohydrin	107–07–3.							
Chloroethylene; see Vinyl chloride	75–01–4.							
Chloroform (Trichloro-methane)	67–66–3	2	9.78					
bis(Chloro-methyl) ether; see 1910.1008	542–88–1.							
Chloromethyl methyl ether; see 1910.1006	107–30–2.							
1-Chloro-l-nitropropane	600–25–9	2	10					
Chloropenta-fluoroethane	76–15–3	1000	6320					
Chloropicrin	76–06–2	0.1	0.7					

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
beta-Chloroprene	126–99–8	10	35					X
o-Chlorostyrene	2039–87–4	50	285	75	428			
o-Chlorotoluene	95–49–8	50	250					
2-Chloro-6-trichloro-methyl pyridine	1929–82–4.							
	Total dust		15					
	Respirable fraction		5					
Chlorpyrifos	2921–88–2		0.2					X
Chromic acid and chromates (as CrO3); see 1910.1026. See Table Z–2 for the exposure limit for any operations or sectors where the exposure limit in 1910.1026 is stayed or are otherwise not in effect.	Varies with compound.					0.1		
Chromium (II) compounds (as Cr)	Varies with compound.		0.5					
Chromium (III) compounds (as Cr)	Varies with compound.		0.5					
Chromium metal and insoluble salts	7440–47–3		1					
Chrysene; see Coal tar pitch volatiles								
Clopidol	2971–90–6.							
	Total dust		15					
	Respirable fraction		5					
Coal dust (less than 5% Si02), quartz, respirable fraction	N/A		2					
Coal dust (greater than or equal to 5% Si02) respirable quartz fraction.	N/A		0.1					
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene.	8007–45–2		0.2					
Cobalt metal, dust, and fume (as Co)	7440–48–4		0.05					
Cobalt carbonyl (as Co)	10210–68–1		0.1					
Cobalt hydrocarbonyl (as Co)	16842–03–8		0.1					
Coke oven emissions; See 1910.1029								
Copper	7440–50–8.							
	Fume (as Cu)		0.1					
	Dusts and mists (as Cu).		1					
Cotton dust, raw This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust or equivalent instrument. The time-weighted average applies to the cotton waste processing operations of waster recycling (sorting, blending, cleaning, and willowing) and garnetting. See also 1910.1043 for cotton dust limits applicable to other sectors.								
Crag herbicide (Sesone)	136–78–7.							
	Total dust		10					
	Respirable fraction		5					
Cresol, all isomers	1319–77–3; 95–48–7; 108–39–4; 106–44–5.	5	22					X
Crotonaldehyde	123–73–9; 4170–30–3.		2	6				
Crufomate	106–44–5		5					
Cumene	98–82–8	50	245					X
Cyanamide	420–04–2		2					
Cyanides (as CN)	151–50–0		5					
Cyanogen	460–19–5	10	20					
Cyanogen chloride	506–77–4					0.3	0.6	
Cyclohexane	110–82–7	300	1050					
Cyclohexanol	108–93–0	50	200					X
Cyclohexanone	108–94–1	25	100					X
Cyclohexene	110–83–8	300	1015					
Cyclohexylamine	108–91–8	10	40					
Cyclonite	121–82–4		1.5					X
Cyclopentadiene	542–92–7	75	200					
Cyclopentane	287–92–3	600	1720					
Cyhexatin	13121–70–5		5					
2,4–D (Dichlorophenoxy-acetic acid)	94–75–7		10					
Decaborane	17702–41–9	0.05	0.3	0.15	0.9			X
Demeton-(Systox®)	8065–48–3		0.1					X
Diborane	19207–45–7	0.1	0.1					
Dichlorodiphenyltri-chloroethane (DDT)	50–29–3		1					X
Dichlorvos (DDVP)	62–73–7		1					X
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123–42–2	50	240					
1,2-Diaminoethane; see Ethylenediamine	107–15–3.							
Diazinon	333–41–5		0.1					X
Diazomethane	334–88–3	0.2	0.4					
1,2-Dibromo-3-chloropropane; see 1910.1044	96–12–8.							
2–N-Dibutylamino-ethanol	102–81–8	2	14					
Dibutyl phosphate	107–66–4	1	5	2	10			
Dibutyl phthalate	84–74–2		5					
Dichloro-acetylene	7572–29–4					0.1	0.4	

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
o-Dichlorobenzene	95–50–1					50	300	
p-Dichlorobenzene	106–46–7	75	450	110	675			
3,3′-Dichloro-benzidine; see 1910.1007	91–94–1.							
Dichlorodifluoro-methane	75–71–8	1000	4950					
1,3-Dichloro-5,5-dimethyl hydantoin	118–52–5		0.2		0.4			
1,1-Dichloroethane	75–34–3	100	400					
1,2-Dichloroethylene	540–59–0	200	790					
Dichloroethyl ether	111–44–4	5	30	10	60			X
Dichloro-methane; see Methylene chloride	75–09–2.							
Dichloromono-fluoromethane	75–43–4	10	40					
1,1-Dichloro- 1-nitroethane	594–72–9	2	10					
1,2-Dichloropropane; see Propylene dichloride	78–87–5.							
1,3-Dichloropropene	542–75–6	1	5					X
2,2-Dichloro-propionic acid	75–99–0	1	6					
Dichloro-tetrafluoroethane	76–14–2	1000	7000					
Dicrotophos	141–66–2		0.25					X
Dicyclo-pentadiene	77–73–6	5	30					
Dicyclo-pentadienyl iron	102–54–5.							
	Total dust		10					
	Respirable fraction		5					
Dieldrin	60–57–1		0.25					X
Diethanolamine	111–42–2	3	15					
Diethylamine	109–89–7	10	30	25	75			
2-Diethylamino-ethanol	100–37–8	10	50					
Diethylene triamine	111–40–0	1	4					
Diethyl ether; see Ethyl ether	60–29–7.							
Diethyl ketone	96–22–0	200	705					
Diethyl phthalate	84–66–2		5					
Difluorodibromo-methane	75–61–6	100	860					
Diglycidyl ether (DGE)	2238–07–5	0.1	0.5					
Dihydroxy-benzene; see Hydroquinone	123–31–9.							
Diisobutyl ketone	108–83–8	25	150					
Diisopropylamine	108–18–9	5	20					X
4-Dimethylamino-azobenzene; see 1910.1015	60–11–7.							
Dimethoxy-methane; see Methylal	109–87–5.							
Dimethyl acetamide	127–19–5	10	35					X
Dimethylamine	124–40–3	10	18					
Dimethylamino-benzene; see Xylidine	1300–73–8.							
Dimethylaniline (N,N-Dimethylaniline)	121–69–7	5	25	10	50			X
Dimethyl-benzene; see Xylene	Varies with isomer.							
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300–76–5		3					X
Dimethyl-formamide	68–12–2	10	30					X
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone	108–83–8.							
1,1-Dimethyl-hydrazine	57–14–7	0.5	1					X
Dimethyl-phthalate	131–11–3		5					
Dimethyl sulfate	77–78–1	0.1	0.5					X
Dinitolmide (3,5-Dinitro-o-toluamide)	148–01–6		5					
Dinitrobenzene (all isomers)	(alpha): 528–29–0 (meta): 99–65–0. (para-): 100–25–4.		1					X
Dinitro-o-cresol	534–52–1		0.2					X
Dinitrotoluene	121–14–2		1.5					X
Dioxane (Diethylene dioxide)	123–91–1	25	90					X
Dioxathion (Delnav)	78–34–2		0.2					X
Diphenyl (Biphenyl)	92–52–4	0.2	1					
Diphenylamine	122–39–4		10					
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate.	101–68–8.							
Dipropylene glycol methyl ether	34590–94–8	100	600	150	900			X
Dipropyl ketone	123–19–3	50	235					
Diquat	85–00–7		0.5					
Di-sec octyl phthalate (Di-2-ethylhexyl phthalate)	117–81–7		5		10			
Disulfiram	97–77–8		2					
Disulfoton	298–04–4		0.1					X
2,6-Di-tert-butyl-p-cresol	128–37–0		10					
Diuron	330–54–1		10					
Divinyl benzene	108–576	10	50					
Emery	112–62–9.							
	Total dust		10					
	Respirable fraction		5					
Endosulfan	115–29–7		0.1					X
Endrin	72–20–8		0.1					X
Epichlorohydrin	106–89–8	2	8					X
EPN	2104–64–5		0.5					X
1,2-Epoxypropane; see Propylene oxide	75–56–9.							
2,3-Epoxy-l-propanol; see Glycidol	556–52–5.							
Ethanethiol; see Ethyl mercaptan	75–08–1.							
Ethanolamine	141–43–5	3	8	6	15			

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Ethion	563–12–2		0.4					X
2-Ethoxyethanol [In Process of 6(b) Rulemaking]	110–80–5.							
2-Ethoxyethyl acetate (Cellosolve acetate) [In Process of 6(b) Rulemaking].	111–15–9.							
Ethyl acetate	141–78–6	400	1400					
Ethyl acrylate	140–88–5	5	20	25	100			X
Ethyl alcohol (Ethanol)	64–17–5	1000	1900					
Ethylamine	75–04–7	10	18					
Ethyl amyl ketone (5-Methyl-3-heptanone)	106–68–3	25	130					
Ethyl benzene	100–41–4	100	435	125	545			
Ethyl bromide	74–96–4	200	890	250	1110			
Ethyl butyl ketone (3-Heptanone)	106–35–4	50	230					
Ethyl chloride	75–00–3	1000	2600					
Ethyl ether	60–29–7	400	1200	500	1500			
Ethyl formate	109–94–4	100	300					
Ethyl mercaptan	75–08–1	0.5	1					
Ethyl silicate	78–10–4	10	85					
Ethylene chlorohydrin	107–07–3					1	3	X
Ethylenediamine	107–15–3	10	25					
Ethylene dibromide; see Table Z–2	106–93–4.							
Ethylene dichloride	107–06–2	1	4	2	8			
Ethylene glycol	107–21–1					50	125	
Ethylene glycol dinitrate	628–96–6				0.1			X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate.	110–49–6.							
Ethyleneimine; see 1910.1012	151–56–4.							
Ethylene oxide; see 1910.1047	75–21–8.							
Ethylidene chloride; see 1,1-Dichloroethane	75–34–3.							
Ethylidene norbornene	16219–75–3					5	25	
N-Ethylmorpholine	100–74–3	5	23					X
Fenamiphos	22224–92–6		0.1					X
Fensulfothion (Dasanit)	115–90–2		0.1					
Fenthion	55–38–9		0.2					X
Ferbam	14484–64–1.							
	Total dust		10					
	Respirable fraction		5					
Ferrovanadium dust	12604–58–9		1		3			
Fluorides (as F)	Varies with compound.		2.5					
Fluorine	7782–41–4	0.1	0.2					
Fluoro-trichloromethane (Trichlorofluoro-methane)	75–69–4					1000	5600	
Fonofos	944–22–9		0.1					X
Formaldehyde; see 1910.1048	50–00–0.							
Formamide	75–12–7	20	30	30	45			
Formic acid	64–18–6	5	9					
Furfural	98–01–1	2	8					X
Furfuryl alcohol	98–00–0	10	40	15	60			X
Gasoline	8006–61–9	300	900	500	1500			
Gemanium tetrahydride	7782–65–2	0.2	0.6					
Glutaraldehyde	111–30–8					0.2	0.8	
Glycerin (mist)	56–81–5.							
	Total dust		10					
	Respirable fraction		5					
Glycidol	556–52–5	25	75					
Glycol monoethyl ether; see 2-Ethoxyethanol	110–80–5.							
Grain dust (oat, wheat, barley)	N/A		10					
Graphite, natural respirable dust	7782–42–5		2.5					
Graphite, synthetic	N/A.							
	Total dust		10					
	Respirable fraction		5					
Guthion®; see Azinphos methyl	86–50–0.							
Gypsum	7778–18–9.							
	Total dust		15					
	Respirable fraction		5					
Hafnium	7440–58–6		0.5					
Heptachlor	76–44–8		0.5					X
Heptane (n-Heptane)	142–82–5	400	1600	500	2000			
Hexachloro-butadiene	87–68–3	0.02	0.24					
Hexachlorocyclo-pentadiene	77–47–4	0.01	0.1					
Hexa-chloroethane	67–72–1	1	10					X
Hexachloro-naphthalene	1335–87–1		0.2					X
Hexafluoro-acetone	684–16–2	0.1	0.7					X
n-Hexane	110–54–3	50	180					
Hexane isomers	Varies with compound.	500	1800	1000	3600			
2-Hexanone (Methyl n-butyl ketone)	591–78–6	5	20					
Hexone (Methyl isobutyl ketone)	108–10–1	50	205	75	300			
sec-Hexyl acetate	108–84–9	50	300					

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Hexylene glycol	107–41–5					25	125	
Hydrazine	302–01–2	0.1	0.1					X
Hydrogenated terphenyls	61788–32–7	0.5	5					
Hydrogen bromide	10035–10–6					3	10	
Hydrogen chloride	7647–01–0					5	7	
Hydrogen cyanide	74–90–8			4.7	5			X
Hydrogen fluoride (as F)	7664–39–3	3		6				
Hydrogen peroxide	7722–84–1	1	1.4					
Hydrogen selenide (as Se)	7783–07–5	0.05	0.2					
Hydrogen sulfide	7783–06–4	10	14	15	21			
Hydroquinone	123–31–9		2					
2-Hydroxypropyl acrylate	999–61–1	0.5	3					X
Indene	95–13–6	10	45					
Indium and compounds (as In)	7440–74–6		0.1					
Iodine	7553–56–2					0.1	1	
Iodoform	75–47–8	0.6	10					
Iron oxide (dust and fume as Fe) Total particulate	1309–37–1		10					
Iron pentacarbonyl (as Fe)	13463–40–6	0.1	0.8	0.2	1.6			
Iron salts (soluble) (as Fe)	Varies with compound.		1					
Isoamyl acetate	123–92–2	100	525					
Isoamyl alcohol (primary and secondary)	123–51–3	100	360	125	450			
Isobutyl acetate	110–19–0	150	700					
Isobutyl alcohol	78–83–1	50	150					
Isooctyl alcohol	26952–21–6	50	270					X
Isophorone	78–59–1	4	23					
Isophorone diisocyanate	4098–71–9	0.005		0.02				X
2-Isopropoxy-ethanol	109–59–1	25	105					
Isopropyl acetate	108–21–4	250	950	310	1185			
Isopropyl alcohol	67–63–0	400	980	500	1225			
Isopropylamine	75–31–0	5	12	10	24			
N-Isopropylaniline	768–52–5	2	10					X
Isopropyl ether	108–20–3	500	2100					
Isopropyl glycidyl ether (IGE)	4016–14–2	50	240	75	360			
Kaolin	N/A.							
	Total dust		10					
	Respirable fraction		5					
Ketene	463–51–4	0.5	0.9	1.5	3			
Lead inorganic (as Pb); see 1910.1025	7439–92–1.							
Limestone	1317–65–3.							
	Total dust		15					
	Respirable fraction		5					
Lindane	58–89–9		0.5					X
Lithium hydride	7580–67–8		0.025					
L.P.G. (Liquefied petroleum gas)	68476–85–7	1000	1800					
Magnesite	546–93–0.							
	Total dust		15					
	Respirable fraction		5					
Magnesium oxide fume, total particulate	1309–48–4.							
	Total dust		10					
	Respirable fraction		5					
Malathion	121–75–5.							
	Total dust		10					X
	Respirable fraction		5					X
Maleic anhydride	108–31–6	0.25	1					
Manganese compounds (as Mn)	7439–96–5						5	
Manganese fume (as Mn)	7439–96–5		1		3			
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079–65–1		0.1					X
Manganese tetroxide (as Mn)	1317–35–7		1					
Marble	1317–65–3.							
	Total dust		15					
	Respirable fraction		5					
Mercury (aryl and inorganic) (as Hg)	7439–97–6						0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439–97–6		0.01		0.03			X
Mercury (vapor) (as Hg)	7439–97–6		0.05					X
Mesityl oxide	141–79–7	15	60	25	100			
Methacrylic acid	79–41–4	20	70					X
Methanethiol; see Methyl mercaptan	74–93–1.							
Methomyl (Lannate)	16752–77–5		2.5					
Methoxychlor	72–43–5.							
	Total dust		10					
	Respirable fraction		5					
2-Methoxyethanol; see Methyl cellosolve	109–86–4.							
4-Methoxyphenol	150–76–5		5					
Methyl acetate	79–20–9	200	610	250	760			
Methyl acetylene (Propyne)	74–99–7	1000	1650					
Methyl acetylene-propadiene mixture (MAPP)		1000	1800	1250	2250			
Methyl acrylate	96–33–3	10	35					X

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Methyl-acrylonitrile	126–98–7	1	3					X
Methylal (Dimethoxy-methane)	109–87–5	1000	3100					
Methyl alcohol	67–56–1	200	260	250	325			X
Methylamine	74–89–5	10	12					
Methyl amyl alcohol; see Methyl isobutyl carbinol	108–11–2.							
Methyl n-amyl ketone	110–43–0	100	465					
Methyl bromide	74–83–9	5	20					X
Methyl butyl ketone; see 2-Hexanone	591–78–6.							
Methyl cellosolve (2-Methoxyethanol)	109–86–4	25	80					X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110–49–6	25	120					X
Methyl chloride	74–87–3	50	105	100	210			
Methyl chloroform (1,1,1-Trichloroethane)	71–55–6	350	1900	450	2450			
Methyl 2-cyanoacrylate	137–05–3	2	8	4	16			
Methyl cyclohexane	108–87–2	400	1600					
Methyl-cyclohexanol	25639–42–3	50	235					
o-Methylcyclo-hexanone	583–60–8	50	230	75	345			X
Methylcyclo-pentadienyl manganese tricarbonyl (as Mn)	12108–13–3		0.2					X
Methyl demeton	8022–00–2		0.5					X
4,4′-Methylene bis(2-chloroaniline) (MBOCA)	101–14–4	0.02	0.22					X
Methylene bis(4-cyclo-hexylisocyanate)	5124–30–1					0.01	0.11	X
Methylene chloride; see 1910.1052	75–09–2.							
Methylene-dianiline; see 1910.1050	101–77–9.							
Methyl ethyl ketone peroxide (MEKP)	1338–23–4					0.7	5	
Methyl formate	107–31–3	100	250	150	375			
Methyl hydrazine (Monomethyl hydrazine)	60–34–4					0.2	0.35	X
Methyl iodide	74–88–4	2	10					X
Methyl isoamyl ketone	110–12–3	50	240					
Methyl isobutyl carbinol	108–11–2	25	100	40	165			X
Methyl isobutyl ketone; see Hexone	108–10–1.							
Methyl isocyanate	624–83–9	0.02	0.05					X
Methyl isopropyl ketone	563–80–4	200	705					
Methyl mercaptan	74–93–1	0.5	1					
Methyl methacrylate	80–62–6	100	410					
Methyl parathion	298–00–0		0.2					X
Methyl propyl ketone; see 2-Pentanone	107–87–9.							
Methyl silicate	681–84–5	1	6					
alpha-Methyl styrene	98–83–9	50	240	100	485			
Methylene bisphenyl isocyanate (MDI)	101–68–8					0.02	0.2	
Metribuzin	21087–64–9		5					
Mica; see Silicates	N/A.							
Molybdenum (as Mo)	7439–98–7.							
	Soluble compounds.		5					
	Insoluble compounds total dust.		10					
	Insoluble compounds. Respirable fraction		5					
Monocrotophos (Azodrin)	6923–22–4		0.25					
Monomethyl aniline	100–61–8	0.5	2					X
Morpholine	110–91–8	20	70	30	105			X
Naphtha (Coal tar)	8030–30–6	100	400					
Naphthalene	91–20–3	10	50	15	75			
alpha-Naphthylamine; see 1910.1004	134–32–7.							
beta-Naphthylamine; see 1910.1009	91–59–8.							
Nickel carbonyl (as Ni)	13463–39–3	0.001	0.007					
Nickel, metal and insoluble compounds (as Ni)	7440–02–0		1					
Nickel, soluble compounds (as Ni)	7440–02–0		0.1					
Nicotine	54–11–5		0.5					X
Nitric acid	7697–37–2	*2*	5	4	10			
Nitric oxide	10102–43–9	25	30					
p-Nitroaniline	100–01–6		3					X
Nitrobenzene	98–95–3	1	5					X
p-Nitrochloro-benzene	100–00–5		1					X
4-Nitrodiphenyl; see 1910.1003	92–93–3.							
Nitroethane	79–24–3	100	310					
Nitrogen dioxide	10102–44–0			1	1.8			
Nitrogen trifluoride	7783–54–2	10	29					
Nitroglycerin	55–63–0				0.11			X
Nitromethane	75–52–5	100	250					
1-Nitropropane	108–03–2	25	90					
2-Nitropropane	79–46–9	10	35					
N-Nitrosodimethyl-amine; see 1910.1016	62–75–9.							
Nitrotoluene	o-isomer 88–72–2 m-isomer 99–08–1 p-isomer 99–99–0.	2	11					X
Nitrotrichloro-methane; see Chloropicrin	76–06–2.							

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Nonane	111–84–2	200	1050					
Octachloro-naphthalene	2234–13–1		0.1		0.3			X
Octane	111–65–9	300	1450	375	1800			
Oil mist, mineral	8012–95–1		5					
Osmium tetroxide (as Os)	20816–12–0	0.0002	0.002	0.0006	0.006			
Oxalic acid	144–62–7		1		2			
Oxygen difluoride	7783–41–7					0.05	0.1	
Ozone	10028–15–6	0.1	0.2	0.3	0.6			
Paraffin wax fume	8002–74–2		2					
Paraquat, respirable dust	4685–14–7		0.1					X
Parathion	56–38–2		0.1					X
Particulates not otherwise regulated	N/A.							
	Total dust		15					
	Respirable fraction		5					
Pentaborane	19624–22–7	0.005	0.01	0.015	0.03			
Pentachloro-naphthalene	1321–64–8		0.5					X
Pentachloro-phenol	87–86–5		0.5					X
Pentaerythritol	115–77–5.							
	Total dust		10					
	Respirable fraction		5					
Pentane	109–66–0	600	1800	750	2250			
2-Pentanone (Methyl propyl ketone)	107–87–9	200	700	250	875			
Perchloro-ethylene (Tetrachloro-ethylene)	127–18–4	25	170					
Perchloromethyl mercaptan	594–42–3	0.1	0.8					
Perchloryl fluoride	7616–94–6	3	14	6	28			
Perlite.								
	Total dust		15					
	Respirable fraction		5					
Petroleum distillates (Naphtha)	8002–05–9	400	1600					
Phenol	108–95–2	5	19					X
Phenothiazine	92–84–2		5					X
p-Phenylene diamine	106–50–3		0.1					X
Phenyl ether, vapor	101–84–8	1	7					
Phenyl ether-biphenyl mixture, vapor	N/A	1	7					
Phenylethylene; see Styrene	100–42–5.							
Phenyl glycidyl ether (PGE)	122–60–1	1	6					
Phenylhydrazine	100–63–0	5	20	10	45			X
Phenyl mercaptan	108–98–5	0.5	2					
Phenylphosphine	638–21–1					0.05	0.25	
Phorate	298–02–2		0.05		0.2			X
Phosdrin (Mevinphos®)	7786–34–7	0.01	0.1	0.03	0.3			X
Phosgene (Carbonyl chloride)	75–44–5	0.1	0.4					
Phosphine	7803–51–2	0.3	0.4	1	1			
Phosphoric acid	7664–38–2		1		3			
Phosphorus (yellow)	7723–14–0		0.1					
Phosphorus oxychloride	10025–87–3	0.1	0.6					
Phosphorus pentachloride	10026–13–8		1					
Phosphorus pentasulfide	1314–80–3		1		3			
Phosphorus trichloride	7719–12–2	0.2	1.5	0.5	3			
Phthalic anhydride	85–44–9	1	6					
m-Phthalodinitrile	626–17–5		5					
Picloram	1918–02–1.							
	Total dust		10					
	Respirable fraction		5					
Picric acid	88–89–1		0.1					X
Piperazine dihydrochloride	142–64–3		5					
Pindone (2-Pivalyl- 1,3-indandione)	83–26–1		0.1					
Plaster of Paris	7778–18–9.							
	Total dust		15					
	Respirable fraction		5					
Platinum (as Pt)	7440–06–4.							
	Metal		1					
	Soluble salts		0.002					
Portland cement	65997–15–1.							
	Total dust		10					
	Respirable fraction		5					
Potassium hydroxide	1310–58–3						2	
Propane	74–98–6	1000	1800					
Propargyl alcohol	107–19–7	1	2					X
beta-Propriolactone; see 1910.1013	57–57–8.							
Propionic acid	79–09–4	10	30					
Propoxur (Baygon)	114–26–1		0.5					
n-Propyl acetate	109–60–4	200	840	250	1050			
n-Propyl alcohol	71–23–8	200	500	250	625			
n-Propyl nitrate	627–13–4	25	105	40	170			
Propylene dichloride	78–87–5	75	350	110	510			
Propylene glycol dinitrate	6423–43–4	0.05	0.3					
Propylene glycol monomethyl ether	107–98–2	100	360	150	540			

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Propylene imine	75–55–8	2	5					X
Propylene oxide	75–56–9	20	50					
Propyne; see Methyl acetylene	74–99–7.							
Pyrethrum	8003–34–7		5					
Pyridine	110–86–1	5	15					
Quinone	106–51–4	0.1	0.4					
Resorcinol	108–46–3	10	45	20	90			
Rhodium (as Rh), metal fume and insoluble compounds	7440–16–6		0.1					
Rhodium (as Rh), soluble compounds	7440–16–6		0.001					
Ronnel	299–84–3		10					
Rosin core solder pyrolysis products, as formaldehyde			0.1					
Rotenone	83–79–4		5					
Rouge.								
	Total dust		10					
	Respirable fraction		5					
Selenium compounds (as Se)	7782–49–2		0.2					
Selenium hexafluoride (as Se)	7783–79–1	0.05	0.4					
Silica, amorphous, precipitated and gel			6					
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica.	68855–54–9		6					
Silica, crystalline cristobalite respirable dust	14464–46–1		0.05					
Silica, crystalline, quartz, respirable dust	14808–60–7		0.1					
Silica, crystalline tripoli (as quartz), respirable dust	1317–95–9		0.1					
Silica, crystalline tridymite respirable dust	15468–32–3		0.05					
Silica, fused, respirable dust	60676–86–0		0.1					
Silicates (less than 1% crystalline silica)								
Mica (respirable dust)	12001–26–2		3					
Soapstone, total dust			6					
Soapstone, respirable dust			3					
Talc (containing asbestos): Use asbestos limit; see 1910.1001.								
Talc (containing no asbestos), respirable dust	14807–96–6		2					
Tremolite; asbestiform—see 1910.1001; non-asbestiform—see 57 FR 24310, June 8, 1992.								
Silicon	7440–21–3.							
	Total dust		10					
	Respirable fraction		5					
Silicon carbide	409–21–2.							
	Total dust		10					
	Respirable fraction		5					
Silicon tetrahydride	7803–62–5	5	7					
Silver, metal and soluble compounds (as Ag)	7440–22–4		0.01					
Soapstone; see Silicates								
Sodium azide	26628–22–8.							
	(as HN3)					0.1		X
	(as NaN3)						0.3	X
Sodium bisulfite	7631–90–5		5					
Sodium fluoroacetate	62–74–8		0.05		0.15			X
Sodium hydroxide	1310–73–2						2	
Sodium metabisulfite	7681–57–4		5					
Starch	9005–25–8.							
	Total dust		15					
	Respirable fraction		5					
Stibine	7803–52–3	0.1	0.5					
Stoddard solvent	8052–41–3	100	525					
Strychnine	57–24–9		0.15					
Styrene	100–42–5	50	215	100	425			
Subtilisins (Proteolytic enzymes)	1395–21–7						0. 00006	
Sucrose	57–50–1.							
	Total dust		15					
	Respirable fraction		5					
Sulfur dioxide	7446–09–5	2	5	5	13			
Sulfur hexafluoride	2551–62–4	1000	6000					
Sulfuric acid	7664–93–9		1					
Sulfur monochloride	10025–67–9					1	6	
Sulfur pentafluoride	5714–22–7					0.01	0.1	
Sulfur tetrafluoride	7783–60–0					0.1	0.4	
Sulfuryl fluoride	2699–79–8	5	20	10	40			
Sulprofos	35400–43–2		1					
Systox®; see Demeton	8065–48–3.							
2,4,5–T	93–76–5		10					
Talc; see Silicates.								
Tantalum, metal and oxide dust	7440–25–7		5					
TEDP (Sulfotep)	3689–24–5		0.2					X
Tellurium and compounds (as Te)	13494–80–9		0.1					
Tellurium hexafluoride (as Te)	7783–80–4	0.02	0.2					

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Temephos	3383–96–8.							
	Total dust		10					
	Respirable fraction		5					
TEPP	107–49–3		0.05					X
Terphenyls	26140–60–3					0.5	5	
1,1,1,2-Tetrachloro-2,2-difluoroethane	76–11–9	500	4170					
1,1,2,2-Tetrachloro 1,2-difluoroethane	76–12–0	500	4170					
1,1,2,2-Tetrachloro-ethane	79–34–5	1	7					X
Tetrachoro-ethylene; see Perchloro-ethylene	127–18–4.							
Tetrachloro-methane; see Carbon tetrachloride	56–23–5.							
Tetrachloro-naphthalene	1335–88–2		2					X
Tetraethyl lead (as Pb)	78–00–2		0.075					X
Tetrahydrofuran	109–99–9	200	590	250	735			
Tetramethyl lead (as Pb)	75–74–1		0.075					X
Tetramethyl succinonitrile	3333–52–6	0.5	3					X
Tetranitro-methane	509–14–8	1	8					
Tetrasodium pyrophosphate	7722–88–5		5					
Tetryl (2,4,6-Trinitro-phenyl-methyl-nitramine)	479–45–8		0.1					X
Thallium, soluble compounds (as Tl)	7440–28–0		0.1					X
4,4′-Thiobis (6-tert-Butyl-m-cresol)	96–69–5.							
	Total dust		10					
	Respirable fraction		5					
Thioglycolic acid	68–11–1	1	4					X
Thionyl chloride	7719–09–7					1	5	
Thiram	137–26–8		5					
Tin, inorganic compounds (except oxides) (as Sn)	7440–31–5		2					
Tin, organic compounds (as Sn)	7440–31–5		0.1					X
Tin oxide (as Sn)	7440–31–5		2					
Titanium dioxide	13463–67–7.							
	Total dust		10					
	Respirable fraction		5					
Toluene	108–88–3	100	375	150	560			
Toluene-2,4-diisocyanate (TDI)	584–84–9	0.005	0.04	0.02	0.15			
m-Toluidine	108–44–1	2	9					X
o-Toluidine	95–53–4	5	22					X
p-Toluidine	106–49–0	2	9					X
Toxaphene; see Chlorinated camphene	8001–35–2.							
Tremolite; see Silicates	N/A.							
Tributyl phosphate	126–73–8	0.2	2.5					
Trichloroacetic acid	76–03–9	1	7					
1,2,4-Trichloro-benzene	120–82–1					5	40	
1,1,1-Trichloroethane; see Methyl chloroform	71–55–6.							
1,1,2-Trichloroethane	79–00–5	10	45					X
Trichloro-ethylene	79–01–6	50	270	200	1080			
Trichloro-methane; see Chloroform	67–66–3.							
Trichloro-naphthalene	1321–65–9		5					X
1,2,3-Trichloropropane	96–18–4	10	60					
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	1000	7600	1250	9500			
Triethylamine	121–44–8	10	40	15	60			
Trifluorobromo-methane	75–63–8	1000	6100					
Trimellitic anhydride	552–30–7	0.005	0.04					
Trimethylamine	75–50–3	10	24	15	36			
Trimethyl benzene	25551–13–7	25	125					
Trimethyl phosphite	121–45–9	2	10					
2,4,6-Trinitrophenyl; see Picric acid	88–89–1.							
2,4,6-Trinitrophenylmethyl nitramine; see Tetryl	479–45–8.							
2,4,6-Trinitrotoluene (TNT)	118–96–1		0.5					X
Triorthocresyl phosphate	78–30–8		0.1					X
Triphenyl amine	603–34–9		5					
Triphenyl phosphate	115–86–6		3					
Tungsten (as W)	7440–33–7.							
	Insoluble compounds.		5		10			
	Soluble compounds.		1		3			
Turpentine	8006–64–2	100	560					
Uranium (as U)	7440–61–1.							
	Soluble compounds.		0.05					
	Insoluble compounds.		0.2		0.6			
n-Valeraldehyde	110–62–3	50	175					
Vanadium	1314–62–1.							
	Respirable Dust as V205.		0.05					
	Fume (as V205)		0.05					
Vegetable Oil Mist	N/A.							
	Total dust		15					

TABLE Z–1–A—LIMITS FOR AIR CONTAMINANTS—Continued

[From the vacated 1989 final rule—*Ex. #149*]

Substance	Cas No.	TWA		STEL		Ceiling		Skin Designation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
	Respirable fraction		5					
Vinyl acetate	108–05–4	10	30	20	60			
Vinyl benzene; see Styrene	100–42–5.							
Vinyl bromide	593–60–2	5	20					
Vinyl chloride; see 1910.1017	75–01–4.							
Vinyl cyanide; see Acrylonitrile	107–13–1.							
Vinyl cyclohexene dioxide	106–87–6	10	60					X
Vinylidene chloride (1,1-Dichloro-ethylene)	75–35–4	1	4					
Vinyl toluene	25013–15–4	100	480					
VM & P Naphtha	8032–32–4	300	1350	400	1800			
Warfarin	81–81–2		0.1					
Welding fumes (total particulate)*	N/A		5					
Wood dust, all soft and hard woods, except Western red cedar.	N/A		5		10			
Wood dust, western red cedar	N/A		2.5					
Xylenes (o-, m-, p-isomers)	1330–20–7	100	435	150	655			
m-Xylene alpha, alpha' diamine	1477–55–0						0.1	X
Xylidine	1300–73–8	2	10					X
Yttrium	7440–65–5		1					
Zinc chloride fume	7646–85–7		1		2			
Zinc chromate (as CrO3); see 910.1026. See Table Z–2 for the exposure limit for any operations or sectors where the exposure limit in 1910.1026 is stayed or are otherwise not in effect.	Varies with compound.							
Zinc oxide fume	1314–13–2		5		10			
Zinc oxide	1314–13–2.							
	Total dust		10					
	Respirable fraction		5					
Zinc stearate	557–05–1.							
	Total dust		10					
	Respirable fraction		5					
Zirconium compounds (as Zr)	7440–67–7		5		10			

[1](30 minutes).

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 50

Federal Reserve System

12 CFR Part 249

Federal Deposit Insurance Corporation

12 CFR Part 329

Liquidity Coverage Ratio: Liquidity Risk Measurement Standards; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 50

[Docket ID OCC–2013–0016]

RIN 1557–AD74

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Regulation WW; Docket No. R–1466]

RIN 7100–AE03

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AE04

Liquidity Coverage Ratio: Liquidity Risk Measurement Standards

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are adopting a final rule that implements a quantitative liquidity requirement consistent with the liquidity coverage ratio standard established by the Basel Committee on Banking Supervision (BCBS). The requirement is designed to promote the short-term resilience of the liquidity risk profile of large and internationally active banking organizations, thereby improving the banking sector's ability to absorb shocks arising from financial and economic stress, and to further improve the measurement and management of liquidity risk. The final rule establishes a quantitative minimum liquidity coverage ratio that requires a company subject to the rule to maintain an amount of high-quality liquid assets (the numerator of the ratio) that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator of the ratio). The final rule applies to large and internationally active banking organizations, generally, bank holding companies, certain savings and loan holding companies, and depository institutions with $250 billion or more in total assets or $10 billion or more in on-balance sheet foreign exposure and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. The final rule focuses on these financial institutions because of their complexity, funding profiles, and potential risk to the financial system. Therefore, the agencies do not intend to apply the final rule to community banks. In addition, the Board is separately adopting a modified minimum liquidity coverage ratio requirement for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have $50 billion or more in total consolidated assets but that are not internationally active. The final rule is effective January 1, 2015, with transition periods for compliance with the requirements of the rule.

DATES: *Effective Date:* January 1, 2015. Comments must be submitted on the Paperwork Reduction Act burden estimates only by December 9, 2014.

ADDRESSES: You may submit comments on the Paperwork Reduction Act burden estimates only. Comments should be directed to:

OCC: 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: 1557–0323, 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.

For further information or to obtain a copy of the collection please contact Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are 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.

Board: You may submit comments, identified by Docket R–1466, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: regs.comments@federalreserve.gov.*
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

A copy of the PRA OMB submission, including any reporting forms and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. Also, these documents may be requested from the agency clearance officer, whose name appears below.

For further information contact the Federal Reserve Board Acting Clearance Officer, John Schmidt, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: You may submit written comments by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: Comments@FDIC.gov.* Include ''Liquidity Coverage Ratio Final Rule'' on the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, Executive Secretary Section, NYA–5046, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street) on

business days between 7:00 a.m. and 5:00 p.m.

• *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/* including any personal information provided.

For further information or to request a copy of the collection please contact Gary Kuiper, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT:

OCC: Kerri Corn, Director, (202) 649–6398, or James Weinberger, Technical Expert, (202) 649–5213, Credit and Market Risk Division; Linda M. Jennings, National Bank Examiner, (980) 387–0619; Patrick T. Tierney, Assistant Director, or Tiffany Eng, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597; or Tena Alexander, Senior Counsel, or David Stankiewicz, Senior Attorney, Securities and Corporate Practices Division, (202) 649–5510; Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance Horsley, Assistant Director, (202) 452–5239, David Emmel, Manager, (202) 912–4612, Adam S. Trost, Senior Supervisory Financial Analyst, (202) 452–3814, or J. Kevin Littler, Senior Supervisory Financial Analyst, (202) 475–6677, Credit, Market and Liquidity Risk Policy, Division of Banking Supervision and Regulation; April C. Snyder, Senior Counsel, (202) 452–3099, Dafina Stewart, Senior Attorney, (202) 452–3876, Jahad Atieh, Attorney, (202) 452–3900, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Kyle Hadley, Chief, Examination Support Section, (202) 898–6532; Eric Schatten, Capital Markets Policy Analyst, (202) 898–7063, Capital Markets Branch Division of Risk Management Supervision, (202) 898–6888; Gregory Feder, Counsel, (202) 898–8724, or Suzanne Dawley, Senior Attorney, (202) 898–6509, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC, 20429.

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I. Overview

A. Background and Summary of the Proposed Rule

On November 29, 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) invited comment on a proposed rule (proposed rule or proposal) to implement a liquidity coverage ratio (LCR) requirement that would be consistent with the international liquidity standards published by the Basel Committee on Banking Supervision (BCBS).[1] The proposed rule would have applied to nonbank financial companies designated by the Financial Stability Oversight Council (Council) for supervision by the Board that do not have substantial insurance activities (covered nonbank companies), large, internationally active banking organizations, and their consolidated subsidiary depository institutions with total assets of $10 billion or more (each, a covered company).[2] The Board also proposed to implement a modified version of the liquidity coverage ratio requirement (modified LCR) as an enhanced prudential standard for bank holding companies and savings and loan holding companies with $50 billion or more in total consolidated assets that are not internationally active and do not have substantial insurance activities (each, a modified LCR holding company).

The BCBS published the international liquidity standards in December 2010 as a part of the Basel III reform package[3] and revised the standards in January 2013 (as revised, the Basel III Revised Liquidity Framework).[4] The agencies are actively involved in the BCBS and its international efforts, including the development of the Basel III Revised Liquidity Framework.

To devise the Basel III Revised Liquidity Framework, the BCBS gathered supervisory data from multiple jurisdictions, including a substantial amount of data related to U.S. financial institutions, which was reflective of a variety of time periods and types of historical liquidity stresses. These historical stresses included both idiosyncratic and systemic stresses across a range of financial institutions. The BCBS determined the LCR parameters based on a combination of historical data analysis and supervisory judgment.

The proposed rule would have established a quantitative minimum LCR requirement that builds upon the liquidity coverage methodologies traditionally used by banking organizations to assess exposures to contingent liquidity events. The

[1] The BCBS is a committee of banking supervisory authorities that was established by the central bank governors of the G10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OCC, Board, and FDIC actively participate in BCBS and its international efforts. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.*

[2] 78 FR 71818 (November 29, 2013).

[3] BCBS, ''Basel III: International framework for liquidity risk measurement, standards and monitoring'' (December 2010), available at *http://www.bis.org/publ/bcbs188.pdf* (Basel III Liquidity Framework).

[4] BCBS, ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (January 2013), available at *http://www.bis.org/publ/bcbs238.htm.*

proposed rule was designed to complement existing supervisory guidance and the requirements of the Board's Regulation YY (12 CFR part 252) on internal liquidity stress testing and liquidity risk management that the Board issued, in consultation with the OCC and the FDIC, pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).[5] The proposed rule also would have established transition periods for conformance with the requirements.

The proposed LCR would have required a covered company to maintain an amount of unencumbered high-quality liquid assets (HQLA amount) sufficient to meet its total stressed net cash outflows over a prospective 30 calendar-day period, as calculated in accordance with the proposed rule. The proposed rule outlined certain categories of assets that would have qualified as high-quality liquid assets (HQLA) if they were unencumbered and able to be monetized during a period of stress. HQLA that are unencumbered and controlled by a covered company's liquidity risk management function would enhance the ability of a covered company to meet its liquidity needs during an acute short-term liquidity stress scenario. A covered company would have determined its total net cash outflow amount by applying the proposal's outflow and inflow rates, which reflected a standardized stress scenario, to the covered company's funding sources, obligations, and assets over a prospective 30 calendar-day period. The net cash outflow amount for modified LCR holding companies would have reflected a 21 calendar-day period. The proposed rule would have been generally consistent with the Basel III Revised Liquidity Framework; however, there were instances where the agencies believed supervisory or market conditions unique to the United States required the proposal to differ from the Basel III standard.

B. Summary of Comments on the Proposed Rule and Significant Comment Themes

Each of the agencies received over 100 comments on the proposal from U.S. and foreign firms, public officials (including state and local government officials and members of the U.S. Congress), public interest groups, private individuals, and other interested parties. In addition, agency staffs held a number of meetings with members of the public and obtained supplementary information from certain commenters. Summaries of these meetings are available on the agencies' public Web sites.[6]

Although many commenters generally supported the purpose of the proposed rule to create a standardized minimum liquidity requirement, most commenters either expressed concern regarding the proposal overall or criticized specific aspects of the proposed rule. The agencies received a number of comments regarding the differences between the proposed rule and the Basel III Revised Liquidity Framework, together with comments on the interaction of this proposal with other rulemakings issued by the agencies. Comments about differences between the proposed rule and the Basel III standard were mixed. Some commenters expressed support for the areas in which the proposed rule was more stringent than the Basel III Revised Liquidity Framework and others stated that having more conservative treatment for assessing the LCR could disadvantage the U.S. banking system. Commenters questioned whether the proposal should impose heightened standards compared to the Basel III Revised Liquidity Framework and requested that the final rule's calculation of the LCR conform to the Basel III standard in order to maintain consistency and comparability internationally. A commenter noted that the proposed rule would create a burden for those institutions required to comply with more than one liquidity standard throughout their global operations. Another commenter argued that the proposed rule's divergence from the Basel III Revised Liquidity Framework would make it more difficult to harmonize with global standards. Commenters also expressed concern about the interaction between the proposed rule and other proposed or recently finalized rules that affect a covered company's LCR, such as the agencies' supplementary leverage ratio[7] and the Commodity Futures Trading Commission's liquidity requirements for derivatives clearing organizations.[8]

Additionally, a few commenters expressed concerns about the overall impact of the requirements, citing the impact of the standard on covered companies' costs, competitiveness, and existing business practices, as well as the impact upon non-financial companies more broadly. As described in more detail below, the agencies have addressed these issues by reducing burdens where appropriate, while ensuring that the final rule serves the purpose of promoting the safety and soundness of covered companies. The agencies found that certain comments concerning the costs and benefits of the proposed rule to be relevant to their deliberations, and, on the basis of these and other considerations, made the changes discussed below.

The proposed rule would have required covered companies to comply with a minimum LCR of 80 percent beginning on January 1, 2015, 90 percent beginning on January 1, 2016, and 100 percent beginning on January 1, 2017, and thereafter. These transition periods were similar to, but shorter than, those set forth in the Basel III Revised Liquidity Framework, and were intended to preserve the strong liquidity positions many U.S. banking organizations have achieved since the recent financial crisis. The proposed rule also would have required covered companies to calculate their LCR daily, beginning on January 1, 2015. A number of commenters expressed concerns with the proposed transition periods as well as the operational difficulties of meeting the proposed requirement for daily calculation of the LCR. Additionally, some commenters expressed concerns regarding the scope of application of the proposed rule, with regard to both the application of the proposed rule to covered nonbank companies and the proposed rule's delineation between covered companies and modified LCR holding companies.

Commenters generally expressed a desire to see a wider range of asset classes included as HQLA or to have some asset classes and funding sources treated as having greater liquidity than proposed. The agencies received comments that highlighted the differences between the types of assets included as HQLA under the U.S. proposal and those that might be included under the Basel III Revised Liquidity Framework. For example, the agencies proposed excluding some asset classes from HQLA that may have qualified under the Basel III Revised Liquidity Framework given the agencies' concerns about their relative lack of liquidity. Many of these comments related to the exclusion in

[5] *See* Board, ''Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations,'' 79 FR 17240 (March 27, 2014) (Board's Regulation YY); OCC, Board, FDIC, Office of Thrift Supervision, and National Credit Union Administration, ''Interagency Policy Statement on Funding and Liquidity Risk Management,'' 75 FR 13656 (March 22, 2010) (Interagency Liquidity Policy Statement).

[6] *See http://www.regulations.gov/index.jsp#!docketDetail;D=OCC-2013-0016* (OCC); *http://www.fdic.gov/regulations/laws/federal/2013/2013_liquidity_coverage_ae04.html* (FDIC); *http://www.federalreserve.gov/newsevents/reform_systemic.htm* (Board).

[7] 79 FR 24528 (May 1, 2014).

[8] 76 FR 69334 (November 8, 2011).

the proposed rule of state and municipal securities from HQLA. Commenters expressed concern that the exclusion of municipal securities from HQLA could lead to higher funding costs for municipalities, which could affect local economies and infrastructure.

Likewise, the agencies' proposed method for determining a covered company's HQLA amount elicited many comments. A number of these comments focused on the treatment of deposits from public sector entities that are required by law to be secured by eligible collateral and would have been treated as secured funding transactions under the proposed rule. Commenters expressed concern that the treatment of secured deposits in the calculation of a covered company's HQLA amount would lead to distortions in the LCR calculation and to reduced acceptance of public deposits by covered companies.

The proposed rule would have required covered companies to hold an amount of HQLA to meet their greatest liquidity need within a prospective 30 calendar-day period rather than at the end of that period. By requiring a covered company to calculate its total net cash outflow amount using its peak cumulative net outflow day, the proposal would have taken into account potential maturity mismatches between a covered company's contractual outflows and inflows during the 30 calendar-day period. The agencies received many comments on the methodology for calculating the peak cumulative net cash outflow amount, specifically in regard to the treatment of non-maturity outflows. Some commenters felt that the approach had merits because it captured potential liquidity shortfalls within the 30 calendar-day period, whereas others argued that that it was overly conservative, unrealistic, and inconsistent with the Basel III Revised Liquidity Framework.

Generally, commenters expressed that the outflow rates used to determine total net cash outflows were too high with respect to specific outflow categories. Commenters also expressed concern that specific outflow rates were applied to overly narrow or overly broad categories of exposures in certain cases. Several commenters requested the agencies to clarify whether the outflow and inflow rates under the final rule are designed to reflect an idiosyncratic stress at a particular institution or general market distress. The agencies received a number of comments on the criteria for determining whether a deposit was an operational deposit and on the definitions of certain related terms. Commenters generally approved of the potential categorization of certain deposits as operational deposits but expressed concern that other deposits were excluded from the category. Similarly, some commenters expressed concern that the outflow rates assigned to committed facilities extended to special purpose entities (SPEs) did not differentiate between different types of SPEs.

Several commenters expressed concern that the proposed modified LCR would have required net cash outflows to be calculated over a 21 calendar-day stress period. Commenters argued that using a 21 calendar-day period would create significant operational burden as it is an atypical period that does not align well with their existing systems and processes. Commenters also expressed concerns regarding the transition periods and the daily calculation requirement applicable to modified LCR holding companies.

C. Overview of the Final Rule and Significant Changes From the Proposal

Consistent with the proposed rule, the final rule establishes a minimum LCR requirement applicable, on a consolidated basis, to large, internationally active banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, and to consolidated subsidiary depository institutions of these banking organizations with $10 billion or more in total consolidated assets.[9] Unlike the proposed rule, however, the final rule will not apply to covered nonbank companies or their consolidated subsidiary depository institutions. Instead, as discussed further below in section I.D, the Board will establish any LCR requirement for such companies by order or rule. The final rule does not apply to foreign banking organizations or U.S. intermediate holding companies that are required to be established under the Board's Regulation YY, other than those companies that are otherwise covered companies.[10]

As discussed in section V of this Supplementary Information section, and consistent with the proposal, the Board also is separately adopting a modified version of the LCR for bank holding companies and savings and loan holding companies without significant insurance operations (or, in the case of savings and loan holding companies, also without significant commercial operations) that, in each case, have $50 billion or more in total consolidated assets, but are not covered companies for the purposes of the final rule.[11]

The final rule requires a covered company to maintain an amount of HQLA meeting the criteria set forth in this final rule (the HQLA amount, which is the numerator of the ratio) that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator of the ratio). The agencies recognize that, under certain circumstances, it may be necessary for a covered company's LCR to fall briefly below 100 percent to fund unanticipated liquidity needs.[12] However, a LCR below 100 percent may also reflect a significant deficiency in a covered company's management of liquidity risk. Therefore, consistent with the proposed rule, the final rule establishes a framework for a flexible supervisory response when a covered company's LCR falls below 100 percent. Under the final rule, a covered company must notify the appropriate Federal banking agency on any business day that its LCR is less than 100 percent. In addition, if a covered company's LCR is below 100 percent for three consecutive business days, the covered company must submit to its appropriate Federal banking agency a plan for remediation of the shortfall.[13] These procedures, which are described in further detail in section III of this Supplementary Information section, are intended to enable supervisors to monitor and respond appropriately to the unique circumstances that give rise to a covered company's LCR shortfall.

The agencies emphasize that the LCR is a minimum requirement and organizations that pose more systemic risk to the U.S. banking system or whose liquidity stress testing indicates a need

[9] Like the proposed rule, the final rule does not apply to institutions that have opted to use the advanced approaches risk-based capital rule. *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC).

[10] 12 CFR 252.153.

[11] Total consolidated assets for the purposes of the proposed rule would have been as reported on a covered company's most recent year-end Consolidated Reports of Condition and Income or Consolidated Financial Statements for Bank Holding Companies, Federal Reserve Form FR Y–9C. Foreign exposure data would be calculated in accordance with the Federal Financial Institutions Examination Council 009 Country Exposure Report. The agencies have retained these standards in the final rule as proposed.

[12] During the transition period, for covered companies, the agencies will consider a shortfall to be a liquidity coverage ratio lower than 80 percent in 2015 and lower than 90 percent in 2016.

[13] During the period when a covered company is required to calculate its LCR monthly, the covered company must promptly consult with the appropriate Federal banking agency to determine whether a plan would be required if the covered company's LCR is below the minimum requirement for any calculation date that is the last business day of the calendar month.

for higher liquidity reserves may need to take additional steps beyond meeting the minimum ratio in order to meet supervisory expectations. The LCR will complement existing supervisory guidance and the more qualitative and internal stress test requirements in the Board's Regulation YY.

Under the final rule, certain categories of assets may qualify as eligible HQLA and may contribute to the HQLA amount if they are unencumbered by liens and other restrictions on transfer and can therefore be converted quickly into cash without reasonably expecting to incur losses in excess of the applicable LCR haircuts during a stress period. Consistent with the proposal, the final rule establishes three categories of HQLA: level 1 liquid assets, level 2A liquid assets and level 2B liquid assets. The fair value, as determined under U.S. generally accepted accounting principles (GAAP), of a covered company's level 2A liquid assets and level 2B liquid assets are subject to haircuts of 15 percent and 50 percent respectively. The amount of level 2 liquid assets (that is, level 2A and level 2B liquid assets) may not comprise more than 40 percent of the covered company's HQLA amount. The amount of level 2B liquid assets may not comprise more than 15 percent of the covered company's HQLA amount.

Certain adjustments have been made to the final rule to address concerns raised by a number of commenters with respect to assets that would have qualified as HQLA. With respect to the inclusion of corporate debt securities as HQLA, the agencies have removed the requirement that corporate debt securities have to be publicly traded on a national securities exchange in order to qualify for inclusion as HQLA. Additionally, in response to requests by several commenters, the agencies have expanded the pool of publicly traded common equity shares that may be included as HQLA. Consistent with the proposed rule, the final rule does not include state and municipal securities as HQLA. As discussed fully in section II.B.2 of this Supplementary Information section, the liquidity characteristics of municipal securities range significantly and many of these assets do not exhibit the characteristics for inclusion as HQLA. With respect to the calculation of the HQLA amount and in response to comments received, the agencies are removing collateralized deposits, as defined in the final rule, from the calculation of amounts exceeding the composition caps, as described in section II.B.5, below.

A covered company's total net cash outflow amount is determined under the final rule by applying outflow and inflow rates, which reflect certain standardized stressed assumptions, against the balances of a covered company's funding sources, obligations, transactions, and assets over a prospective 30 calendar-day period. Inflows that can be included to offset outflows are limited to 75 percent of outflows to ensure that covered companies are maintaining sufficient on-balance sheet liquidity and are not overly reliant on inflows, which may not materialize in a period of stress.

As further described in section II.C of this Supplementary Information section and discussed in the proposal, the measure of net cash outflow and the outflow and inflow rates used in its determination are meant to reflect aspects of historical stress events including the recent financial crisis. Consistent with the Basel III Revised Liquidity Framework and the agencies' evaluation of relevant supervisory information, these net outflow components of the final rule take into account the potential impact of idiosyncratic and market-wide shocks, including those that would result in: (1) A partial loss of unsecured wholesale funding capacity; (2) a partial loss of secured, short-term financing with certain collateral and counterparties; (3) losses from derivative positions and the collateral supporting those positions; (4) unscheduled draws on committed credit and liquidity facilities that a covered company has provided to its customers; (5) the potential need for a covered company to buy back debt or to honor non-contractual obligations in order to mitigate reputational and other risks; (6) a partial loss of retail deposits and brokered deposits from retail customers; and (7) other shocks that affect outflows linked to structured financing transactions, mortgages, central bank borrowings, and customer short positions.

The agencies revised certain elements of the calculation of net cash outflows in the final rule, which are also described in section II.C below. The methodology for determining the peak cumulative net outflow has been amended to address certain comments relating to the treatment in the proposed rule of non-maturity outflows. The revised methodology focuses more explicitly on the maturity mismatch of contractual outflows and inflows as well as overnight funding from financial institutions.

The agencies have also changed the definition of operational services and the list of operational requirements. In making these changes, the agencies have addressed certain issues raised by commenters relating to the types of operational services that would be covered by the rule and the requirement to exclude certain deposits from being classified as operational. Additionally, the agencies have limited the outflow rate that must be applied to maturing secured funding transactions such that the outflow rate should generally not be greater than the outflow rate for an unsecured funding transaction with the same wholesale counterparty. The agencies have also revised the outflow rates for committed credit and liquidity facilities to SPEs so that only SPEs that rely on the market for funding receive the 100 percent outflow rate. This change should address commenters' concerns about inappropriate outflow rates for SPEs that are wholly funded by long-term bank loans and similar facilities and do not have the same liquidity risk characteristics as those that rely on the market for funding.

Consistent with the Basel III Revised Liquidity Framework, the final rule is effective as of January 1, 2015, subject to the transition periods in the final rule. Under the final rule, covered companies will be required to maintain a minimum LCR of 80 percent beginning January 1, 2015. From January 1, 2016, through December 31, 2016, the minimum LCR would be 90 percent. Beginning on January 1, 2017, and thereafter, all covered companies would be required to maintain an LCR of 100 percent. Transition periods are described fully in section IV of this Supplementary Information section.

The agencies made changes to the final rule's transition periods to address commenters' concerns that the proposed transition periods would not have provided covered companies enough time to establish the required infrastructure to ensure compliance with the proposed rule's requirements, including the proposed daily calculation requirement. These changes reflect commenters' concern regarding the operational challenges of implementing the daily calculation requirement, while still requiring firms to maintain sufficient HQLA to comply with the rule. Although the agencies will still require compliance with the final rule starting January 1, 2015, the agencies have delayed implementation of the daily calculation requirement. With respect to the daily calculation requirements, covered companies that are depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody, and any depository institution that is a consolidated subsidiary of such depository institution holding

companies that has total consolidated assets equal to $10 billion or more, are required to calculate their LCR on the last business day of the calendar month from January 1, 2015, to June 30, 2015, and beginning on July 1, 2015, must calculate their LCR on each business day. All other covered companies are required to calculate the LCR on the last business day of the calendar month from January 1, 2015, to June 30, 2016, and beginning on July 1, 2016, and thereafter, must calculate their LCR each business day.

As detailed in section V of this Supplementary Information section, in response to comments, the Board is also adjusting the transition periods and calculation frequency requirements for the modified LCR in the final rule. Modified LCR holding companies will not be subject to the final rule in 2015 and will calculate their LCR monthly starting January 1, 2016. Furthermore, the Board is increasing the stress period over which modified LCR net cash outflows are to be calculated from 21 calendar days to 30 calendar days and is amending the methodology required to calculate total net cash outflows under the modified LCR.

The Basel III Revised Liquidity Framework also establishes liquidity risk monitoring mechanisms to strengthen and promote global consistency in liquidity risk supervision. These mechanisms include information on contractual maturity mismatch, concentration of funding, available unencumbered assets, LCR reporting by significant currency, and market-related monitoring tools. At this time, the agencies are not implementing these monitoring mechanisms as regulatory standards or requirements. However, the agencies intend to obtain information from covered companies to enable the monitoring of liquidity risk exposure through reporting forms and information the agencies collect through other supervisory processes.

The final rule will provide enhanced information about the short-term liquidity profile of a covered company to managers, supervisors, and market participants. With this information, the covered company's management and supervisors should be better able to assess the company's ability to meet its projected liquidity needs during periods of liquidity stress; take appropriate actions to address liquidity needs; and, in situations of failure, implement an orderly resolution of the covered company. The agencies anticipate that they will separately seek comment upon proposed regulatory reporting requirements and instructions pertaining to a covered company's disclosure of the final rule's LCR in a subsequent notice under the Paperwork Reduction Act.

The final rule is consistent with the Basel III Revised Liquidity Framework, with some modifications to reflect the unique characteristics and risks of the U.S. market and U.S. regulatory frameworks. The agencies believe that these modifications support the goal of enhancing the short-term liquidity resiliency of covered companies and do not unduly diminish the consistency of the LCR on an international basis.

The agencies note that the BCBS is in the process of reviewing the Net Stable Funding Ratio (NSFR) that was included in the Basel III Liquidity Framework when it was first published in 2010. The NSFR is a standard focused on a longer time horizon that is intended to limit overreliance on short-term wholesale funding, to encourage better assessment of funding risks across all on- and off-balance sheet items, and to promote funding stability. The agencies anticipate a separate rulemaking regarding the NSFR once the BCBS adopts a final international version of the NSFR.

D. Scope of Application of the Final Rule

1. Covered Companies

Consistent with the Basel III Revised Liquidity Framework, the proposed rule would have established a minimum LCR applicable to all U.S. internationally active banking organizations, and their consolidated subsidiary depository institutions with total consolidated assets of $10 billion or more. In implementing internationally agreed upon standards in the United States, such as the capital framework developed by the BCBS, the agencies have historically applied a consistent threshold for determining whether a U.S. banking organization should be subject to such standards. The threshold, generally banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, is based on the size, complexity, risk profile, and interconnectedness of such organizations.[14]

A number of commenters asserted that the agencies' definition of internationally active would apply the quantitative minimum liquidity standard to an inappropriate set of companies. Several commenters argued that the internationally active thresholds would capture several large banking organizations even though the business models, operations, and funding profiles of these organizations have some characteristics that are similar to those bank holding companies that would be subject to the modified LCR proposed by the Board. Commenters stated that it would be more appropriate for all ''regional banks'' to be subject to the modified LCR as described under section V of the Supplementary Information section to the proposed rule. One commenter requested that the agencies not apply the standard based on the foreign exposure threshold, but use a threshold that takes into account changes in industry structure, considerations of competitive equality across jurisdictions, and differences in capital and liquidity regulation.

The Board also proposed to apply the proposed rule to covered nonbank companies as an enhanced liquidity standard pursuant to its authority under section 165 of the Dodd-Frank Act. The Board believed those organizations should maintain appropriate liquidity commensurate with their contribution to overall systemic risk in the United States and believed the proposal properly reflected such firms' funding profiles. One commenter stated that the proposed rule would adversely impact covered nonbank companies that own banks to facilitate customer transactions, and would create a mismatch of regulations that will hamper the ability of such businesses to operate. This commenter further noted that because of their different business models, covered nonbank companies are likely to engage in significantly less deposit-taking than large bank holding companies, which generally translates into less access to one of a few sources of level 1 liquid assets, Federal Reserve Bank balances. The commenter requested specific tailoring of the LCR or a delay in the implementation of the final rule for covered nonbank companies.

One commenter noted that although the proposed rule would have exempted depository institution holding companies with substantial insurance operations and savings and loan holding companies with substantial commercial operations, it would not have exempted depository holding companies with significant retail securities brokerage operations, which the commenter argued also have liquidity risk profiles that should not be covered by the

[14] *See e.g.,* OCC, Board, and FDIC, ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule,'' 78 FR 62018 (October 11, 2013).

liquidity requirements. Another commenter suggested that the agencies consider waiving the LCR requirement for certain covered companies, subject to satisfactory compliance with other metrics such as capital ratios, stress tests, or the NSFR.

The final rule seeks to calibrate the net cash outflow requirement for a covered company based on the composition of the organization's balance sheet, off-balance sheet commitments, business activities, and funding profile. Sources of funding that are considered less likely to be affected at a time of a liquidity stress are assigned significantly lower 30 calendar-day outflow rates. Conversely, the types of funding that are historically vulnerable to liquidity stress events are assigned higher outflow rates. Consistent with the Basel III Revised Liquidity Framework, in the proposed rule, the agencies expected that covered companies with less complex balance sheets and less risky funding profiles would have lower net cash outflows and would therefore require a lower amount of HQLA to meet the proposed rule's minimum liquidity standard. For example, under the proposed rule, covered companies that rely to a greater extent on retail deposits that are fully covered by deposit insurance and less on short-term unsecured wholesale funding would have had a lower total net cash outflow amount when compared to a banking organization that was heavily reliant on wholesale funding.

Furthermore, systemic risks that could impair the safety of covered companies were also reflected in the minimum requirement, including provisions to address wrong-way risk, shocks to asset prices, and other industry-wide risks that materialized in the 2007–2009 financial crisis. Under the proposed rule, covered companies that have greater interconnectedness to financial counterparties and have liquidity risks related to risky capital market instruments may have larger net cash outflows when compared to covered companies that do not have such dependencies. Large consolidated banking organizations engage in a diverse range of business activities and have a liquidity risk profile commensurate with the breadth of these activities. The scope and volume of these organizations' financial transactions lead to interconnectedness between banking organizations and between the banking sector and other financial and non-financial market participants.

The agencies believe that the proposed scope of application thresholds were properly calibrated to capture companies with the most significant liquidity risk profiles. The agencies believe that covered depository institution holding companies with total consolidated assets of $250 billion or more have a riskier liquidity profile relative to smaller firms based on their breadth of activities and interconnectedness with the financial sector. Likewise, the foreign exposure threshold identifies firms with a significant international presence, which may also be subject to greater liquidity risks for the same reasons. In finalizing this rule, the agencies are promoting the short-term liquidity resiliency of institutions engaged in a broad variety of activities, transactions, and forms of financial interconnectedness. For the reasons discussed above, the agencies believe that the consistent scope of application used across several regulations is appropriate for the final rule.[15]

The agencies believe that providing a waiver to covered companies that meet alternate metrics would be contrary to the express purpose of the proposed rule to provide a standardized quantitative liquidity metric for covered companies. Moreover, with respect to commenters' requests to exclude certain covered companies with large retail securities brokerage and other non-depository operations from the scope of the final rule, the agencies believe that such companies have heightened liquidity risk profiles due to the range and volume of financial transactions entered into by such organizations and that the LCR is appropriately calibrated to reflect those business models.

The proposed rule exempted depository institution holdings companies and nonbank financial companies designated by the Council for Board supervision with large insurance operations or savings and loan holding companies with large commercial operations, because their business models differ significantly from covered companies. The Board recognizes that the companies designated by the Council may have a range of businesses, structures, and activities, that the types of risks to financial stability posed by nonbank financial companies will likely vary, and that the enhanced prudential standards applicable to bank holding companies may not be appropriate, in whole or in part, for all nonbank financial companies. Accordingly, the Board is not applying the LCR requirement to nonbank financial companies supervised by the Board through this rulemaking. Instead, following designation of a nonbank financial company for supervision by the Board, the Board intends to assess the business model, capital structure, and risk profile of the designated company to determine how the proposed enhanced prudential standards should apply, and if appropriate, would tailor application of the LCR by order or rule to that nonbank financial company or to a category of nonbank financial companies. The Board will ensure that nonbank financial companies receive notice and opportunity to comment prior to determination of the applicability of any LCR requirement.

Upon the issuance of an order or rule that causes a nonbank financial company to become a covered nonbank company subject to the LCR requirement, any state nonmember bank or state savings association with $10 billion or more in total consolidated assets that is a consolidated subsidiary of such covered nonbank company also would be subject to the final rule. When a nonbank financial company parent of a national bank or Federal savings association becomes subject to the LCR requirement by order or rule, the OCC will apply its reservation of authority under § __.1(b)(1)(iv) of the final rule, including applying the notice and response procedures described in § __.1(b)(5) of the final rule, to determine if application of the LCR requirement is appropriate for the national bank or Federal savings association in light of its asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

As in the proposed rule, the final rule does not apply to a bridge financial company or a subsidiary of a bridge financial company, a new depository institution or a bridge depository institution, as those terms are used in the resolution context.[16] The agencies believe that requiring the FDIC to maintain a minimum LCR at these entities would inappropriately constrain the FDIC's ability to resolve a depository institution or its affiliated companies in an orderly manner.[17]

[15] *Id.*

[16] *See* 12 U.S.C. 1813(i); 5381(a)(3).

[17] Pursuant to the International Banking Act (IBA), 12 U.S.C. 3102(b), and OCC regulation, 12 CFR 28.13(a)(1), the operations of a Federal branch or agency regulated and supervised by the OCC are subject to the same rights and responsibilities as a national bank operating at the same location. Thus, as a general matter, Federal branches and agencies are subject to the same laws and regulations as national banks. The IBA and the OCC regulation state, however, that this general standard does not apply when the IBA or other applicable law or regulations provide other specific standards for

A company will remain subject to this final rule until its appropriate Federal banking agency determines in writing that application of the rule to the company is not appropriate. Moreover, nothing in the final rule limits the authority of the agencies under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

As proposed, the agencies are reserving the authority to apply the final rule to a bank holding company, savings and loan holding company, or depository institution that does not meet the asset thresholds described above if it is determined that the application of the LCR would be appropriate in light of a company's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered companies, or risk to the financial system. The agencies also are reserving the authority to require a covered company to hold an amount of HQLA greater than otherwise required under the final rule, or to take any other measure to improve the covered company's liquidity risk profile, if the appropriate Federal banking agency determines that the covered company's liquidity requirements as calculated under the final rule are not commensurate with its liquidity risks. In making such determinations, the agencies will apply the notice and response procedures as set forth in their respective regulations.

2. Covered Depository Institution Subsidiaries

The proposed rule would have applied the LCR requirements to depository institutions that are the consolidated subsidiaries of covered companies and have $10 billion or more in total consolidated assets. Several commenters argued that the agencies should not apply a separate LCR requirement to subsidiary depository institutions of covered companies. Another commenter noted that foreign banking organizations would be subject to separate liquidity requirements for the entire organization, for any U.S. intermediate holding company that the foreign banking organization would be required to form under the Board's Regulation YY, and for depository institution subsidiaries that would be subject to the proposed rule, which, the commenter asserted, could result in unnecessarily duplicative holdings of liquid assets within the organization. In addition, several commenters argued that the separate LCR requirement for depository institution subsidiaries would result in excess liquidity being trapped at the covered subsidiaries, especially if the final rule capped the inflows from affiliated entities at 75 percent of their outflows. To alleviate this burden, one commenter requested that the final rule permit greater reliance on support by the top-tier holding company.

One commenter argued that excess liquidity at the holding company should be considered when calculating the LCR for the subsidiary in order to recognize the requirement that a bank holding company serve as a source of strength for its subsidiary depository institutions. The commenter also argued that requiring subsidiary depository institutions to calculate the LCR does not recognize the relationship between consolidated depository institutions that are subsidiaries of the same holding company and requested that the rule permit a depository institution to count any excess HQLA held by an affiliated depository institution, consistent with the sister bank exemption in section 23A of the Federal Reserve Act.[18]

One commenter argued that the rule should not require less complex banking organizations to calculate the LCR for consolidated subsidiary depository institutions with total consolidated assets of $10 billion or more. Another commenter expressed concern that although subsidiary depository institutions with total consolidated assets between $1 billion and $10 billion would not be required to comply with the requirements of the proposed rule, agency examination staff would pressure such subsidiary depository institutions to conform to the requirements of the final rule. A few commenters requested that the agencies clarify that these subsidiary depository institutions would not be required by agency examination staff to conform to the rule.

In promoting short-term, asset-based liquidity resiliency at covered companies, the agencies are seeking to limit the consequences of a potential liquidity stress event on the covered company and on the broader financial system in a manner that does not rely on potential government support. Large depository institution subsidiaries play a significant role in a covered company's funding structure, and in the operation of the payments system. These large subsidiaries generally also have access to deposit insurance coverage. Accordingly, the agencies believe that the application of the LCR requirement to these large depository institution subsidiaries is appropriate.

To reduce the potential systemic impact of a liquidity stress event at such large depository institution subsidiaries, the agencies believe that such entities should have a sufficient amount of HQLA to meet their own net cash outflows and should not be overly reliant on inflows from their parents or affiliates. Accordingly, the agencies do not believe that the separate LCR requirement for certain depository institution subsidiaries is duplicative of the requirement at the consolidated holding company level, and the agencies have adopted this provision of the final rule as proposed.

The Board is not applying the requirements of the final rule to foreign banking organizations and intermediate holding companies required to be formed under the Board's Regulation YY that are not otherwise covered companies at this time. The Board anticipates implementing an LCR-based standard through a future separate rulemaking for the U.S. operations of some or all foreign banking organizations with $50 billion or more in combined U.S. assets.

3. Companies That Become Subject to the LCR Requirements

The agencies have added § __.1(b)(2) to address the final rule's applicability to companies that become subject to the LCR requirements before and after September 30, 2014. Companies that are subject to the minimum liquidity standard under § __.1(b)(1) as of September 30, 2014 must comply with the rule beginning January 1, 2015, subject to the transition periods provided in subpart F of the final rule. A company that meets the thresholds for applicability after September 30, 2014, based on an applicable regulatory year-end report under § __.1(b)(1)(i) through (b)(1)(iii) must comply with the final rule beginning on April 1 of the following year.

The final rule provides newly covered companies with a transition period for the daily calculation requirement, recognizing that a daily calculation requirement could impose significant operational and technology demands.

Federal branches or agencies, or when the OCC determines that the general standard should not apply. This final rule would not apply to Federal branches and agencies of foreign banks operating in the United States. At this time, these entities have assets that are substantially below the proposed $250 billion asset threshold for applying the proposed liquidity standard to an internationally active banking organization. As part of its supervisory program for Federal branches and agencies of foreign banks, the OCC reviews liquidity risks and takes appropriate action to limit such risks in those entities.

[18] 12 U.S.C. 371c.

Specifically, a newly covered company must calculate its LCR monthly from April 1 to December 1 of its first year of compliance. Beginning on January 1 of the following year, the covered company must calculate its LCR daily.

For example, a company that meets the thresholds for applicability under § __.1(b)(1)(i) through (b)(1)(iii) based on its regulatory report filed for fiscal year 2017 must comply with the final rule requirements beginning on April 1, 2018. From April 1, 2018 to December 31, 2018, the final rule requires the covered company to calculate its LCR monthly. Beginning January 1, 2019, and thereafter, the covered company must calculate its LCR daily.

When a covered company becomes subject to the final rule after September 30, 2014, as a result of an agency determination under § __.1(b)(1)(iv) that the LCR requirement is appropriate in light of the covered company's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system, the company must comply with the final rule requirements according to a transition period specified by the agency.

II. Minimum Liquidity Coverage Ratio

A. The LCR Calculation and Maintenance Requirement

As described above, under the proposed rule, a covered company would have been required to maintain an HQLA amount that was no less than 100 percent of its total net cash outflows.

1. A Liquidity Coverage Requirement

One commenter argued that the proposed rule's requirements would reduce incentives to maintain diversified liquid asset portfolios and other funding sources, which would result in the loss of diversification in banking organizations' sources of funding and liquid asset composition. Another commenter asserted that restoring and strengthening the authorities of the Federal Reserve as the lender of last resort would be a more effective and efficient alternative to bolstering a covered company's liquidity reserves. One commenter stated that the LCR requirement would introduce additional system complexities without taking into account the benefits of long-term funding stability afforded by the NSFR.

The agencies believe that the most recent financial crisis demonstrated that large, internationally active banking organizations were exposed to substantial wholesale market funding risks, as well as contingent liquidity risks, that were not well mitigated by the then-prevailing liquidity risk management practices and liquidity portfolio compositions. For a number of large financial institutions, this led to failure, bankruptcy, restructuring, merger, or only maintaining operations with financial support from the Federal government. The agencies believe that covered companies should not overly rely on wholesale market funding that may be elusive in a time of stress, not rely on expectations of government support, and not rely on asset classes that have a significant liquidity discount if sold during a period of stress. The agencies do not believe that the final rule's minimum standard will constrain the diversity of a covered company's funding sources or unduly restrict the types of assets that a covered company may hold for general liquidity risk purposes. Covered companies are expected to maintain appropriate levels of liquidity without reliance on central banks acting in the capacity of lenders of last resort. With respect to the NSFR, the agencies continue to engage in and support the ongoing development of the ratio as an international standard, and anticipate the standard will be implemented in the United States at the appropriate time. In the meantime, the agencies expect covered companies to maintain appropriate stable structural funding profiles.

For these reasons, the overall structure of the LCR requirement is being adopted as proposed. Under the final rule, a covered company is required to maintain an HQLA amount that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period, in accordance with the calculation requirements for the HQLA amount and total net cash outflows, as discussed below.

2. The Liquidity Coverage Ratio Stress Period

The proposed rule would have required covered companies to calculate the LCR based on a 30 calendar-day stress period. Some commenters requested that the liquidity coverage ratio calculation instead be based on a calendar-month stress period. Another commenter noted that supervisors should be attentive to the possibility that excess liquidity demands can build up just outside the 30 calendar-day window.

Consistent with the Basel III Revised Liquidity Framework, the final rule uses a standardized 30 calendar-day stress period. The LCR is intended to facilitate comparisons across covered companies and to provide consistent information about historical trends. The agencies are retaining the prospective 30 calendar-day period because a calendar month stress period is not compatible with the daily calculation requirement, which requires a forward-looking calculation of liquidity stress for the 30 calendar days following the calculation date, and a 30 calendar-day stress period would provide for an accurate historical comparison. Furthermore, while the LCR would establish one scenario for stress testing, the agencies expect companies subject to the final rule to maintain robust stress testing frameworks that incorporate additional scenarios that are more tailored to the risks within their companies.[19] The agencies also expect covered companies to appropriately monitor and manage liquidity risk both within and beyond the 30-day stress period. Accordingly, the agencies are adopting this aspect of the final rule as proposed.

3. The Calculation Date, Daily Calculation Requirement, and Comments on LCR Reporting

Under the proposed rule, a covered company would have been required to calculate its LCR on each business day as of that date (the calculation date), with the horizon for each calculation ending 30 days from the calculation date. The proposed rule would have required a covered company to calculate its LCR on each business day as of a set time selected by the covered company prior to the effective date of the rule and communicated in writing to its appropriate Federal banking agency.

The proposed rule did not include a proposal to establish a reporting requirement for the LCR. The agencies anticipate separately seeking comment on proposed regulatory reporting requirements and instructions pertaining to a covered company's disclosure of the final rule's LCR in a subsequent notice under the Paperwork Reduction Act.

A number of commenters stated that the daily calculation requirement imposes significant operational burdens on covered companies. These include costs associated with building and testing new information technology systems, developing governance and

[19] Covered companies that are subject to the Board's Regulation YY are required to conduct internal liquidity stress tests that include a minimum of four periods over which the relevant stressed projections extend: Overnight, 30-day, 90-day, and one-year time horizons, and additional time horizons as appropriate. 12 CFR 253.35 (domestic bank holding companies); (12 CFR 235.175 (foreign banking organizations).

internal control frameworks for the LCR, and collecting and reviewing the requisite data to comply with the requirements of the proposed rule. Commenters argued that developing systems is challenging, expensive, and time consuming for those organizations that do not currently have such reporting capabilities in place. For example, one commenter said that capturing the data to perform the LCR calculation on a daily basis would require banking organizations to implement entirely new and custom data systems and mechanics. Several commenters expressed concerns generally that the additional system development costs would outweigh the benefits from the LCR to supervisors.

In addition to the costs of developing new systems, commenters also raised concerns about the time frame between the adoption of the final rule and the effective date of the proposed rule and indicated that there would be insufficient time in which to develop operational capabilities to comply with the proposed rule. For instance, one commenter argued that because the rule was not yet final, there would not be enough time to implement systems before the January 1, 2015 compliance date. Several commenters echoed a similar concern and contended that the burden associated with implementing and testing systems for the daily calculation is heightened by a short time frame. Some of these commenters requested a delay in the implementation of the final rule to better develop operational capabilities for compliance.

Several commenters argued that the requirement to calculate the LCR daily would require large changes to data systems, processes, reporting, and governance and were concerned that their institutions would not have the capability to perform accurately the required calculations. In particular, the commenters expressed concern with the level of certainty required for such calculation and its relation to their disclosure obligations under securities laws. Other commenters observed that there are limits to the number of large scale projects that covered companies can implement at one time, and building LCR reporting systems would require significant resources.

Other commenters preferred a monthly calculation given the significant information technology costs and short time frame until implementation. Further, several commenters stated that much of the data necessary to calculate a daily LCR currently is available only on systems that report monthly, rather than daily. These commenters also expressed concern over developing the necessary internal controls to ensure that the data is sufficiently accurate. Several commenters requested that the agencies require certain ''regional'' banking organizations that met the proposed rule's scope of applicability threshold, but have not been identified as Global Systemically Important Banks (G–SIBs) by the Financial Stability Board, to calculate the LCR on a monthly, rather than daily, basis. Commenters argued that the daily calculation for such organizations is unnecessary and that the monitoring of daily liquidity risk management should be established through the supervisory process. One commenter argued that it may not be necessary to perform detailed calculations every business day during periods of ample liquidity and suggested that the agencies impose the daily requirement only during periods of stress.

Covered companies that would not be subject to supervisory daily liquidity reporting requirements under the Board's information collection and Complex Institution Liquidity Monitoring Report (FR 2052a) liquidity reporting program [20] raised concerns about the time needed to develop systems to comply with a daily LCR requirement. Those companies asserted they should not be subject to a daily calculation or, in the alternative, that they should be provided with additional time to develop operational capabilities relative to those institutions submitting the FR 2052a report. A commenter suggested that covered companies that have not previously been subject to bank or bank holding company liquidity reporting requirements should be given additional time to develop the necessary systems. Another commenter requested that the agencies clarify the mechanics for calculating the LCR and reporting it to regulators. Several commenters requested that, if the final rule would require daily calculation of the LCR, the agencies establish a transition period for firms to implement this calculation methodology.

The agencies recognize that a daily calculation requirement for a new regulatory requirement imposes significant operational and technology demands upon covered companies. However, the agencies continue to believe the daily calculation requirement is appropriate for covered companies under the final rule. Covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposures are large, complex organizations with significant trading and other activities. Moreover, idiosyncratic or market driven liquidity stress events have the potential to become significant in a short period of time even for covered companies that have not been designated as G–SIBs by the Financial Stability Board and that have relatively less complex balance sheets and more consistent funding profiles than G–SIBs in the normal course of business. In contrast to the entities that would be subject to the Board's modified LCR requirement discussed in section V of this Supplementary Information section, such organizations tend to have more significant trading activities, interconnectedness in the financial system, and are a significant source of credit to the areas of the United States in which they operate. Supervisors expect an organization that is a covered company under this rule to have robust, forward-looking liquidity risk monitoring tools that enable the organization to be responsive to changing liquidity risks. These tools are expected to be in place even during periods when the organization considers that it has ample liquidity, so that emerging risks may be identified and mitigated. The agencies also note that during periods of stress, it may be difficult for companies to implement a daily reporting requirement if the necessary technological systems have not previously been established.

Therefore, the agencies continue to believe the daily calculation requirement is appropriate for covered companies under the final rule. However, the agencies recognize that the calculation requirements under this rule, including the daily calculation requirement, may necessitate certain enhancements to a covered company's liquidity risk data collection and monitoring infrastructure. Accordingly, the agencies have changed the proposed rule to include certain transition periods as described fully in section IV of this Supplementary Information section. With these revisions, the agencies believe that the final rule achieves its overall objective of promoting better liquidity management and reducing liquidity risk. To that end, the agencies have sought to achieve a balance between operational concerns and the overall objectives of the LCR by providing covered companies with additional time to implement the daily calculation requirement. Likewise, with respect to the level of precision

[20] Board, ''Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB,'' 79 FR 48158 (August 15, 2014).

required, the agencies believe that the transition period should provide covered companies with an appropriate time frame to upgrade systems, develop controls, train employees, and enhance other operational capabilities so that covered companies will have the requisite operational tools to effectively implement a daily calculation requirement.

With respect to reporting frequencies, the agencies continue to anticipate that they will separately seek comment on proposed regulatory reporting requirements and instructions for the LCR in a subsequent notice.

B. High-Quality Liquid Assets

The agencies received a number of comments on the criteria for HQLA and the designation of the liquidity level for various assets. Under the proposed rule, the numerator of the LCR would have been a covered company's HQLA amount, which would have been the HQLA held by the covered company subject to the qualifying operational control criteria and compositional limitations. These proposed criteria and limitations were meant to ensure that a covered company's HQLA amount would include only assets with a high potential to generate liquidity through monetization (sale or secured borrowing) during a stress scenario.

Consistent with the Basel III Revised Liquidity Framework, the agencies proposed classifying HQLA into three categories of assets: Level 1, level 2A, and level 2B liquid assets. Specifically, the agencies proposed that level 1 liquid assets, which are the highest quality and most liquid assets, would have been included in a covered company's HQLA amount without a limit and without haircuts. Level 2A and 2B liquid assets have characteristics that are associated with being relatively stable and significant sources of liquidity, but not to the same degree as level 1 liquid assets. Accordingly, the proposed rule would have subjected level 2A liquid assets to a 15 percent haircut and, when combined with level 2B liquid assets, they could not have exceeded 40 percent of the total HQLA amount. Level 2B liquid assets, which are associated with a lesser degree of liquidity and more volatility than level 2A liquid assets, would have been subject to a 50 percent haircut and could not have exceeded 15 percent of the total HQLA amount. All other classes of assets would not qualify as HQLA.

Commenters expressed concerns about several proposed criteria for identifying the types of assets that qualify as HQLA. Commenters also suggested that the agencies designate certain additional assets as HQLA and change the categorization of certain assets as level 1, level 2A, or level 2B liquid assets. A commenter cautioned that the proposed rule's stricter definition of HQLA compared to the Basel III Revised Liquidity Framework could lead to distortions in the market, such as dramatically increased demand for limited supplies of asset classes and hoarding of HQLA by financial institutions.

The final rule adopts the proposed rule's overall structure for the classification of assets as HQLA and the compositional limitations for certain classes of HQLA in the HQLA amount. As discussed more fully below, the agencies considered the issues raised by commenters and incorporated a number of modifications in the final rule to address commenters' concerns.

1. Liquidity Characteristics of HQLA

Assets that qualify as HQLA should be easily and immediately convertible into cash with little or no expected loss of value during a period of liquidity stress. In identifying the types of assets that would qualify as HQLA in the proposed and final rules, the agencies considered the following categories of liquidity characteristics, which are generally consistent with those of the Basel III Revised Liquidity Framework: (a) Risk profile; (b) market-based characteristics; and (c) central bank eligibility.

a. Risk Profile

Assets that are appropriate for consideration as HQLA tend to have lower risk. There are various forms of risk that can be associated with an asset, including liquidity risk, market risk, credit risk, inflation risk, foreign exchange risk, and the risk of subordination in a bankruptcy or insolvency. Assets appropriate for consideration as HQLA would be expected to remain liquid across various stress scenarios and should not suddenly lose their liquidity upon the occurrence of a certain type of risk. Another characteristic of these assets is that they generally experience ''flight to quality'' during a crisis, which is where investors sell their other holdings to buy more of these assets in order to reduce the risk of loss and thereby increase their ability to monetize assets as necessary to meet their own obligations.

Assets that may be highly liquid under normal conditions but experience wrong-way risk and that could become less liquid during a period of stress would not be appropriate for consideration as HQLA. For example, securities issued or guaranteed by many companies in the financial sector have been more prone to lose value when the banking sector is experiencing stress and become less liquid due to the high correlation between the health of these companies and the health of the financial sector generally. This correlation was evident during the recent financial crisis as most debt issued by such companies traded at significant discounts for a prolonged period. Because of this high potential for wrong-way risk, and consistent with the Basel III Revised Liquidity Framework, the final rule excludes from HQLA assets that are issued by companies that are primary actors in the financial sector. Identification of these companies is discussed in section II.B.2, below.

b. Market-Based Characteristics

The agencies also have found that assets appropriate to be included as HQLA generally exhibit certain market-based characteristics. First, these assets tend to have active outright sale or repurchase markets at all times with significant diversity in market participants, as well as high trading volume. This market-based liquidity characteristic may be demonstrated by historical evidence, including evidence observed during recent periods of market liquidity stress. Such assets should demonstrate: Low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and other appropriate factors. Diversity of market participants, on both the buying and selling sides of transactions, is particularly important because it tends to reduce market concentration and is a key indicator that a market will remain liquid during periods of stress. The presence of multiple committed market makers is another sign that a market is liquid.

Second, assets that are appropriate for consideration as HQLA generally tend to have prices that do not incur sharp declines, even during times of stress. Volatility of traded prices and bid-ask spreads during normal times are simple proxy measures of market volatility; however, there should be historical evidence of relative stability of market terms (such as prices and haircuts) as well as trading volumes during stressed periods. To the extent that an asset exhibits price or volume fluctuation during times of stress, assets appropriate for consideration as HQLA tend to increase in value and experience a flight to quality during these periods of stress because historically market participants move into more liquid assets in times of systemic crisis.

Third, assets that can serve as HQLA tend to be easily and readily valued. The agencies generally have found that an asset's liquidity is typically higher if market participants can readily agree on its valuation. Assets with more standardized, homogenous, and simple structures tend to be more fungible, thereby promoting liquidity. The pricing formula of more liquid assets generally is easy to calculate when it is based upon sound assumptions and publicly available inputs. Whether an asset is listed on an active and developed exchange can serve as a key indicator of an asset's price transparency and liquidity.

c. Central Bank Eligibility

Assets that a covered company can pledge at a central bank as collateral for intraday liquidity needs and overnight liquidity facilities in a jurisdiction and in a currency where the bank has access to the central bank generally tend to be liquid and, as such, are appropriate for consideration as HQLA. In the past, central banks have provided a backstop to the supply of banking system liquidity under conditions of severe stress. Central bank eligibility should, therefore, provide additional assurance that assets could be used in acute liquidity stress events without adversely affecting the broader financial system and economy. However, central bank eligibility is not itself sufficient to categorize an asset as HQLA; all of the final rule's requirements for HQLA must be met if central bank eligible assets are to qualify as HQLA.

d. Comments About Liquidity Characteristics

In their proposal, the agencies requested comments on whether the agencies should consider other characteristics in analyzing the liquidity of an asset. Although several commenters expressed concerns about the agencies' evaluation of the proposed liquidity characteristics to designate certain assets as HQLA, the agencies received only a few comments on the set of liquidity characteristics. One commenter suggested that the agencies evaluate secondary trading levels over time, specifically for level 1 liquid assets. The commenter also recommended that the agencies consider various factors to assess security issuances, including the absolute size of parent issuer holdings, credit ratings, and average credit spreads. Another commenter expressed its belief that the inclusion of an asset as HQLA should be determined based on objective criteria for market liquidity and creditworthiness.

In response to the commenter's concerns, the agencies agree that trading volume is an important characteristic of an asset's liquidity. The agencies believe that high trading volume across dynamic market environments is one of several factors that evidences market-based characteristics of HQLA. The final rule continues to consider trading volume to assess the liquidity of an asset.

In response to the commenter's suggestion for the final rule to include factors such as credit ratings and average credit spreads, the agencies recognize that indicators of credit risk include credit ratings and average credit spreads. The risk profile of an asset also includes many other types of risks. The agencies note that the final rule incorporates assessments of credit risk in certain level 1 and level 2A liquid assets criteria by referring to the risk weights assigned to securities under the agencies' risk-based capital rules. The agencies are not including the additional factors suggested by the commenter because in some cases, it would be legally impermissible, and additionally, the agencies believe the link to risk weights in the risk-based capital rules for level 1 and level 2A qualifying criteria sufficiently captures credit risk factors for purposes of the LCR.[21]

Finally, in response to one commenter's request that the agencies incorporate objective criteria in the liquidity characteristics of the final rule, the agencies highlight that certain objective criteria relating to price decline scenarios are included as qualifying criteria for level 2A and level 2B liquid assets, as discussed in section II.B.2. The agencies believe that the liquidity characteristics in the final rule, combined with certain objective criteria for specific categories of HQLA, provide an appropriate basis for evaluating a variety of asset classes for inclusion as HQLA.

2. Qualifying Criteria for Categories of HQLA

Based on the analysis of the liquidity characteristics above, the proposed rule would have included a number of classes of assets meeting these characteristics as HQLA. However, within certain of the classes of assets that the agencies proposed to include as HQLA, the proposed rule would have set forth a number of qualifying criteria and specific requirements for a particular asset to qualify as HQLA. With certain modifications to address commenters' concerns regarding certain classes of assets, discussed below, the agencies are adopting these criteria and requirements generally as proposed.

a. The Liquid and Readily-Marketable Standard

Most of the assets in the HQLA categories would have been required to meet the proposed rule's definition of ''liquid and readily-marketable'' in order to be included as HQLA. Under the proposed rule, an asset would have been liquid and readily-marketable if it is traded in an active secondary market with more than two committed market makers, a large number of committed non-market maker participants on both the buying and selling sides of transactions, timely and observable market prices, and high trading volumes. The agencies proposed this ''liquid and readily-marketable'' requirement to ensure that assets included as HQLA would exhibit a level of liquidity that would allow a covered company to convert them into cash during times of stress and, therefore, to meet its obligations when other sources of funding may be reduced or unavailable.

Commenters raised several concerns with the proposed rule's definition of ''liquid and readily-marketable.'' Several commenters urged the agencies to provide more detail on the liquid and readily-marketable standard. One of these commenters highlighted that the definition included undefined terms and suggested that the agencies either provide specific securities or asset classes or refer to instrument characteristics similar to those listed in the Board's Regulation YY. One commenter urged the agencies to pursue a more quantitative approach to identifying securities that would meet the standard. Another commenter noted that the agencies did not provide guidance on how to document that HQLA meets the market-based characteristics or the liquid and readily-marketable standard. Separately, another commenter suggested that the liquid and readily-marketable standard should account for indicators of liquidity other than those related to the secondary market. In particular, the commenter highlighted that covered companies can monetize securities outside of the outright sales market through repurchase transactions and through posting securities as collateral

[21] A credit rating is one potential perspective on credit risk that may be used by a covered company in its assessment of the risk profile of a security. However, covered companies should avoid over reliance upon credit ratings in isolation. In addition, the Dodd-Frank Act prohibits the reference to or reliance on credit ratings in an agency's regulations. Public Law 111–203, section 939A, 124 Stat 1376 (2010).

securing over-the-counter or exchange-traded derivative transactions. Another commenter interpreted the liquid and readily-marketable standard to require a security-by-security analysis incorporating data on market makers and market participants and trading volumes to determine eligibility under the criteria. The commenter contended that such analysis could be burdensome on covered companies with significant trading operations. One commenter requested that the agencies remove this standard for all level 1 and level 2A liquid assets. Another stated that there was a difference between the regulatory text of the proposed rule and the discussion in the Supplementary Information section to the proposed rule, which indicated that HQLA would need to exhibit certain market-based characteristics, such as no sharp price declines, and standardized, homogeneous, and simple securities structures. The commenter stated that these characteristics were not included in the liquid and readily-marketable standard and requested clarification on how much the structure of a security would be questioned by the supervisors of a covered company.

After reviewing the comments, the agencies have determined to retain the proposed definition of ''liquid and readily-marketable'' in the final rule. The agencies believe that defining an asset as liquid and readily-marketable if it is traded in an active secondary market with more than two committed market makers, a large number of committed non-market maker participants on both the buying and selling sides of transactions, timely and observable market prices, and high trading volumes provides an appropriate standard for determining whether an asset can be readily sold in times of stress. These elements of the requirement are meant to ensure that assets included as HQLA are traded in deep, active markets to allow a covered company to convert them into cash by sale or repurchase transactions during times of stress. In particular, the agencies believe that an active secondary market for an asset is an indicator of the ease with which a covered company may monetize that asset. In response to a commenter's concern that a covered company may only monetize securities through outright sales to meet the liquid and readily-marketable standard, the agencies are clarifying that a covered company may monetize assets through repurchase transactions in addition to outright sales.

Although one commenter requested that the final rule include specific securities or instrument characteristics to further define ''liquid and readily-marketable,'' the agencies believe that the specific types of securities set forth in the categories of level 1, level 2A, and level 2B liquid assets provide sufficient detail of the types of securities and instruments that may be liquid and readily-marketable and may be considered HQLA. In addition, the final rule retains from the proposed rule certain price decline scenarios to identify certain level 2A and level 2B liquid assets.[22] The agencies believe that price decline scenarios are appropriate for certain types of assets included in level 2A and 2B liquid assets to evaluate the liquidity and market-based characteristics of those assets. As the criteria for these categories of HQLA incorporate price decline scenarios, the agencies do not believe it is necessary to separately include price decline scenarios as part of the liquid and readily-marketable standard.

One commenter requested that the agencies clarify the Supplementary Information section discussion in the proposed rule indicating that HQLA should exhibit standardized, homogeneous, and simple security structures. The agencies believe that the criteria for HQLA set forth in § __.20 of the final rule includes assets that meet these criteria. The final rule continues to require that certain HQLA categories meet the final rule's definition of liquid and readily-marketable. The agencies emphasize that securities with unique, bespoke, or complex structures which are difficult to value on a routine basis, regardless of issuer or capital risk weight, may not meet the liquid and readily-marketable standard.

In response to a commenter's concern about the burden of a security-by-security analysis to demonstrate that a security qualifies as liquid and readily-marketable, the agencies recognize that certain companies may trade or hold a significant number of different securities. Although the exercise of assessing unique securities for the purpose of determining whether they are liquid and readily-marketable may involve operational burden, the agencies believe this analysis and determination is critical to ensuring that only securities that will serve as a reliable source of liquidity during times of stress are included in a company's HQLA. A covered company may choose not to determine whether a security is liquid and readily-marketable for LCR purposes if it determines that the cost of performing the analysis exceeds the benefit of including the security as HQLA. Thus, the agencies decline to remove the liquid and readily-marketable standard for all level 1 and level 2A liquid assets, as requested by one commenter.

Furthermore, in response to requests that the agencies clarify any documentation requirements in determining whether an asset is liquid and readily-marketable, the agencies expect that a covered company should be able to demonstrate to its appropriate Federal banking agency its security-by-security analysis (which may include time-series analyses about the specific security or comparative analysis of similar securities from the same issuer) that HQLA held by the covered company meets the liquid and readily-marketable standard.

b. Financial Sector Entities

Consistent with the Basel III Revised Liquidity Framework, the proposed rule would have provided that assets that are included as HQLA could not be issued by a financial sector entity, because these assets could exhibit similar risks and correlation with covered companies (wrong-way risk) during a liquidity stress period. In the proposed rule, financial sector entities would have included regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or a consolidated subsidiary of any of the foregoing. In addition, under the proposed rule, securities issued by any company (or any of its consolidated subsidiaries) that an agency has determined should, for the purposes of the proposed rule, be treated the same as a regulated financial company, investment company, non-regulated fund, pension fund, or investment adviser, based on its engagement in activities similar in scope, nature, or operations to those entities (identified company) would not have been included as HQLA.

The term regulated financial company under the proposed rule would have included bank holding companies and savings and loan holding companies (depository institution holding companies); nonbank financial companies supervised by the Board; depository institutions; foreign banks; credit unions; industrial loan companies, industrial banks, or other similar institutions described in section 2 of the Bank Holding Company Act (BHC Act); national banks, state member banks, and state nonmember banks (including those that are not depository institutions); insurance companies; securities holding companies (as defined in section 618 of the Dodd-

[22] *See* § __.20(b) and (c).

Frank Act);[23] broker-dealers or dealers registered with the Securities and Exchange Commission (SEC); futures commission merchants and swap dealers, each as defined in the Commodity Exchange Act;[24] or security-based swap dealers defined in section 3 of the Securities Exchange Act.[25] It would also have included any designated financial market utility, as defined in section 803 of the Dodd-Frank Act.[26] The proposed definition would have also included foreign companies that are supervised and regulated in a manner similar to the institutions listed above.[27]

In addition, the proposed definition of regulated financial company would have included a company that is included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) Web site, provided that the top-tier depository institution holding company was subject to the proposed rule (FR Y–6 companies).[28] FR Y–6 companies are typically controlled by the filing depository institution holding company under the BHC Act. Although many of these companies may not be consolidated on the financial statements of a depository institution holding company, the links between the companies are sufficiently significant that the agencies believed that it would have been appropriate to exclude securities issued by FR Y–6 companies (and their consolidated subsidiaries) from HQLA, for the same policy reasons that other regulated financial companies' securities would have been excluded from HQLA under the proposal. The organizational hierarchy chart produced by the NIC Web site reflects (as updated regularly) the FR Y–6 companies a depository institution holding company must report on the form. The agencies proposed this method for identifying these companies in order to reduce burden associated with obtaining the FR Y–6 organizational charts for all depository institution holding companies subject to the proposed rule, because the charts are not uniformly available by electronic means.

Commenters suggested that the proposed definition of ''regulated financial company'' was overly broad. For example, one commenter stated that for the purposes of deposit classification, the definition of ''financial institution'' needs to be limited to those entities that contribute to the risk of interconnectedness to ensure the accurate capture of the underlying risk of the depositor, noting that the NAICS codes for ''Finance and Insurance'' and ''Commercial Banking'' include over 816,000 and 79,000 business, respectively. The commenter stated that, depending on the definition, certain financial institutions may have operational needs and transactional deposits that are more similar to a non-financial institution.[29]

Overall, the agencies believe that the overall scope of the proposed definition of ''regulated financial company'' appropriately captured the types of the companies whose assets could exhibit similar risks and correlation with covered companies during a liquidity stress period. Although the number of financial entities are large, due to the prominence of the financial services industry to the economy of the United States, the agencies continue to believe that the liquidity risks presented by securities and obligations of such companies would be difficult to monetize during a period of significant financial distress, as shown in the recent financial crisis. Accordingly, similar to the proposed rule, the final rule will exclude the securities and obligations of financial sector entities from being HQLA.

In addition to comments regarding the scope of the entities that would have been included under the proposed rule, several commenters expressed concerns regarding the specific inclusion of certain entities.

i. Companies Listed on a Covered Company's FR Y–6

Commenters expressed concern about the definition's inclusion of any company that is included in the organizational chart of a covered company as reported on the Form FR Y–6 and reflected on the NIC Web site within the definition of regulated financial company. These commenters contended that the FR Y–6 is an expansive form that captures a substantial range of activities and investments of depository institution holding companies, including companies in which the covered company has a minority, non-controlling interest, as well as merchant banking investments. Commenters reasoned that merchant banking investments may be non-financial enterprises and may not contribute to the ''wrong-way risk'' contemplated by the agencies in defining regulated financial company. The commenters believed that such entities should not be included as regulated financial companies and requested that the final rule's definition of regulated financial company not include all companies reported by a covered company on the Form FR Y–6.

The agencies recognize that there are certain shortcomings in the scope of the entities that are listed on a covered company's FR Y–6, including the potential capture of non-financial, passive merchant banking subsidiaries. The Board is actively considering options to adjust the reporting mechanism which may be used in determining the population of regulated financial companies. Moreover, because entities listed on a covered company's FR Y–6 that are non-financial, merchant banking investments or that do not meet the definition of control under the BHC Act are not currently separated from other entities controlled by a covered company, the agencies do not believe it would be appropriate at this time to provide a blanket exemption for merchant banking or non-control investments. The Board anticipates that it will revise the reporting requirements used for this purpose in the near future. However, because any revisions to reporting requirements would be subject to public comment, for purposes of the final rule, the agencies are finalizing the definition of regulated financial company as proposed. The agencies do not believe that any change to the definition of regulated financial company would be appropriate without subjecting such a revision to public

[23] 12 U.S.C. 1850a(a)(4).

[24] 7 U.S.C. 1a(28) and (49).

[25] 15 U.S.C. 78c(a)(71).

[26] 12 U.S.C. 5462(4).

[27] Under paragraph (8) of the proposed rule's definition of ''regulated financial company,'' the following would not be considered regulated financial companies: U.S. government-sponsored enterprises; small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*); entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; and central banks, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank.

[28] See National Information Center, A repository of financial data and institution characteristics collected by the Federal Reserve System, available at *http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx.*

[29] The agencies note that the proposed rule would have recognized that financial sector entities have operational needs and deposits that are similar to non-financial entities by treating the deposits of financial sector entities that meet the operational deposit criteria as operational deposits. The non-operational deposits of a financial would have been subject to a higher outflow rate than a non-financial wholesale counterparty due to correlation of liquidity risks between financial sector entities and covered companies. The final rule retains each of these provisions as discussed below under section II.C.3.h.

comment, together with other revisions to the reporting requirements that would be used to identify regulated financial companies.

ii. Foreign Regulated Financial Entities

The definition of regulated financial company under the proposed rule would have included a non-U.S.-domiciled company that is supervised and regulated in a manner similar to the other entities described in the definition, including bank holding companies. One commenter requested that the agencies clarify that the definition of regulated financial company would not include non-U.S. government-sponsored entities and public sector entities. The commenter argued that certain public sector entities are not engaged in a full range of banking activities, but are, however, typically subject to prudential regulation. Two commenters also requested that the preamble to the final rule explain how the ''supervised and regulated in a similar manner'' standard should be construed.

The final rule adopts this provision of the rule as proposed. The agencies are clarifying that, for purposes of the final rule, a foreign company, including a non-U.S. public sector entity, that is similar in structure to a U.S. regulated financial company (e.g., a foreign bank or foreign insurance company) and that is subject to prudential supervision and regulation in a manner that is similar to a U.S. regulated financial company would be considered a regulated financial company under the final rule. In considering the similarity of the supervision and regulation of a foreign company, a covered company can consider whether the non-U.S. activities and operations of the company would be subject to supervision and regulation in the United States and whether such activities are subject to supervision and regulation abroad.

iii. Investment Companies and Investment Advisers

Under the proposed rule, investment companies would have included companies registered with the SEC under the Investment Company Act of 1940 [30] and investment advisers would have included companies registered with the SEC as investment advisers under the Investment Advisers Act of 1940,[31] as well as the foreign equivalent of such companies.

One commenter expressed concern with the proposed rule's treatment of investment companies as financial sector entities. The commenter argued that if an investment company does not invest in financial sector entities, the value of its shares would not correlate with covered companies. The commenter recommended that an investment company's HQLA eligibility should be based on the investment company's investment policies, such that if an investment company has a policy of investing 80 percent of its assets in HQLA or in securities and obligations of non-financial sector entities, its securities would be treated as HQLA of the same level as the lowest level HQLA permitted under the policy.

After considering the commenter's concerns, the agencies decline to adopt the commenter's recommendation in the final rule. Similar to other entities in the financial sector, investment companies have been more prone to lose value and, as a result, become less liquid in times of liquidity stress regardless of the investment company's investment policies or portfolio composition, due to the potentially higher correlation between the health of these companies and the health of the financial markets generally. The agencies believe that a covered company can be exposed to the interconnectedness of financial markets through its investment in investment companies. Thus, consistent with the Basel III Revised Liquidity Framework, the final rule would exclude assets issued by companies that are primary actors in the financial sector from HQLA, including investment company shares.

iv. Non-Regulated Funds

Under the proposed rule, non-regulated funds would have included hedge funds or private equity funds whose investment advisers are required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), and any consolidated subsidiary of such fund, other than a small business investment company, as defined in section 102 of the Small Business Investment Act of 1958.[32]

Commenters expressed concerns about the proposed definition of ''non-regulated fund.'' One of these commenters stated that the proposed definition would have included the undefined terms ''hedge fund'' and ''private equity fund.'' The commenter also argued that the definition should not include portfolio companies that are consolidated subsidiaries of non-regulated funds and those funds that invest primarily in real estate and related assets. The commenter suggested that the definition exclude any fund that does not issue redeemable securities that provide investors with redemption rights in the ordinary course and should also exclude closed-end funds. The commenter also stated that although the definition requires a banking organization to determine whether the investment adviser of a fund is required to file Form PF, this information on whether a particular fund is the subject of a Form PF is not publicly available.

Generally, a manager of a ''private fund'' that is required to register with the SEC as an investment adviser and manages more than $150 million in private fund assets is required to file SEC Form PF. Although the final rule does not define hedge funds or private equity funds, the agencies believe that such terms are commonly understood in the financial services industry and note that the instructions to the SEC's Form PF provide a definition for private equity funds and hedge funds that are captured under the form.[33] Therefore the agencies believe that defining ''non-regulated fund'' by referencing the private equity and hedge funds whose investment advisers are required to file SEC Form PF adequately defines the universe of hedge funds and private equity funds captured under the final rule.

In response to commenter concerns that the definition of ''non-regulated fund'' includes portfolio companies that are consolidated subsidiaries of private funds, the agencies have modified the definition of ''non-regulated fund.'' The agencies recognize that consolidated subsidiaries of private funds may not conduct financial activities, but would have received treatment as financial sector entities under the proposed rule. Accordingly, the final rule's definition of ''non-regulated fund'' no longer includes consolidated subsidiaries of hedge funds and private equity funds whose investment adviser is required to file SEC Form PF.

With respect to the commenter's request to exclude any fund that does not issue redeemable securities and closed-end funds from the definition of non-regulated fund, although investors in these funds are unable to redeem securities and may not appear to present liquidity risk, the agencies believe these obligations and securities do pose similar liquidity risks and will behave similarly to those of other financial entities.

[30] 15 U.S.C. 80a–1 *et seq.*

[31] 15 U.S.C. 80b–1 *et seq.*

[32] 15 U.S.C. 661 *et seq.*

[33] *See* Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operations and Commodity Trading Advisors (Form PF), available at *http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf.*

Finally, the agencies recognize that Form PF filings are not publicly disclosed. However, the agencies expect that a covered company should understand whether its customer is a private equity fund or a hedge fund. The agencies further expect that when identifying HQLA a covered company should undertake the necessary diligence to confirm whether an investment adviser to such fund, which is typically the manager of the fund, is required to file Form PF and meets the final rule's definition of ''non-regulated fund.''

c. Level 1 Liquid Assets

Under the proposed rule, a covered company could have included the full fair value of level 1 liquid assets in its HQLA amount.[34] The proposed rule would have recognized that these assets have the highest potential to generate liquidity for a covered company during periods of severe liquidity stress and thus would have been includable in a covered company's HQLA amount without limit. The proposed rule would have included the following assets as level 1 liquid assets: (1) Federal Reserve Bank balances; (2) foreign withdrawable reserves; (3) securities issued or unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury; (4) liquid and readily-marketable securities issued or unconditionally guaranteed as to the timely payment of principal and interest by any other U.S. government agency (provided that its obligations are fully and explicitly guaranteed by the full faith and credit of the United States government); (5) certain liquid and readily-marketable securities that are claims on, or claims guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank; and (6) certain debt securities issued by sovereign entities.

As discussed in more detail below, a number of commenters suggested including additional assets in the level 1 liquid asset category. After considering the comments received, the final rule includes the criteria for the level 1 liquid asset category substantially as proposed.

[34] Assets that meet the criteria of eligible HQLA may be held by a covered company designated as either ''available-for-sale'' or ''held-to-maturity,'' but must be included in the HQLA amount calculation at fair value (as determined under GAAP).

i. Reserve Bank Balances

Under the Basel III Revised Liquidity Framework, ''central bank reserves'' are included as HQLA. In the United States, Federal Reserve Banks are generally authorized under the Federal Reserve Act to maintain balances only for ''depository institutions'' and for other limited types of organizations.[35] Pursuant to the Federal Reserve Act, there are different kinds of balances that depository institutions may maintain at Federal Reserve Banks, and they are maintained in different kinds of Federal Reserve Bank accounts. Balances that depository institutions must maintain to satisfy a reserve balance requirement must be maintained in the depository institution's ''master account'' at a Federal Reserve Bank or, if the institution has designated a pass-through correspondent, in the correspondent's master account. A ''reserve balance requirement'' is the amount that a depository institution must maintain in an account at a Federal Reserve Bank in order to satisfy that portion of the institution's reserve requirement that is not met with vault cash. Balances in excess of those required to be maintained to satisfy a reserve balance requirement, known as ''excess balances,'' may be maintained in a master account or in an ''excess balance account.'' Finally, balances maintained for a specified period of time, known as ''term deposits,'' are maintained in a term deposit account offered by the Federal Reserve Banks. The proposed rule used the term ''Reserve Bank balances'' as the relevant term to capture central bank reserves in the United States.

Under the proposed rule, all balances a depository institution maintains at a Federal Reserve Bank (other than balances that an institution maintains on behalf of another institution, such as balances it maintains on behalf of a respondent or on behalf of an excess balance account participant) would have been considered level 1 liquid assets, except for certain term deposits as explained below.

Consistent with the concept of ''central bank reserves'' in the Basel III Revised Liquidity Framework, the proposed rule included in its definition of ''Reserve Bank balances'' only those term deposits offered and maintained pursuant to terms and conditions that: (1) Explicitly and contractually permit such term deposits to be withdrawn upon demand prior to the expiration of the term; or that (2) permit such term deposits to be pledged as collateral for term or automatically-renewing overnight advances from a Federal Reserve Bank. Regarding the first point, term deposits offered under the Federal Reserve's Term Deposit Facility that include an early withdrawal feature that allows a depository institution to obtain a return of funds prior to the deposit maturity date, subject to an early withdrawal penalty, would be included in ''Reserve Bank balances'' because such term deposits would be explicitly and contractually repayable on notice. The amount associated with a term deposit that would be included as ''Reserve Bank balances'' is equal to the amount that would be received upon withdrawal of such a term deposit. Those term deposits that do not include this feature would not be included in ''Reserve Bank balances.'' The terms and conditions for each term deposit offering specify whether the term deposits being offered include an early withdrawal feature. Regarding the second point, although term deposits may be pledged as collateral for discount window borrowing, the Federal Reserve's current discount window lending programs do not generally provide term or automatically-renewing overnight advances.

Commenters suggested various assets related to Reserve Bank balances to include as level 1 liquid assets or to be reflected in the level 1 liquid asset amount. One commenter recommended that the final rule include required reserves in the level 1 liquid asset amount, alleging that the proposed rule circumvented Regulation D, which allows covered companies to manage their reserves over a 14-day period.[36] A few commenters argued that the final rule should include vault cash, whether held in branches or ATMs, as a level 1 liquid asset. The commenter argued that the final rule should be consistent with the Basel III Revised Liquidity Framework, which recognizes the intrinsic liquidity value of cash and includes coins and banknotes as level 1 liquid assets. Commenters further contended that vault cash, which can be used to satisfy the bank's reserve requirement under Regulation D, is a fundamental feature of daily liquidity management for banks and should be included as level 1 liquid assets.[37] One commenter requested confirmation whether gold bullion meets the definition of level 1 liquid assets, arguing that it is low risk, highly liquid, has an active outright sale market, high trading volumes, a diverse number of

[35] *See* 12 U.S.C. 342.

[36] 12 CFR part 204.

[37] 12 CFR 204.5(a)(1).

market participants, and has historically been a flight-to-quality asset.

After considering the comments, the agencies are adopting the proposed criteria in the final rule with respect to central bank reserves. The agencies are not adopting a commenter's suggestion to include required reserves in the level 1 liquid asset amount because the assets held to satisfy required reserves, whether vault cash or balances maintained at a Federal Reserve Bank, are required for the covered company to manage reserves over the maintenance period pursuant to Regulation D and the agencies do not believe that the assets held to satisfy a covered company's required reserves would entirely be available for use during a liquidity stress event due to the reserve requirements.[38]

The final rule does not include cash, whether held in branches or ATMs, in level 1 liquid assets, as such cash may be necessary to meet daily business transactions and due to logistical concerns associated with ensuring that the cash can be immediately used to meet the covered company's outflows. However, as noted in section II.B.5 of this Supplementary Information section, the final rule does modify the calculation of the HQLA amount. Under the proposed rule, the level 1 liquid asset amount would have equaled the fair value of all level 1 liquid assets held by the covered company as of the calculation date, less required reserves under section 204.4 of Regulation D (12 CFR 204.4). Under the final rule, agencies have clarified that the amount to be deducted from the fair value of eligible level 1 assets is the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5). A reserve balance requirement is the amount that a depository institution must maintain in an account at a Federal Reserve Bank in order to satisfy that portion of the institution's reserve requirement that is not met with vault cash.

The agencies also decline to adopt a commenter's suggestion to include gold bullion as a level 1 liquid asset given the concerns about the volatility in market value of the asset and the logistical factors associated with holding and liquidating the asset.

ii. Foreign Withdrawable Reserves

The agencies proposed that reserves held by a covered company in a foreign central bank that are not subject to restrictions on use (foreign withdrawable reserves) would have been included as level 1 liquid assets. Similar to Reserve Bank balances, foreign withdrawable reserves should be able to serve as a medium of exchange in the currency of the country where they are held. The agencies received no comments on the definition of foreign withdrawable reserves. The final rule includes foreign withdrawable reserves as level 1 liquid assets as proposed.

iii. United States Government Securities

The proposed rule would have included as level 1 liquid assets securities issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Generally, these types of securities exhibited high levels of liquidity even in times of extreme stress to the financial system, and typically are the securities that experience the most flight to quality when investors adjust their holdings. Level 1 liquid assets would have also included securities issued by any other U.S. government agency whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government, provided that they are liquid and readily-marketable.

One commenter suggested that the agencies' inclusion in level 1 liquid assets of only agency securities that are fully and explicitly guaranteed by the full faith and credit of the U.S. government was too narrow and this would increase the demand for Government National Mortgage Association (GNMA) securities by large banking organizations, resulting in increased market pricing for such securities that would impact the profitability of investments at smaller banking organizations. The agencies believe that securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government have credit and liquidity risk that is comparable to securities issued by the U.S. Treasury. Thus, due to the inherent low risk of such securities and obligations, the agencies believe that it is appropriate to classify such securities as level 1 liquid assets. The agencies believe that any increased holdings of such securities by covered companies should not result in significant price increases for the securities due to the requirement of the final rule that each covered company ensure that it maintains policies and procedures that ensure the appropriate diversification of its HQLA by asset type, counterparty, issuer, and other factors. The final rule adopts this provision as proposed and continues to include U.S. government securities as level 1 liquid assets.

iv. Certain Sovereign and Multilateral Organization Securities

The proposed rule would have included as level 1 liquid assets securities that are a claim on, or a claim unconditionally guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank, provided that such securities met the following four requirements.

First, these securities must have been assigned a zero percent risk weight under the standardized approach for risk-weighted assets of the agencies' risk-based capital rules.[39] Generally, securities issued by sovereigns that are assigned a zero percent risk weight have shown resilient liquidity characteristics. Second, the proposed rule would have required these securities to be liquid and readily-marketable, as discussed above. Third, these securities would have been required to have been issued by an entity whose obligations have a proven record as a reliable source of liquidity in the repurchase or sales markets during stressed market conditions. A covered company could have demonstrated a historical record that met this criterion through reference to historical market prices during times of stress, such as the period of financial market stress experienced from 2007 to 2009. Covered companies should also have looked to other periods of systemic and idiosyncratic stress to see if the asset under consideration has proven to be a reliable source of liquidity. Fourth, these securities could not be an obligation of a regulated financial company, non-regulated fund, pension fund, investment adviser, or identified company or any consolidated subsidiary of such entities.

One commenter expressed concern about the inclusion of all sovereign obligations that qualify for a zero percent risk weight as level 1 liquid assets. The commenter argued that a broad range of sovereign debt may receive a zero percent risk weight under the Basel III capital accord and may include sovereign entities whose commitments pose credit, liquidity, or exchange rate risk, and suggested that the agencies include a minimum sovereign rating classification.

The agencies considered the commenter's concerns, but are adopting

[38] 12 CFR 204.5(b)(1).

[39] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve), and 12 CFR part 324 (FDIC).

the criteria for sovereign obligations to be included as level 1 liquid assets as proposed. The agencies believe that sovereign obligations that continue to qualify for a zero percent risk weight have shown resilient liquidity characteristics. The agencies believe that the risk weight assigned to sovereign obligations under the agencies' risk-based capital rules is an appropriate standard and decline to require a minimum sovereign rating classification. The agencies continue to retain the proposed criteria for determining whether sovereign and multilateral organization securities qualify as level 1 liquid assets under the final rule such as requiring them to be liquid and readily-marketable.[40] The agencies believe that these criteria limit the concerns raised by the commenter that capital risk weight alone is insufficient to preclude all illiquid foreign debt issuances. Consistent with the inclusion of level 1 liquid assets as HQLA, the agencies believe that qualifying sovereign securities should continue to be includable in a covered company's HQLA amount without limit.

v. Certain Foreign Sovereign Debt Securities

Under the proposed rule, debt securities issued by a foreign sovereign entity that are not assigned a zero percent risk weight under the standardized approach for risk-weighted assets of the agencies' risk-based capital rules could have served as level 1 liquid assets if they were liquid and readily-marketable, the sovereign entity issued such debt securities in its own currency, and a covered company held the debt securities to meet its cash outflows in the jurisdiction of the sovereign entity, as calculated in the outflow section of the proposed rule. These assets would have been appropriately included as level 1 liquid assets despite having a risk weight greater than zero because a sovereign often is able to meet obligations in its own currency through control of its monetary system, even during fiscal challenges. The agencies received no significant comments on this section of the proposed rule and so the final rule adopts this standard as proposed.

vi. Level 1 Liquid Assets at a Foreign Parent

Several commenters requested that the agencies permit a covered company that is a U.S. subsidiary of a foreign company subject to the LCR in another country to treat assets that are permitted to be included as level 1 liquid assets under the laws of that country as level 1 liquid assets for purposes of the final rule. After considering the commenters' request, the agencies decline to adopt the commenter's request. The agencies believe that assets should exhibit the liquidity characteristics required in the final rule, which have been calibrated for the outflows of U.S. covered companies, to be included as level 1 liquid assets for purposes of the U.S. LCR requirement. The agencies intend to ensure that the requirements for level 1 liquid assets are consistent for all covered companies, regardless of the ownership of an individual covered company. As noted above, the agencies have included certain foreign sovereign obligations as level 1 liquid assets and believe that these asset classes appropriately reflect the outflows of U.S. covered companies.

vii. Deposits by Covered Nonbank Companies in Third-Party Commercial Banks

One commenter requested that the agencies permit covered nonbank companies to include as level 1 liquid assets, subject to a haircut, overnight deposits in third-party commercial banks or holding companies that are subject to the final rule or a foreign equivalent standard, so long as the deposits are not concentrated in any one affiliated group of banks. After considering the commenter's request, the agencies have decided not to adopt the suggestion and believe all covered companies have several investment options to fulfill their HQLA requirement. The agencies recognize that covered nonbank companies do not have access to certain services available to banking entities and may place significant deposits with third-party banking organizations. Such deposits do not meet the agencies' criteria for level 1 liquid assets because during a liquidity stress event many commercial banks may exhibit the same liquidity stress correlation and wrong-way risk discussed above in relation to excluded financial sector entity securities. However, the agencies note that amounts in these deposits may qualify as an inflow, with a 100 percent inflow rate, to offset outflows, depending upon their operational nature.

viii. Liquidity Up-Front Fee

The proposed rule briefly noted there has been ongoing work on the Basel III LCR and central bank operations. The BCBS announced on January 12, 2014, an amendment to the Basel III Revised Liquidity Framework that included allowing capacity from restricted committed liquidity facilities of central banks as HQLA. One commenter stated that any concerns expressed by the banking industry regarding the availability of liquid assets could be addressed by permitting financial institutions to pay the Federal Reserve an up-front fee for a committed liquidity line.

The agencies are considering the merits of including central bank restricted committed facility capacity as HQLA for purposes of the U.S. LCR requirement and may propose at a future date to include such capacity as HQLA.

d. Level 2A Liquid Assets

Under the proposed rule, level 2A liquid assets would have included certain obligations issued or guaranteed by a U.S. government sponsored enterprise (GSE)[41] and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank. Assets in these categories would have been required to be liquid and readily-marketable, as described above, to be considered level 2A liquid assets. The agencies received a number of comments on the treatment of GSE securities under the proposed rule. After reviewing the comments received, for the reasons discussed below, the agencies are adopting the proposed criteria for level 2A liquid assets in the final rule.

i. U.S. GSE Securities

Commenters suggested a variety of approaches to change the final rule's treatment of U.S. GSE securities. Under the proposed rule, U.S. GSE securities are classified as level 2A liquid assets, which are subject to a 15 percent haircut and, when combined with level 2B liquid assets, have a 40 percent maximum composition limit in the HQLA amount, as discussed in section II.B.5 of this Supplementary Information section.

Several commenters requested that the agencies designate debt securities issued and guaranteed by a U.S. GSEs as level 1 liquid assets in the final rule. Commenters also stated that the 15 percent haircut for such obligations was too high. A few commenters recommended that the agencies remove the 40 percent composition cap on level 2 liquid assets for U.S. GSE securities if the final rule does not include U.S. GSE securities as level 1 liquid assets. Other commenters suggested that the agencies

[40] The agencies note that an asset's ability to qualify under this criterion may change over time.

[41] GSEs currently include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, and the Federal Home Loan Bank (FHLB) System.

remove the ''liquid and readily-marketable'' requirement for the inclusion of U.S. GSE securities as level 2A liquid assets because the securities clearly meet these requirements. One commenter suggested a graduated cap approach, whereby U.S. GSE securities in excess of the 40 percent composition limit in the HQLA amount would be subject to a haircut that would increase as the proportion of U.S. GSE securities to total HQLA increases.

To support their request, commenters made various observations about the liquidity characteristics of U.S. GSE securities. Many commenters highlighted that the market for U.S. GSE securities is one of the deepest and most liquid in the world, with over $4 trillion in GSE mortgage backed securities (MBS) outstanding and a daily trading volume in GSE MBS that averages almost $230 billion. In particular, some commenters argued that MBS issued by FNMA and FHLMC are among the highest quality and most liquid assets. A number of commenters mentioned that U.S. GSE securities comprise a significant amount of the liquidity portfolios of banking organizations because they are recognized by the market as trading in deep and liquid markets. Commenters also contended that GSE securities, like U.S. Treasury securities, have the highest potential to generate liquidity for a covered company during periods of severe liquidity stress. For example, one commenter pointed out that during the 2007–2009 financial crisis, demand for FHLB consolidated obligations increased during the dramatic flight-to-quality event.

Commenters also urged the agencies to consider the potential adverse impact of classifying GSE securities as level 2A liquid assets. These commenters argued that the level 2A liquid asset designation would discourage banking organizations from investing in the securities and would therefore decrease liquidity in the secondary mortgage market. A commenter asserted that the 40 percent cap on level 2A and level 2B liquid assets would result in U.S. banking industry positions being concentrated in the U.S. Treasury and U.S. agency markets, rather than being more broadly diversified across those markets and the GSE market. Another commenter suggested that the agencies assess the impact to the value of U.S. GSE securities should banking organizations liquidate their holdings, which could in turn increase mortgage funding costs and decrease the availability of credit for mortgages.

Some commenters argued that other agency guidance and rules consider or imply that U.S. GSE securities are highly liquid. For example, one commenter stated that the agencies have provided previous guidance encouraging institutions to hold an amount of high-quality liquid assets and cited securities issued by U.S. GSEs as an example of such assets and urged the agencies to explain any deviation from this guidance.[42] Another commenter raised the issue that the Board's then-proposed enhanced liquidity standards under section 165 of the Dodd-Frank Act classified U.S. GSE securities as ''fully liquid.''[43]

Commenters also urged the agencies to consider the fact that certain U.S. GSEs currently operate under the conservatorship of the Federal Housing Finance Agency (FHFA) and receive capital support from the U.S. Treasury. These commenters argued that GSE securities should receive level 1 liquid asset designation while the U.S. GSEs receive support from the U.S. government because the obligations are effectively guaranteed by the full faith and credit of the U.S. government. One commenter suggested that, while the U.S. GSEs are in conservatorship, the agencies permit these securities to receive a 10 percent risk weight under the capital rules and permit them to be in level 1 liquid assets.

Finally, commenters compared the treatment of U.S. GSE securities as level 2A liquid assets under the proposed rule to the classification of securities issued by certain multilateral development banks, such as the International Bank for Reconstruction and Development, the Inter-American Development Bank, the International Finance Corporation, the German Development Bank, the European Investment Bank, the German Agriculture Bank, and the Asian Development Bank as level 1 liquid assets. Commenters argued that the size and liquidity of the markets for these securities is much less than the size and liquidity of the market for U.S. GSE securities.

The agencies recognize that some securities issued and guaranteed by U.S. GSEs consistently trade in very large volumes and generally have been highly liquid, including during times of stress, as indicated by commenters. The agencies also recognize that certain U.S. GSEs currently operate under the conservatorship of FHFA and receive capital support from the U.S. Treasury. However, the obligations of the U.S. GSEs are currently effectively, but not explicitly, guaranteed by the full faith and credit of the United States. Under the agencies' risk-based capital rules, the obligations and guarantees of U.S. GSEs—including those operating under conservatorship of FHFA—continue to be assigned a 20 percent risk weight, rather than the zero percent risk weight assigned to securities explicitly guaranteed by the full faith and credit of the United States. The agencies have long held the view that obligations of U.S. GSEs should not be accorded the same treatment as obligations that carry the explicit, unconditional guarantee of the U.S. government and that are assigned a zero percent risk weight. Moreover, the agencies feel that the events related to the 2007–2009 financial stress that required these entities to be placed under conservatorship do not support temporarily improving GSE securities' HQLA status.

Consistent with the agencies' risk-based capital rules, the agencies are not assigning the most favorable regulatory treatment to securities issued and guaranteed by U.S. GSEs under the final rule, even while certain GSEs temporarily operate under the conservatorship of FHFA. The final rule assigns GSE securities to the level 2A liquid asset category, as long as they are investment grade consistent with the OCC's investment securities regulation (12 CFR part 1) as of the calculation date and are liquid and readily-marketable. Additionally, consistent with the agencies' risk-based capital rules' higher risk weight for the preferred stock of U.S. GSEs, the final rule excludes such preferred stock from HQLA.

The agencies are aware that certain previous agency guidance and rules recognize the liquid nature of U.S. GSE securities;[44] however, the guidance and rules do not specifically address the types of diversification requirements that are being required by the final rule's inclusion of different levels of HQLA. The final rule continues to recognize U.S. GSE securities as highly liquid instruments that trade in deep and active markets by including them as a level 2A liquid asset.

In response to commenters' suggestions to remove the 40 percent composition cap, or apply a graduated cap to U.S. GSE securities included as level 2A liquid assets, the agencies believe that the proposed 40 percent cap (when combined with level 2B liquid assets) should continue to apply to all level 2A liquid assets, including U.S. GSE securities. In this regard, commenters also expressed concerns

[42] *See* Interagency Liquidity Policy Statement.

[43] *See* 12 CFR 252.35(b)(3).

[44] *See, e.g.,* Interagency Liquidity Policy Statement.

that the cap on level 2A liquid assets would result in concentrated positions in U.S. Treasury and agency markets. The agencies continue to believe that the 40 percent composition cap is appropriate to ensure that level 2 liquid assets comprise a smaller portion of a covered company's total HQLA amount, such that the majority of the HQLA amount is comprised of level 1 liquid assets, which are the assets that have consistently demonstrated the most liquidity during periods of market distress. The designation of certain assets as level 2A liquid assets indicates that the assets have characteristics that are associated with being relatively stable and significant sources of liquidity, but not to the same degree as level 1 liquid assets. The agencies believe that the level 2 liquid asset cap appropriately prevents concentrations of less liquid assets and ensures a sufficient stock of the most liquid assets to meet stressed outflows during a period of significant market distress. As a result, level 2A liquid assets, when combined with level 2B liquid assets, cannot exceed 40 percent of the HQLA amount under the final rule.

Commenters expressed concerns that the proposed designation of U.S. GSE securities as level 2A liquid assets would result in broad market consequences, including decreased liquidity in the secondary mortgage market, increased mortgage funding costs, and impact to the fair value of U.S. GSE securities. The agencies do not believe the treatment of U.S. GSE securities will have broad market consequences as the largest market participants generally have already adjusted their funding profile and assets in anticipation of the LCR requirement with little impact on the overall market. Furthermore, the agencies highlight that the final rule does not prohibit covered companies from investing in U.S. GSE securities and instead continues to allow covered companies to participate fully in U.S. GSE securities markets.

ii. Certain Sovereign and Multilateral Organization Securities

The proposed rule also would have included as a level 2A liquid asset a claim on, or a claim guaranteed by, a sovereign entity or a multilateral development bank that was: (1) Not included in level 1 liquid assets; (2) assigned no higher than a 20 percent risk weight under the standardized approach for risk-weighted assets of the agencies' risk-based capital rules;[45] (3) issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and (4) not an obligation of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing. A covered company would have been required to demonstrate that a claim on or claims guaranteed by a sovereign entity or a multilateral development bank had a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions through reference to historical market prices during times of stress.[46] Covered companies should have looked to multiple periods of systemic and idiosyncratic liquidity stress in compiling such records. The agencies did not receive any comments on the proposed treatment of sovereign and multilateral organization securities that would have qualified as level 2A liquid assets under the proposed criteria. Thus, the final rule classifies them as level 2A liquid assets as proposed.

e. Level 2B Liquid Assets

Under the proposed rule, level 2B liquid assets would have included certain publicly traded corporate debt securities and publicly traded shares of common stock that are liquid and readily-marketable. The limitation of level 2B liquid assets to those that are publicly traded was meant to ensure a minimum level of liquidity, as privately traded assets are typically less liquid. Under the proposed rule, the definition of ''publicly traded'' would have been consistent with the definition used in the agencies' regulatory capital rules and would identify securities traded on registered exchanges with liquid two-way markets. A two-way market would have been defined as a market where there are independent bona fide offers to buy and sell, so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame, conforming to trade custom. This definition was designed to identify markets with transparent and readily available pricing, which, for the reasons discussed above, is fundamental to the liquidity of an asset.

The agencies received comments requesting clarification on the types of publicly traded corporate debt securities that may be included in level 2B liquid assets. Several commenters also suggested that the agencies broaden the scope of publicly traded corporate debt securities and publicly traded shares of common stock to be included in level 2B liquid assets. After considering commenters' concerns, the agencies adopted several modifications to the final rule's criteria for level 2B liquid assets, as discussed below.

i. Corporate Debt Securities

Publicly traded corporate debt securities would have been considered level 2B liquid assets under the proposed rule if they met three requirements (in addition to being liquid and readily-marketable). First, the securities would have been required to meet the definition of ''investment grade'' under 12 CFR part 1 as of the calculation date.[47] This standard would ensure that assets that did not meet the required credit quality standard for bank investment would not have been included in HQLA. The agencies believed that meeting this standard is indicative of lower overall risk and, therefore, higher liquidity for a corporate debt security. Second, the securities would have been required to be issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions. A covered company could have demonstrated this record of liquidity reliability and lower volatility during times of stress by showing that the market price of the publicly traded debt securities or equivalent securities of the issuer declined by no more than 20 percent during a 30 calendar-day period of significant stress, or that the market haircut demanded by counterparties to secured lending and secured funding transactions that were collateralized by such debt securities or equivalent securities of the issuer increased by no more than 20 percentage points during a 30 calendar-day period of significant stress. As discussed above, a covered company could demonstrate a historical record that meets this criterion through reference to historical market prices and available funding haircuts of the debt security during times of stress. Third, the proposed rule also provided that the debt securities could not be obligations of a regulated financial company,

[45] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC).

[46] This would be demonstrated if the market price of the security or equivalent securities of the issuer declined by no more than 10 percent or the market haircut demanded by counterparties to secured funding or lending transactions that are collateralized by such security or equivalent securities of the issuer increased by no more than 10 percentage points during a 30 calendar-day period of significant stress.

[47] 12 CFR 1.2(d).

investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing.

The proposed rule would have defined ''publicly traded'' consistent with the definition used in the agencies' regulatory capital rules and would have identified securities traded on registered exchanges with liquid two-way markets. Commenters stated that the proposed rule's definition of ''publicly traded'' would exclude a substantial portion of corporate debt securities because they were not traded on a public market or exchange. Commenters pointed out that unlike equity securities, corporate debt securities are not generally listed on a national securities exchange. Instead, corporate debt securities are generally traded in active, liquid secondary markets. Commenters argued that applying the ''publicly traded'' requirement to corporate debt securities would severely limit the universe of corporate debt securities that could be included as level 2B liquid assets.

To address concerns that the ''publicly traded'' requirement is overly restrictive for corporate debt securities, some commenters suggested that the final rule include non-publicly traded debt if the issuer's equity is publicly traded. These commenters noted that unlisted debt securities of public companies are actively traded in liquid markets.

After considering the comments received, the agencies have decided to remove the ''publicly traded'' requirement for corporate debt securities to be included as level 2B liquid assets. The agencies acknowledge that corporate debt securities are frequently traded in over-the-counter secondary markets and are less frequently listed and regularly traded on national securities exchanges, as required by the ''publicly traded'' definition. Thus, the ''publicly traded'' requirement would have unduly narrowed the scope of corporate debt securities that can be designated as level 2B liquid assets.

The final rule continues to impose certain other requirements that the agencies proposed on level 2B corporate debt securities. First, the final rule continues to require that the securities meet the liquid and readily-marketable standard to be included in level 2B assets. Second, the final rule also continues to require that the securities meet the definition of ''investment grade'' under 12 CFR part 1 as of a calculation date.[48] Third, the securities are required to be issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions. The covered company must demonstrate that the market price of the securities or equivalent securities of the issuer declined by no more than 20 percent or the market haircut demanded by counterparties to secured lending and secured funding transactions that were collateralized by such debt securities or equivalent securities of the issuer increased by no more than 20 percentage points during a 30 calendar-day period of significant stress, or that the market haircut demanded by counterparties to secured lending and secured funding transactions that were collateralized by such debt securities or equivalent securities of the issuer increased by no more than 20 percentage points during a 30 calendar-day period of significant stress. Lastly, the final rule provides that the debt securities may not be obligations of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing.

ii. Publicly Traded Shares of Common Stock

Under the proposed rule, publicly traded shares of common stock could have been included as level 2B liquid assets if the shares met the five requirements set forth below (in addition to being liquid and readily-marketable).

First, to be considered a level 2B liquid asset under the proposed rule, publicly traded common stock would have been required to be included in: (1) The Standard & Poor's 500 Index (S&P 500); (2) if the stock is held in a non-U.S. jurisdiction to meet liquidity risks in that jurisdiction, an index that the covered company's supervisor in that jurisdiction recognizes for purposes of including the equities as level 2B liquid assets under applicable regulatory policy; or (3) any other index for which the covered company can demonstrate to the satisfaction of its appropriate Federal banking agency that the equity in such index is as liquid and readily-marketable as equities traded on the S&P 500.

As discussed in the Supplementary Information section to the proposed rule, the agencies believed that listing of a common stock in a major stock index is an important indicator of the liquidity of the stock, because such stock tends to have higher trading volumes and lower bid-ask spreads during stressed market conditions than those that are not listed. The agencies identified the S&P 500 as being appropriate for this purpose given that it is considered a major index in the United States and generally includes the most liquid and actively traded stocks.

Second, to be considered a level 2B liquid asset, the publicly traded common stock would have been required to have been issued in: (1) U.S. dollars; or (2) the currency of a jurisdiction where the covered company operated and the stock offset its net cash outflows in that jurisdiction. This requirement was meant to ensure that, upon liquidation of the stock, the currency received from the sale would match the outflow currency.

Third, the common stock would have been required to have been issued by an entity whose common stock has a proven record as a reliable source of liquidity in the repurchase or sales markets during stressed market conditions. Under the proposed rule, a covered company could have demonstrated this record of reliable liquidity by showing that the market price of the common stock or equivalent securities of the issuer declined by no more than 40 percent during a 30 calendar-day period of significant stress, or that the market haircut, as evidenced by observable market prices, of secured funding or lending transactions collateralized by such common stock or equivalent securities of the issuer increased by no more than 40 percentage points during a 30 calendar-day period of significant stress. This requirement was intended to exclude volatile equities from inclusion as level 2B liquid assets, which is a risk to the preservation of liquidity value. As discussed above, a covered company could have demonstrated this historical record through reference to the historical market prices of the common stock during times of stress.

Fourth, as with the other asset categories of HQLA and for the same reasons, common stock included in level 2B liquid assets may not have been issued by a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing. During the recent financial crisis, the common stock of such companies experienced significant declines in value correlated to other financial institutions and the agencies believe that such declines indicate those assets would be less likely to provide substantial liquidity during future periods of stress in the banking system and, therefore, are not appropriate for inclusion in a covered company's HQLA.

[48] 12 CFR 1.2(d).

Fifth, if held by a depository institution, the publicly traded common stock could not have been acquired in satisfaction of a debt previously contracted (DPC). Because of general statutory prohibitions on holding equity investments for their own account,[49] depository institutions subject to the proposed rule would not be able to include common stock as level 2B liquid assets. In general, publicly traded common stock may be acquired by a depository institution to prevent a loss from a DPC. However, in order for a depository institution to avail itself of the authority to hold DPC assets, such as by holding publicly traded common stock, such assets typically must be divested in a timely manner.[50] The agencies believe that depository institutions should make a good faith effort to dispose of DPC publicly traded common stock as soon as commercially reasonable, subject to the applicable legal time limits for disposition. The agencies are concerned that permitting depository institutions to include DPC publicly traded common stock in level 2B liquid assets may provide an inappropriate incentive for depository institutions to hold such assets beyond a commercially reasonable period for disposition. Therefore, the proposal would have prohibited depository institutions from including DPC publicly traded common stock as level 2B liquid assets.

Finally, under the proposed rule, a depository institution could have eligible publicly traded common stock permissibly held by a consolidated subsidiary as level 2B liquid assets if the assets were held to cover the net cash outflows for the consolidated subsidiary. For example, if Subsidiary A holds level 2B publicly traded common stock of $200 in a legally permissible manner and has net outflows of $80, the parent depository institution could not count more than $80 of Subsidiary A's level 2B publicly traded common stock in the parent depository institution's consolidated level 2B liquid assets after the 50 percent haircut discussed below.

The agencies received several comments on the criteria for publicly traded equity securities to be included in level 2B liquid assets. Some commenters suggested that the agencies broaden the scope of eligible equity securities beyond those included in the S&P 500. One of these commenters stated that the proposed rule favors a small group of equity issuers included in the S&P 500, which could lead to market distortions and unforeseeable consequences. Several commenters suggested that the agencies consider other major stock indices for the level 2B liquid asset criteria. For U.S. equities, a few commenters recommended that the final rule include equities that comprise the Russell 3000 index. Another commenter suggested the Russell 1000 index. These commenters provided analysis of the volatility and trading volumes of stocks within these indices showing the comparability of the most and least liquid securities in these indices with the S&P 500.

In addition, although the proposed rule would have provided that common equities in any other index for which the covered company can demonstrate to the satisfaction of the agencies that the index is as liquid and readily-marketable as the S&P 500 may be included in level 2B liquid assets, commenters argued that identifying specific indices in the final rule would allow covered companies to avoid waiting for agency approval of indices and promote certainty for banking organizations structuring secured financing transactions. Accordingly, some commenters suggested that the final rule designate all equities included in major equity indices in G–20 jurisdictions as level 2B liquid assets under the final rule. Finally, other commenters argued that exchange traded funds (ETFs) based on the indices included as HQLA should be included, because the ETFs add incremental liquidity on top of that seen in the market for the underlying equities.

After considering commenters' concerns and the liquidity characteristics of the indices commenters proposed to be included as HQLA, the agencies have determined to adjust the scope of U.S. equities that may be included as level 2B liquid assets. Specifically, the final rule includes common equity securities of companies included in the Russell 1000 index in the criteria for level 2B liquid assets in place of the companies included in the S&P 500. The proposed rule identified the S&P 500 as being appropriate for this purpose, given that it is considered a major index in the United States and generally includes the most liquid and actively traded stocks. The agencies have determined that the Russell 1000 index would be a more appropriate index after considering comments evidencing the similarities in trading volumes, volatilities, and price movements of the two indices. Moreover, stocks that are included in the Russell 1000 index are selected based on predetermined criteria, whereas a committee evaluates and selects stocks for inclusion in the S&P 500. The agencies believe that the systematic selection of stocks for inclusion in the Russell 1000 index, combined with the liquidity characteristics of stocks included in the index, support replacing the S&P 500 index with the Russell 1000 index in the criteria for level 2B liquid assets.

As mentioned above, some commenters recommended including equities in the Russell 3000 index in level 2B liquid assets. The agencies evaluated the Russell 3000 index and were concerned that it includes a wider universe of stocks and captures the equities of certain smaller U.S. companies by market capitalization. As a result, equities in the Russell 3000 index exhibit a greater range of liquidity characteristics and include equities that demonstrate less favorable trading volumes, volatilities, and price changes. Thus, the agencies believe that the Russell 1000 index, which includes a broader set of stocks than the S&P 500, provides an appropriate universe of stocks that may be eligible as level 2B liquid assets.

The agencies emphasize, however, that equities included in the Russell 1000 index must also meet certain other requirements to be level 2B liquid assets, which the final rule adopts as proposed. Thus, to be considered a level 2B liquid asset, an equity included in the Russell 1000 index must meet other requirements provided in the final rule, such as meeting the liquid and readily-marketable standard and being issued by an entity whose shares have a proven record as a reliable source of liquidity in the sales or repurchase market during a stressed scenario.

In response to commenters' requests for the final rule to identify other indices that include equities that may be designated as level 2B liquid assets, the agencies have determined that the final rule should no longer include the provision to allow a covered company to demonstrate that the equity securities included in another index should be eligible for level 2B liquid assets because the final rule includes the significantly broader Russell 1000 index. In addition, the agencies are unaware of another existing index the components of which would be appropriate for inclusion as level 2B liquid assets.

The final rule does not include ETFs that are based on the indices as level 2B liquid assets. The agencies believe that the liquidity characteristics of ETFs are

[49] 12 U.S.C. 24 (Seventh) (national banks); 12 U.S.C. 1464(c) (federal savings associations); 12 U.S.C. 1831a (state banks); 12 U.S.C. 1831e (state savings associations).

[50] *See generally* 12 CFR 1.7 (OCC); 12 U.S.C. 1843(c)(2) (Board); 12 CFR 362.1(b)(3) (FDIC).

not identical to the liquidity characteristics of the underlying index or the individual components of the fund. Rather, ETFs have their own risk profiles, trading volumes, and market-based characteristics separate from the underlying index. Accordingly, the final rule does not include ETFs as level 2B liquid assets.

The proposed rule would have required publicly traded common stocks to have been issued in: (1) U.S. dollars; or (2) the currency of a jurisdiction where the covered company operated and the stock offset its net cash outflows in that jurisdiction in order to be considered a level 2B liquid asset. The final rule adopts the provision as proposed. The agencies clarify that the provision's second requirement limits a covered company to including as level 2B liquid assets equities issued in the currency of a jurisdiction where the covered company operates. For example, a covered company may hold a stock issued in Japanese yen as a level 2B liquid asset only if: (1) The covered company operates in Japan, and (2) the stock is available to support the covered company's yen denominated net cash outflows in Japan.

iii. Assets Securing a Transaction

Lastly, one commenter suggested that there are narrow situations where the agencies should expand level 2B liquid asset recognition for purposes of the LCR denominator, even when those assets are not recognized as HQLA in the LCR numerator. Specifically, the commenter requested that the agencies include additional classes of assets as level 2B liquid assets solely for the purposes of determining the applicable outflow and inflow rates for transactions secured by the asset. The commenter argued that failure to do so would result in anomalous LCR results even with otherwise reliable secured lending transactions. After considering the commenters' suggestion, the agencies believe that assets should be designated consistently as HQLA for purposes of calculating both the LCR numerator and denominator. In determining HQLA designation, the agencies considered the liquidity characteristics of assets to ensure that a covered company's HQLA amount only includes assets with a high potential to generate liquidity during a stress scenario. The agencies believe that such an approach is appropriate for determining the designation of assets as HQLA for all aspects of the LCR calculation, including the determination of outflow and inflow rates for transactions secured by the asset.

f. Assets Recommended for HQLA Designation

A number of commenters requested that the agencies consider designating additional assets as HQLA. In particular, commenters suggested including as HQLA municipal securities, asset-backed securities (ABS), state and local authority housing bonds backed by Federal Housing Association and Department of Veterans Affairs guarantees, covered bonds, private label MBS, and investment company shares. Several commenters also argued that permissible collateral pledged to FHLBs, FHLB letters of credit, and unused borrowing commitments from FHLBs should be considered as HQLA. The agencies considered commenters' requests and have declined to designate additional assets as HQLA for the reasons discussed below.

i. Municipal Securities

Many commenters urged the agencies to include municipal securities as HQLA, noting that the Basel III Revised Liquidity Framework would include them in its definition of HQLA. Commenters raised a number of policy justifications to support the inclusion of investment grade municipal securities as HQLA, either as level 2A or level 2B liquid assets, including assertions that municipal securities exhibit liquidity characteristics consistent with HQLA status and that the exclusion of municipal securities from HQLA could lead to higher funding costs for municipalities, which could affect local economies and infrastructure.

Several commenters contended that U.S. municipal securities should satisfy the proposed rule's qualifying criteria for HQLA. Many of these commenters argued that municipal bonds meet the liquid and readily-marketable requirement of HQLA because they exhibited limited price volatility particularly during the recent financial crisis, high trading volumes, and deep and stable secured funding markets. Commenters also focused on the high credit quality and low historical default rates of these securities. Furthermore, commenters asserted that the risk and liquidity profiles of municipal securities were comparable, if not superior, to the profiles of other types of assets the agencies proposed for inclusion as HQLA, such as corporate bonds, equities, certain foreign sovereign obligations, and certain securities of GSEs. A number of commenters expressed concerns that the proposed rule would have included certain sovereign securities for countries that have smaller GDPs than some U.S. states as HQLA while excluding obligations of U.S. states and local governments. Some of these commenters argued that the credit ratings of certain states compare favorably with those of countries whose obligations could be included as level 1 or level 2A liquid assets. Commenters also contended that municipal securities perform well and experience increased demand during times of stress. Several commenters asserted that banking organizations could liquidate large holdings of municipal securities with minimal market or price disruption during a crisis scenario.

Many commenters asserted that municipal securities have active markets with high trading volumes, a large number of registered broker-dealers who make markets in the municipal securities, and significant diversity in market participants. These commenters maintained that certain large issuers of municipal securities markets have regular and active trading. In particular, commenters argued that municipal securities are actively traded by a number of nonbank financial sector entities and retail customers and have a low degree of interconnectedness with banking organizations. A few commenters acknowledged that the municipal bond market includes numerous, diverse issuers and that certain individual municipal securities may have low trading volumes. However, these commenters argued that the securities typically trade on a per issuer basis rather than a per security basis and urged the agencies to evaluate the municipal security market as a whole when assessing their liquidity characteristics for HQLA status.

Several commenters asserted that many municipal securities exhibit the HQLA characteristics of being easily and readily valued. Some of these commenters highlighted that although municipal securities are not traded on an exchange, most of them can be readily valued on a daily basis from a variety of pricing services. Certain commenters highlighted that municipal securities are eligible collateral for loans at the Federal Reserve discount window.

Many commenters focused on the potential consequences of excluding municipal securities from HQLA. Commenters asserted that their exclusion would discourage banking organizations from purchasing the securities. Consequently, state and local entities would face increased funding costs for infrastructure and essential public services. Commenters stated that municipal securities are a vital source of credit for local communities, and the proposed rule's exclusion of the

securities from HQLA would have limited a source of funding for local economies. Some commenters stated that the proposed rule's treatment of municipal securities would have led states and municipalities to pass on increased funding costs for infrastructure and essential public services to local businesses and the general public in the form of increased taxes.

Several commenters asserted that although municipal securities are not typically used as collateral for repurchase agreements, they are rehypothecated by tender options bonds, which did not see significant haircuts or price changes during the recent financial crisis.

Commenters also compared the proposed rule's treatment of municipal securities to the standards of other jurisdictions. A few of these commenters noted that the proposed rule's exclusion of municipal securities was inconsistent with the Basel III Revised Liquidity Framework, which potentially recognizes securities issued by state and municipal governments that qualify for 20 percent risk weighting under the Basel capital standards as level 2A assets. One commenter noted that the European Bank Authority has recommended including certain bonds issued by European local government institutions as HQLA.

Some commenters noted that encouraging covered companies to invest in municipal securities would compel covered companies to diversify their holdings of HQLA with securities that have a varied investor base. Commenters pointed out that the financial sector is underexposed to the municipal securities market and asserted that this diversification would improve the liquidity risk profiles of banking organizations.

Finally, several commenters argued that the agencies could limit municipal securities included as HQLA through a number of criteria including: (1) Only those securities that would be ''investment grade'' under 12 CFR part 1 as of a calculation date; (2) only those securities that have a 20 percent risk-weighting under the agencies risk-based capital rules; or (3) a separate 25 percent composition cap on municipal securities included in a covered company's HQLA amount.

Under the final rule, securities issued by public sector entities, such as a state, local authority, or other government subdivision below the level of a sovereign (including U.S. states and municipalities) do not qualify as HQLA. The goal of the LCR is to ensure that covered companies are able to meet their short-term liquidity needs during times of stress. Inability to meet those liquidity needs proved to be a significant cause of the failure or near failure of several large financial firms during the recent financial crisis. To ensure adequate liquidity, the final rule only includes as HQLA securities that can be easily and immediately convertible into cash with little or no loss of value during a period of stress, either by sale or through a repurchase transaction.

With respect to municipal securities, the agencies have observed that the liquidity characteristics of municipal securities range significantly, and overall, many municipal securities are not ''liquid and readily-marketable'' in U.S. markets as defined in § __.3 of the final rule. For instance, many securities issued by public sector entities exhibit low average daily trading volumes and have generally demonstrated less favorable price changes and volatility characteristics. In addition, the agencies have found that the funding of many municipal securities is very limited in the repurchase market, which indicates that the securities may not be able to be quickly converted into cash during a period of stress. Generally, the agencies believe that covered companies would be limited in their ability to rapidly monetize many municipal securities in the event of a severe systemic liquidity stress scenario.

Several commenters pointed to other characteristics, such as credit quality, default rates, and central bank eligibility, in urging the agencies to include municipal securities as HQLA. As discussed, the final rule considers certain liquidity characteristics, including risk profile, market-based characteristics, and central bank eligibility to identify types of assets that would qualify as HQLA. Although the agencies consider the credit risk and central bank eligibility associated with an asset in determining HQLA eligibility, the agencies also consider other characteristics, such as trading volumes, price characteristics, and the presence of active sales or repurchase markets for the securities at all times. After considering the relevant characteristics taken together, the agencies believe that many municipal securities do not demonstrate the requisite liquidity characteristics to qualify as HQLA under the final rule.

Some commenters questioned the basis for excluding municipal securities from HQLA when the agencies proposed to include corporate bonds, equities, and securities of sovereign countries that have recently experienced financial difficulties. The agencies note that although the credit risk of a security may be an important aspect for determining the liquidity of a class of assets, the agencies also believe that trading volumes and the presence of deep, active sale or repurchase markets for an asset class are important aspects of any potential class of HQLA. As discussed above, the agencies have determined that the liquidity characteristics of other assets, such as corporate bonds, equities, and certain sovereign securities, meet the requirements for HQLA eligibility because of their trading volumes and the presence of deep, active sale or repurchase markets for those assets. For many municipal securities, the agencies have not found that the markets and trading volume is as deep and active on an ongoing basis such that there is a high level of confidence that a banking organization could quickly convert these municipal securities into cash during a severe liquidity stress event. The agencies observe that the final rule's treatment of municipal securities is consistent with the treatment of other assets that also, as a class, significantly vary in trading volume and lack access to deep and active repurchase markets and therefore do not qualify as HQLA, such as covered bonds and ABS.

Commenters also compared the proposed rule's treatment of municipal securities to the potential standards of other jurisdictions and the Basel III Revised Liquidity Framework, which contemplate that certain securities issued by public sector entities such as states and municipalities may be included as HQLA. However, for the reasons discussed above, the agencies believe that many municipal securities are not liquid and readily-marketable in U.S. markets and thus do not exhibit the liquidity characteristics necessary to be included as HQLA under the final rule.

In response to commenters' suggested criteria for including certain municipal securities as HQLA, although some commenters noted that pricing services can offer daily values for certain municipal securities, the agencies recognize that financial data from municipal issuers can be inconsistent and vary in timing. The agencies believe that challenges in data availability can impact the ability of covered companies and supervisors to determine the eligibility of certain municipal securities based on suggested sets of criteria. Furthermore, generally, the agencies have concluded that the criteria suggested by commenters would lead to inclusion of municipal securities that exhibit a range of liquidity characteristics, including those with

less favorable characteristics that are not compatible with HQLA eligibility and that would not be a sufficiently reliable source of liquidity for a banking organization during a period of stress.

Finally, as discussed above, commenters expressed concerns about the market impact of excluding municipal securities from HQLA. A few commenters also stated that encouraging covered companies to invest in municipal securities would help diversify the covered companies' holdings. The agencies highlight that the final rule does not prohibit covered companies from investing in municipal securities and diversifying their investment portfolios. The agencies are aware that covered companies continue to actively invest in municipal securities, evidenced by covered companies' increased holdings of municipal securities since the financial crisis, for reasons unrelated to liquidity risk management practices. Under the final rule, covered companies may continue to participate fully in municipal security markets. The agencies continue to believe that municipal securities can be appropriate investments for covered companies and expect the banking sector to continue to participate in this market. Many covered companies did not include municipal securities in their holdings of liquid assets for contingent liquidity stress purposes prior to the LCR, yet continued to invest in municipal securities for yield, credit quality, and other factors; therefore, the agencies do not believe the final rule will have a significant impact on overall demand for municipal securities.

ii. ABS, Covered Bonds, Private Label MBS, and Mortgage Loans

A number of commenters recommended that the agencies designate certain securitization exposures, specifically certain high credit quality ABS, covered bonds, and private label MBS (commercial, multifamily, and residential real estate), as level 2B liquid assets. Commenters asserted that banking organizations are key investors in these securitization products that serve as important long-term financing instruments supporting the economy. These commenters warned that failure to include these securities as HQLA could adversely impact the private U.S. mortgage market.

Some commenters suggested that the final rule include ''high-quality'' ABS as level 2B liquid assets. For example, one commenter suggested that the final rule include a set of criteria to identify high-quality ABS having liquidity characteristics similar to those of corporate debt securities that are included as level 2B liquid assets, so that the ABS meeting those criteria could also be included as level 2B liquid assets. In support of that recommendation, some commenters asserted that certain publicly traded ABS exhibited similar historical performance to investment grade publicly traded corporate debt securities, even during the recent financial crisis. Some commenters asserted that excluding ABS from HQLA could undermine investment in the ABS market and increase the cost of securitization financing available to customers of banking organizations. A commenter requested that the final rule include investment grade senior unsubordinated ABS collateralized or otherwise backed solely by loans originated under the Federal Family Education Loan Program as level 2A liquid assets.

Some commenters recommended that the agencies include covered bonds as level 2B liquid assets. Commenters argued that the proposed rule's exclusion of covered bonds from HQLA deviated from the Basel III Revised Liquidity Framework's designation of certain high credit quality covered bonds as level 2A liquid assets with a 15 percent haircut. One commenter suggested a set of criteria to identify high credit quality covered bonds that could be included as level 2B liquid assets.[51] The commenter suggested that the agencies consider including covered bonds that meet the criteria and have a proven track record as a reliable source of liquidity in a stressed market environment as level 2B liquid assets. Another commenter noted that the risk characteristics of covered bonds are fundamentally different from other securitizations and highlighted that the liquidity of covered bonds in Europe during recent crises was not significantly impaired. One commenter acknowledged that the U.S. covered bond market is not highly developed, but supported including covered bonds as HQLA to encourage development of the market.

Some commenters suggested that the final rule include private label MBS as level 2B liquid assets. A few commenters argued that the proposed rule's exclusion of private label MBS from HQLA deviated from the Basel III Revised Liquidity Framework, which includes certain high credit quality private label residential MBS (RMBS) as level 2B liquid assets with a 25 percent haircut, and suggested that the agencies follow the Basel standard. One of these commenters suggested that the agencies adopt a set of criteria to identify high credit quality RMBS that could be considered level 2B liquid assets that is similar to the criteria the agencies proposed to adopt for corporate debt securities that would have been level 2B liquid assets under the proposed rule. The commenter recommended that the eligible RMBS would qualify for level 2B treatment to the extent that the RMBS could be shown to have a proven track record as a reliable source of liquidity during stressed market environments as demonstrated by: (i) The market price of the RMBS or equivalent securities of the sponsor declining by no more than 20 percent during a 30 calendar-day period of significant stress, or (ii) the market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the RMBS or equivalent securities of the sponsor declining no more than 20 percentage points during a 30-calendar day period of significant stress.

A few commenters stated that in the agencies' proposed rule on credit risk retention, the agencies have proposed to exempt from risk retention certain RMBS backed by ''qualified mortgages'' as defined under the Truth in Lending Act in part because of their credit characteristics and requested that the agencies consider including RMBS backed by ''qualified mortgages'' as HQLA.[52] Some commenters asserted that failing to include RMBS as HQLA could negatively impact the residential mortgage market by impeding the return of private capital. Commenters also requested that mortgage loans be included as HQLA, arguing that the failure to do so could have unintended consequences for the mortgage market.

After considering the comments, the agencies have determined not to include ABS, covered bonds, private label MBS and mortgage loans as level 2B liquid assets. The agencies are aware that specific issuances of ABS, RMBS, or covered bonds may exhibit some liquidity characteristics that are similar

[51] Specifically, the commenter suggested that a covered bond should qualify as a level 2B liquid asset if the security: (1) Is registered under the Securities Act of 1933 or exempt under the SEC's Rule 144A; (2) is senior debt that is issued by a regulated, unaffiliated financial institution located in an Organization for Economic Co-Operation and Development country; (3) grants the holders the right to sell the covered asset pool upon default and that the sale could not be stayed or delayed due to the insolvency of the issuer; and (4) meets the other criteria required for a level 2B liquid asset.

[52] *See* OCC, Board, FDIC, FHFA, SEC, U.S. Department of Housing and Urban Development, ''Credit Risk Retention,'' 78 FR 57989 (September 20, 2013).

to those of assets included as HQLA. However, the agencies continue to believe that ABS, covered bonds, private label MBS, and mortgage loans do not meet the liquid and readily-marketable standard in U.S. markets, and thus do not exhibit the liquidity characteristics necessary to be included as HQLA under the final rule. Evidence from the 2007–2009 financial crisis and the period following indicates that the market demand for a variety of securitization issuances can decline rapidly during a period of stress, and that such demand may not rapidly recover. ABS may be dependent on a diverse range of underlying asset classes, each of which may be impacted in a period of significant stress. Furthermore, the bespoke characteristics of securitization structures may be tailored to a limited range of investors. The ability to monetize securitization issuances and whole loans through or in the repurchase market may be limited in a period of stress.

Moreover, although certain ABS issuances, such as ABS backed by loans under the Federal Family Education Loan Program and RMBS backed solely by securitized ''qualified mortgages'' or mortgages guaranteed by the Federal Housing Authority or the Department of Veterans Affairs, may have lower credit risk, the liquidity risk profile of such securities, including the inability to monetize the issuance during a period of stress, would not warrant treatment as HQLA. The agencies note that ABS and RMBS issuances have substantially lower trading volumes than MBS that are guaranteed by U.S. GSEs and demand for such securities has decreased, as shown by the substantial decline in the number of issuances since the recent financial crisis. The agencies note that the inclusion of RMBS under the Basel III Revised Liquidity Framework was limited to those securitizations where the underlying mortgages were full recourse loans, which is not permissible in a number of states, and therefore would complicate any inclusion of RMBS as HQLA in the United States.

Likewise, with respect to mortgage loans, including qualified mortgage loans or those guaranteed by the Federal Housing Authority or the Department of Veterans Affairs, the agencies note that due to legal requirements for transfer and the lack of use of mortgages as collateral for repurchase agreements, such loans cannot typically be rapidly monetized during a period of financial stress, prohibiting their classification as HQLA. Moreover, although such assets can be pledged to the FHLB, the agencies do not believe that the FHLB should represent the sole method of rapid monetization for any class of assets included as HQLA, as discussed further below.

As one commenter mentioned, the U.S. market for covered bonds is not highly developed, with few issuances. The agencies do not believe that it is appropriate for the agencies to use the LCR as the mechanism for encouraging or developing the liquidity of an asset class. Rather, the LCR is designed to ensure that covered institutions have sufficient liquid assets that already have been proven sources of liquidity in the event of a liquidity crisis. Furthermore, the agencies observe that covered bonds, which are typically issued by companies in the financial sector, exhibit significant risks regarding interconnectedness and wrong-way risk among companies in the financial sector.

Several commenters highlighted that excluding RMBS and covered bonds from HQLA could cause a detrimental impact on the U.S. residential mortgage market. The agencies recognize the importance of capital funding to the U.S. residential mortgage markets and highlight that the final rule does not prohibit covered companies from continuing to invest in ABS, covered bonds, and private label MBS, and does not restrict a covered company from making mortgage loans or loans underlying ABS and covered bonds. As discussed above, the agencies do not expect, and have not observed, that banking organizations base their investment decisions solely on regulatory considerations and do not anticipate that exclusion of these assets from HQLA will significantly deter investment in these assets.

iii. Investment Company Shares

A few commenters requested that the agencies consider including certain investment company shares, such as shares of mutual funds and money market funds (MMFs), as HQLA. Commenters argued that investment companies should not be treated as financial sector entities for purposes of determining whether shares of the investment company may be included as HQLA. As discussed above, the proposed rule would have excluded securities issued by a financial sector entity from HQLA to avoid the potential for wrong-way risk. Commenters suggested that the agencies look through to the investments of the fund to determine HQLA eligibility. In particular, a commenter requested clarification that mutual funds such as open-end GNMA funds should be considered level 1 liquid assets, because the underlying assets are zero percent risk weighted GNMA securities.

Specifically for MMFs, one commenter highlighted that the SEC introduced enhanced liquidity requirements for MMFs in 2010. The commenter contended that the new regulations have sufficiently improved the stability of MMFs to justify their inclusion in HQLA. The commenter also suggested that the agencies include certain high-quality MMFs, such as government MMFs and tax-exempt funds, as HQLA.

After considering these comments, the agencies have determined not to include shares of investment companies, including mutual funds and MMFs, as HQLA. The agencies recognize that certain underlying investments of the investment companies may include high-quality assets. However, similar to securities issued by many companies in the financial sector, shares of investment companies have been prone to lose value and become less liquid during periods of severe market stress or an idiosyncratic event involving the fund's sponsor. As recognized by some commenters, certain shares in MMFs exhibited liquidity stress during the recent financial crisis. Further, the recently finalized SEC rules regarding money markets may impose some barriers on investors' ability to withdraw all of their funds during a stress.[53] Therefore, the agencies do not believe that shares of investment companies demonstrate the liquidity characteristics necessary to be included as HQLA.

iv. FHLB Collateral and Commitments

Certain commenters urged the agencies to consider including collateral pledged to FHLBs and unused borrowing capacity from FHLBs as HQLA. One commenter supported the agencies' proposal to treat as unencumbered those HQLA currently pledged to a U.S. GSE that are subject to a blanket, but not asset-specific, lien, where potential credit secured by the HQLA is not currently extended. However, the commenter requested that the agencies also consider including any assets that are pledged to FHLBs in support of FHLB advance availability as HQLA, rather than only those assets that are currently specified as level 1, level 2A, and level 2B liquid assets. The commenter contended that FHLB-eligible collateral is highly liquid because it can be readily converted into cash advances from a FHLB. Separately,

[53] *See* SEC, ''Money Market Fund Reform; Amendments to Form PF,'' 79 FR 47736 (August 14, 2014).

a few commenters recommended that the agencies include FHLB collateralized advance availability, FHLB letters of credit, or FHLB borrowing capacity as HQLA. The commenters emphasized that depository institutions have the ability to access liquidity from FHLBs even during times of stress and therefore argued that FHLB capacity would be a reliable source of liquidity during a crisis.

The agencies have considered the commenters' suggestions and have determined not to include as HQLA collateral pledged to FHLBs that are not otherwise HQLA under the proposed rule, FHLB letters of credit, or FHLB collateralized advance availability. In determining the types of assets that would qualify as HQLA, the agencies considered certain liquidity characteristics that are reflected in the criteria in § __.20 of the final rule, as discussed above. The agencies have determined that assets, including those that are considered permissible collateral for FHLB advances, must meet the criteria set forth in § __.20 of the final rule to qualify as HQLA, including low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and other appropriate factors. As discussed above, although certain collateral, such as mortgages, may be accepted by the FHLB, a covered company may not be able to rapidly liquidate a portfolio of such assets other than as collateral for the extension of credit by the FHLB. The agencies do not believe that it would be appropriate to rely on the extension of credit by the FHLB as the sole method of monetization during a period of market distress.

Separately, the agencies believe that FHLB collateralized advance availability and FHLB letters of credit should not be included as HQLA. The LCR is designed to encourage the holding of liquid assets that may be immediately and reliably converted to cash in times of liquidity stress as borrowing capacity may be constrained, particularly borrowing capacity tied to lower quality assets. The agencies observe that reliance on market borrowing capacity has proved problematic in the past for many covered companies during periods of severe market stress. Accordingly, the LCR is designed to ensure that companies hold sufficient assets to cover outflows during a period of market distress. Thus the final rule would not include such borrowing capacity as HQLA.

v. Including Other Securities

One commenter requested that the agencies adopt in the final rule provisions from the Board's Regulation YY's liquidity risk-management requirements that permit covered institutions to hold certain ''highly liquid assets'' for purposes of its liquidity stress tests under that rule. Unlike the proposed rule, the Board's Regulation YY includes certain government securities, cash, and any other assets that the bank holding company demonstrates to the Board are highly liquid. Specifically, the commenter requested that the agencies incorporate each of the criteria set forth in Regulation YY for assets that are demonstrated to be ''highly liquid'' and to also permit assets that meet such criteria to qualify as HQLA in the final rule.

The proposed rule and Regulation YY were designed to complement one another. Whereas the Regulation YY's internal liquidity stress-test requirements provide a view of an individual firm under multiple scenarios, and include assumptions tailored to the idiosyncratic aspects of the company's liquidity profile, the standardized measure of liquidity adequacy under the proposed rule would have facilitated a transparent assessment of covered companies' liquidity positions under a standard stress scenario and comparison across covered companies. Due to the tailoring of the liquidity stress assumptions under Regulation YY to the risk profile of the company, Regulation YY provided companies discretion to determine whether an asset would be liquid under a particular scenario. Although the criteria set forth in Regulation YY share broad themes with the final rule's requirements for determining HQLA, the agencies believe that the final rule's standardized asset requirements are appropriate for determining the assets that would be easily and immediately convertible to cash with little or no loss of value during a period of liquidity stress and are designed to provide for comparability across covered companies due to the standardized outflow assumptions. Thus, the final rule does not incorporate specific criteria from Regulation YY.

3. Requirements for Inclusion as Eligible HQLA

For HQLA to be eligible to be included in the HQLA amount (LCR numerator), the proposed rule would have required level 1 liquid assets, level 2A liquid assets and level 2B liquid assets to meet all the operational requirements and generally applicable criteria set forth in § __.20(d) and (e) of the proposed rule. Because certain assets may have met the high-quality liquid asset criteria set forth in § __ .20(a)–(c) of the proposed rule, but may not have met the operational or generally applicable criteria requirements (and thus not be eligible to be included in the calculation of the HQLA amount), the agencies are adding a new construct in the final rule (eligible HQLA). The purpose of this addition is to more clearly draw a distinction between those assets that are HQLA under § __.20 (a)–(c) of the final rule and eligible HQLA which also meet the operational, generally applicable criteria, and maintenance of U.S. eligible requirements which have been adopted in § __.22 of the final rule. In other words, only eligible HQLA meeting all the necessary requirements set forth in § __.22 are to be included in the calculation steps to determine the HQLA amount. For the purpose of consistency and ease of reference, this Supplementary Information section also uses this distinction between HQLA and eligible HQLA when referring to the requirements that the proposed rule would have implemented.

The final rule continues to permit a covered company to include assets in each HQLA category as of a calculation date without regard to the asset's residual maturity. For all HQLA, the residual maturity of the asset will be reflected in the asset's fair value and should not have an effect on the covered company's ability to monetize the asset.

a. Operational Requirements

Under the proposed rule, an asset that a covered company could have included in its HQLA amount would have needed to meet a set of operational requirements. These operational requirements were intended to better ensure that a covered company's eligible HQLA can be liquidated in times of stress. Several of these requirements related to the monetization of an asset, meaning the receipt of funds from the outright sale of an asset or from the transfer of an asset pursuant to a repurchase agreement. A number of commenters requested clarification on the operational requirements. The final rule retains the proposed operational requirements and clarifies certain aspects of the requirements as discussed below.

i. Operational Capability To Monetize HQLA

The proposed rule would have required a covered company to have the operational capability to monetize the HQLA held as eligible HQLA. This capability would have been demonstrated by: (1) Implementing and

maintaining appropriate procedures and systems to monetize the asset at any time in accordance with relevant standard settlement periods and procedures; and (2) periodically monetizing a sample of eligible HQLA that reasonably reflects the composition of the covered company's total eligible HQLA portfolio, including with respect to asset type, maturity, and counterparty characteristics. This requirement was designed to ensure a covered company's access to the market, the effectiveness of its processes for monetization, the availability of the assets for monetization, and to minimize the risk of negative signaling during a period of actual stress. The agencies would have monitored such procedures, systems, and periodic sample liquidations through their supervisory process.

One commenter requested that the agencies clarify that a covered company may demonstrate its operational capacity to monetize HQLA through its ordinary business activities. The commenter claimed that requiring monetization solely to demonstrate access to the market for purposes of the rule could lead the covered company to incur a profit and loss for a transaction that lacks a business purpose. A separate commenter questioned whether actual sales of assets were required to meet the requirement that a covered company have the operational capacity to monetize HQLA.

Commenters requested that the agencies include additional methods of monetization. One commenter argued that monetization of an asset should include transfer of the asset in exchange for cash in the settlement of an overnight reverse repurchase agreement. The commenter clarified that the counterparty of the overnight reverse repurchase agreement could be a Federal Reserve Bank or another entity that provides the reliable monetization of assets held under the reverse repurchase agreement. The commenter contended that such assets should be eligible HQLA even when they do not meet all other requirements related to the monetization of the asset.

After considering commenters' concerns, the agencies are retaining the proposed requirement that a covered company demonstrate its operational capacity to monetize HQLA by periodically monetizing a sample of the assets either through an outright sale or pursuant to a repurchase agreement. The agencies expect actual sales or repurchase agreements to occur for a covered company to demonstrate periodic monetization. Furthermore, as requested by commenters and as discussed above, the agencies clarify that monetization includes receiving funds pursuant to a repurchase agreement. To the extent that a covered company monetizes certain assets, such as U.S. Treasury securities, on a regular, frequent basis through business-as-usual activities, the company may rely on evidence of sales during the ordinary course of business and repurchase transactions of those assets to demonstrate its operational capability to monetize them. However, the agencies are aware that a company may monetize certain assets on a sporadic or less frequent basis due to the nature of the assets or business. The agencies expect that in order to meet the operational capability requirement for eligible HQLA, the covered company monetize those types of assets through specific steps that go beyond ordinary business activities. In particular, to meet the requirement, the agencies expect a covered company to more thoroughly demonstrate the periodic monetization of assets that exhibit less favorable liquidity characteristics than other HQLA.

Under the proposed and final rules, reverse repurchase agreements subject to a legally binding agreement at the calculation date are secured lending transactions and these transactions do not count as HQLA. The assets that are provided to the covered company by some overnight reverse repurchase agreements may potentially meet the operational requirements for eligible HQLA described in the rule. The agencies do not believe that the presence of the overnight reverse repurchase agreement and the anticipated exchange of the assets for cash is sufficient in itself to meet the monetization standard, as for operational or business reasons such transactions may be required to be rolled over on an ongoing basis. The agencies are clarifying that in order to meet this monetization standard, covered companies must show that they are not rolling over the overnight reverse repurchase agreement indefinitely and must hold or use the cash received from the maturing transaction for a sustained period; or the covered company must periodically monetize the underlying asset through outright sale or transfer pursuant to a repurchase agreement.

Another commenter expressed concern that the requirement to periodically monetize HQLA conflicted with a previous interagency policy statement on liquidity risk management that provided that ''affirmative testing . . . may be impractical.'' [54] This statement in the 2010 Interagency Liquidity Policy Statement referred to a banking organization's required contingency funding plan (CFP) that set forth strategies for addressing liquidity shortfalls in emergency scenarios. The policy statement acknowledged that while affirmative testing of certain components of the CFP may be impractical, ''institutions should be sure to test operational components of the CFP.'' Therefore, the proposed rule's requirement that a covered company demonstrate its operational capability to monetize assets did not conflict with the previous interagency policy statement.

ii. HQLA Under the Control of the Liquidity Management Function

Under the proposed rule, a covered company would have been required to implement policies that required all eligible HQLA to be under the control of the management function of the covered company that is charged with managing liquidity risk. To do so, a covered company would have been required either to segregate the HQLA from other assets, with the sole intent to use them as a source of liquidity, or to demonstrate its ability to monetize the HQLA and have the resulting funds available to the risk management function, without conflicting with another business or risk management strategy. Thus, if an HQLA had been used to hedge a specific transaction, such as holding an asset to hedge a call option that the covered company had written, it could not have been included in the covered company's eligible HQLA if the sale of the asset or its use in a repurchase transaction would have conflicted with another business or risk management strategy. If the use of the asset in the repurchase transaction would not have conflicted with the hedge, the HQLA may have been eligible under the proposed rule. If HQLA had been used as a general macro hedge, such as interest rate risk of the covered company's portfolio, it could still have been included as eligible HQLA. This requirement was intended to ensure that a central function of a covered company had the authority and capability to liquidate eligible HQLA to meet its obligations in times of stress without exposing the covered company to risks associated with specific transactions and structures that had been hedged. There were instances during the recent financial crisis where unencumbered assets of some firms were not available to meet liquidity demands because the firms' treasuries did not have access to such assets.

A few commenters requested that the agencies clarify the requirement for

[54] *See* Interagency Liquidity Policy Statement.

segregating assets. One commenter questioned whether an electronic flag was adequate to demonstrate segregation or whether separate accounts are required. Another commenter requested clarification on whether segregated assets could be placed in multiple consolidated subsidiaries. The agencies continue to believe that a covered company may demonstrate that the eligible HQLA is under the control of the liquidity risk management function by segregating the HQLA with the sole intent to use the HQLA as a source of liquidity. Although the agencies have not adopted a preferred method of showing such segregations, a covered company should be able to demonstrate that the segregated assets are under the control of the management function charged with managing liquidity risk at the covered company. The agencies expect a covered company to be able to demonstrate that the chosen form of segregation facilitates the liquidity management function's use of the assets for liquidity purposes.

iii. Termination of Transaction Hedging HQLA

The proposed rule would have required a covered company to have included in its total net cash outflow amount the amount of cash outflow that would have resulted from the termination of any specific transaction hedging eligible HQLA. The proposal would have required a covered company to include the impact of the hedge in the outflow because if the covered company were to liquidate the asset, it would be required to close out the hedge to avoid creating a risk exposure. This requirement was not intended to apply to general macro hedges such as holding interest rate derivatives to adjust internal duration or interest rate risk measurements, but was intended to cover specific hedges that would become risk exposures if the asset were sold. The agencies did not receive comments on this operational requirement. However, the agencies are clarifying that, consistent with the Basel III Revised Liquidity Framework, the amount of the outflow resulting from the termination of the hedging transaction should be deducted from the fair value of the applicable eligible HQLA instead of being included as an outflow in the LCR denominator. Section __.22(a)(3) of the final rule has been amended to clarify this requirement.

iv. Policies and Procedures To Determine Eligible HQLA Composition

Under the proposed rule, a covered company would have been required to implement and maintain policies and procedures that determined the composition of the assets held as eligible HQLA on a daily basis by: (1) Identifying where its eligible HQLA were held by legal entity, geographical location, currency, custodial or bank account, and other relevant identifying factors; (2) determining that the assets included as eligible HQLA continued to qualify as eligible HQLA; and (3) ensuring that the HQLA held by a covered company as eligible HQLA are appropriately diversified by asset type, counterparty, issuer, currency, borrowing capacity or other factors associated with the liquidity risk of the assets.

The agencies also recognized that significant international banking activity occurs through non-U.S. branches of legal entities organized in the United States and that a foreign branch's activities may give rise to the need to hold eligible HQLA in the jurisdiction where it is located. While the agencies believed that holding HQLA in a geographic location where it is needed to meet liquidity needs such as those envisioned by the LCR was appropriate, they were concerned that other factors such as taxes, rehypothecation rights, and legal and regulatory restrictions may encourage certain companies to hold a disproportionate amount of their eligible HQLA in locations outside the United States where unforeseen impediments may prevent timely repatriation of HQLA during a liquidity crisis. Nonetheless, establishing quantitative limits on the amount of eligible HQLA that can be held abroad and still count towards a U.S. domiciled legal entity's LCR requirement is complex and may be overly restrictive in some cases. Therefore, the agencies proposed to require a covered company to establish policies to ensure that eligible HQLA maintained in foreign locations was appropriate with respect to where the net cash outflows could arise. By requiring that there be a correlation between the eligible HQLA held outside of the United States and the net cash outflows attributable to non-U.S. operations, the agencies intended to increase the likelihood that eligible HQLA would be available to a covered company in the United States and to avoid repatriation concerns from eligible HQLA held in another jurisdiction.

Commenters did not express significant concerns about the requirement to implement and maintain policies and procedures to determine the composition of the assets in eligible HQLA.

The agencies incorporated two clarifying changes in the final rule. Although the proposed rule would have required a covered company to have policies and procedures to determine its eligible HQLA composition on a daily basis, the final rule clarifies that the requirement applies on each calculation date. The agencies incorporated the modification to clarify that the requirement applies on each date a covered company calculates its LCR, subject to the transition provisions in subpart F of the final rule. The agencies also emphasized in § __.22(a)(5) of the final rule that the methodology a covered company uses to determine the eligibility of its HQLA must be documented and must be applied consistently. For example, a covered company cannot make inconsistent determinations in terms of eligible HQLA requirements for HQLA with the same operational characteristics, either across different assets or across time. Additionally, a covered company cannot treat the same asset as eligible HQLA for one part of the final rule, while not treating it as eligible HQLA for another part of the final rule.

4. Generally Applicable Criteria for Eligible HQLA

Under the proposed rule, assets would have been required to meet the following generally applicable criteria to be considered as eligible HQLA.

a. Unencumbered

The proposed rule required that an asset be unencumbered in order for it to be included as eligible HQLA. First, the asset would have been required to be free of legal, regulatory, contractual, or other restrictions on the ability of a covered company to monetize the asset. The agencies believed that, as a general matter, eligible HQLA should only include assets that could be converted easily into cash. Second, the asset could not have been pledged, explicitly or implicitly, to secure or provide credit-enhancement to any transaction, except that the asset could be pledged to a central bank or a U.S. GSE to secure potential borrowings if credit secured by the asset has not been extended to the covered company or its consolidated subsidiaries. This exception was meant to account for the ability of central banks and U.S. GSEs to lend against the posted HQLA or to return the posted HQLA, in which case a covered

company could sell or engage in a repurchase agreement with the assets to receive cash. This exception was also meant to permit collateral that is covered by a blanket (rather than asset-specific) lien from a U.S. GSE to be included as eligible HQLA.

The final rule includes a clarifying change to the proposed requirement. The final rule adopts the proposed exception that an asset may be considered unencumbered if the asset is pledged to a central bank or a U.S. GSE to secure potential borrowings and credit secured by the asset has not been extended to the covered company or its consolidated subsidiaries. Under the final rule, the agencies clarify that the assets may also be considered unencumbered if the pledge of these assets is not required to support access to the payment services of a central bank. In certain circumstances, a central bank may have the ability to encumber the pledged assets to avoid losses that may occur when a troubled institution fails to fulfill its payments. The agencies are concerned that such a scenario is more likely to occur during a period of market stress. Thus, the agencies believe that assets pledged by a covered company to access a central bank's payment services are considered encumbered. This provision of the final rule would apply only to assets that a covered company is required to pledge to receive access to the payment services of a central bank, and would not encompass assets that are voluntarily pledged by a covered company to support additional services that may be offered by the central bank, such as overdraft capability.

One commenter expressed concerns that segregated funds held by a covered company pursuant to SEC's customer protection rule 15c3–3 (Rule 15c3–3) would be considered encumbered assets. The commenter noted that Rule 15c3–3 is an SEC rule requiring the segregation of customer assets and places limits on the broker-dealer's use of customer funds. After reviewing the commenter's concerns, the agencies believe that funds held in a Rule 15c3–3 segregated account should be considered encumbered assets. Rule 15c3–3 requires a covered company to set aside assets in a segregated account to ensure that broker-dealers have sufficient assets to meet the needs of their customers. Accordingly, the assets in Rule 15c3–3 segregated accounts are not freely available to the covered company to meet its liquidity needs and are not considered unencumbered for purposes of the final rule. However, while these accounts are excluded from eligible HQLA, the agencies are including treatment of an inflow amount with respect to certain amounts related to broker-dealer segregated accounts as detailed in § __.33(g) of the final rule.

Some commenters noted that the subsidiaries of some covered companies are subject to the SEC's proposed rules to implement liquidity requirements on broker-dealers and security-based swap dealers that use the alternative net capital computation methodology. The SEC's proposed rule would be a potential regulatory restriction on the transfer of HQLA and the commenter expressed concern that the proposed rule would lead to broad disqualification of the HQLA of SEC-regulated entities. The agencies believe it is appropriate that in cases where legal restrictions exist that do not allow the transfer of HQLA between entities, that only HQLA that is equal to the amount of the net outflows of that legal entity should be included in the consolidated LCR, as discussed further below in section II.B.4.c and II.B.4.d. However, the agencies clarify that in cases where such restrictions would result in an amount of HQLA subject to restrictions on transfer that is less than the amount of net outflows as calculated under the final rule for the legal entity, the covered company may include all of the HQLA of the legal entity subject to the restriction in its consolidated LCR HQLA amount, assuming that the HQLA meets the operational requirements specified above, as well as other requirements in the final rule.

One commenter requested that the agencies clarify that securities acquired through reverse repurchase agreements that have not been rehypothecated and are legally and contractually available for a covered company's use are unencumbered for purposes of the rule. Two commenters requested that the agencies clarify that all borrowed assets are legally and contractually available for the covered company's use. The agencies clarify that borrowed securities, including those that are acquired through reverse repurchase agreements, that have not been rehypothecated may be considered unencumbered if the covered company has rehypothecation rights with respect to the securities and the securities are free of legal, regulatory, contractual, or other restrictions on the ability of the covered company to monetize them and have not been pledged to secure or provide credit-enhancement to any transaction, with certain exceptions. The agencies highlight that HQLA, including assets received through reverse repurchase agreements and other borrowed assets, must meet all requirements set forth in § __.22 of the final rule to qualify as eligible HQLA.

b. Segregated Client Pool Securities

Under the proposed rule, an asset included as eligible HQLA could not have been a client pool security held in a segregated account or cash received from a repurchase agreement on client pool securities held in a segregated account. The proposed rule defined a client pool security as one that is owned by a customer of a covered company and is not an asset of the organization, regardless of the organization's hypothecation rights to the security. Because client pool securities held in a segregated account are not freely available to meet all possible liquidity needs of the covered company, they should not count as a source of liquidity.

Commenters did not raise significant concerns on the exclusion of assets in client pool securities from HQLA. The agencies have therefore largely adopted the proposed requirement in the final rule.

c. Treatment of HQLA Held by U.S. Consolidated Subsidiaries

Under the proposal, HQLA held in a legal entity that is a U.S. consolidated subsidiary of a covered company would have been included as eligible HQLA subject to specific limitations depending on whether the subsidiary was subject to the proposed rule and was therefore required to calculate a LCR under the proposed rule.

If the consolidated subsidiary was subject to a minimum LCR under the proposed rule, then a covered company could have included eligible HQLA held in the consolidated subsidiary in an amount up to the consolidated subsidiary's net cash outflows, as calculated to meet its LCR requirement. The covered company could also have included in its HQLA amount any additional amount of HQLA if the monetized proceeds from that HQLA would be available for transfer to the top-tier covered company during times of stress without statutory, regulatory, contractual, or supervisory restrictions. Regulatory restrictions would include, for example, sections 23A and 23B of the Federal Reserve Act [55] and Regulation W.[56] Supervisory restrictions may include, but would not be limited to, enforcement actions, written agreements, supervisory directives or requests to a particular subsidiary that would directly or indirectly restrict the

[55] 12 U.S.C. 371c, 371c–1.

[56] 12 CFR part 223.

subsidiary's ability to transfer the HQLA to the parent covered company.

If the consolidated subsidiary was not subject to a minimum LCR under § __.10 of the proposed rule, a covered company could have included the HQLA held in the consolidated subsidiary in an amount up to the net cash outflows of the consolidated subsidiary that would have been included in the covered company's calculation of its LCR, plus any additional amount of HQLA held by the consolidated subsidiary the monetized proceeds from which would be available for transfer to the top-tier covered company during times of stress without statutory, regulatory, contractual, or supervisory restrictions.

Section __.22(b)(3) of the final rule adopts the treatment of HQLA held by U.S. consolidated subsidiaries as proposed. This treatment is consistent with the Basel III Revised Liquidity Framework and ensures that assets in the pool of eligible HQLA can be freely monetized and the proceeds can be freely transferred to a covered company in times of a liquidity stress. In response to a commenter's request for clarification, the agencies clarify that a covered company is required only to apply the statutory, regulatory, contractual, or supervisory restrictions that are in effect as of the calculation date.

d. Treatment of HQLA Held by Non-U.S. Consolidated Subsidiaries

Consistent with the Basel III Revised Liquidity Framework, the proposed rule provided that a covered company could have included eligible HQLA held by a non-U.S. legal entity that is a consolidated subsidiary of the covered company in an amount up to: (1) The net cash outflows of the non-U.S. consolidated subsidiary that are included in the covered company's net cash outflows, plus (2) any additional amount of HQLA held by the non-U.S. consolidated subsidiary that is available for transfer to the top-tier covered company during times of stress without statutory, regulatory, contractual, or supervisory restrictions. The proposed rule would have required covered companies with foreign operations to identify the location of HQLA and net cash outflows in foreign jurisdictions and exclude any HQLA above the amount of net cash outflows for those jurisdictions that is not freely available for transfer due to statutory, regulatory, contractual or supervisory restrictions. Such transfer restrictions would have included LCR requirements greater than those that would be established by the proposed rule, counterparty exposure limits, and any other regulatory, statutory, or supervisory limitations.

One commenter supported the proposed rule's approach to permitting a covered company to include as eligible HQLA a certain level of HQLA of its non-U.S. consolidated subsidiary. One commenter argued that the final rule should permit a covered company to include as eligible HQLA assets held in a non-U.S. consolidated subsidiary that qualify as HQLA in the host jurisdiction of that subsidiary. The commenter contended that jurisdictions adopting the Basel III Revised Liquidity Framework would consider certain assets as HQLA depending on the liquidity characteristics of the assets in the market of the relevant jurisdiction. This approach, the commenter noted, is also consistent with the recommendation of the European Banking Authority for the treatment of HQLA in jurisdictions outside of the Eurozone.

Another commenter requested that the agencies acknowledge that HQLA held in foreign entities that are not subject to prudential regulation or capital requirements are less likely to present repatriation issues.

After reviewing commenters' concerns, the agencies have determined to adopt the proposed liquidity requirements for non-U.S. consolidated subsidiaries without change. The agencies have declined to adopt a commenter's suggestion that the final rule permit a covered company's eligible HQLA to include the HQLA of its non-U.S. consolidated subsidiaries as defined in the host jurisdiction of the subsidiary. The agencies recognize that jurisdictions will likely vary in their adoption of the Basel III Revised Liquidity Framework. However, the final rule was designed to implement the LCR standard as appropriate for the United States and its markets, and, for the purposes of the LCR in the United States, only those assets that meet the liquidity characteristics and criteria of the final rule can be included as HQLA. The agencies decline to differentiate between foreign entities that are subject to prudential regulation or capital requirements and those that are not for purposes of determining whether HQLA is more or less subject to risk of restriction on transfer from those jurisdictions. The agencies believe that generally HQLA held in foreign entities may encounter challenges during a severe period of stress that prevent the timely repatriation of assets. Furthermore, the agencies do not believe it would be appropriate to provide favorable regulatory treatment for assets held in a jurisdiction where there is less, rather than more, explicit prudential regulation.

e. Maintenance of Eligible HQLA in the United States

The agencies believe it is appropriate for a covered company to hold eligible HQLA in a particular geographic location in order to meet local liquidity needs there. However, they do not believe it is appropriate for a covered company to hold a disproportionate amount of eligible HQLA in locations outside the United States, given that unforeseen impediments may prevent timely repatriation of liquidity during a crisis. Therefore, under the proposal, a covered company would have been generally expected to maintain in the United States an amount and type of eligible HQLA that is sufficient to meet its total net cash outflow amount in the United States.

A commenter requested that the agencies confirm that that the general expectation that a covered company maintain in the United States an amount and type of HQLA that is sufficient to meet its total net cash outflow amount in the United States would be monitored through a supervisory approach.

The final rule maintains the requirement that a covered company is generally expected to maintain as eligible HQLA an amount and type of eligible HQLA in the United States that is sufficient to meet its total net cash outflow amount in the United States. In response to the commenter's request for clarification, the agencies expect to monitor this requirement through the supervisory process.

f. Exclusion of Certain Rehypothecated Assets

Under the proposed rule, assets that a covered company received under a rehypothecation right where the beneficial owner has a contractual right to withdraw the asset without remuneration at any time during a 30 calendar-day stress period would not have been included in HQLA. This exclusion extended to assets generated from another asset that was received under such a rehypothecation right. If the beneficial owner had such a right and were to exercise it within a 30 calendar-day stress period, the asset would not be available to support the covered company's liquidity position.

The agencies have included a clarifying change to the proposed requirement in the final rule. The final rule provides that any asset which a covered company received with rehypothecation rights would not be considered eligible HQLA if the

counterparty that provided the asset, or the beneficial owner, has a contractual right to withdraw the asset without paying non-de minimis remuneration at any time during the 30 calendar days following the calculation date.

g. Exclusion of Assets Designated To Cover Operational Costs

In the proposed rule, assets specifically designated to cover operational costs could not be included as eligible HQLA. The agencies believe that assets specifically designated to cover costs such as wages or facility maintenance generally would not be available to cover liquidity needs that arise during stressed market conditions.

The agencies did not receive comment on this provision and are adopting the proposed requirement in § __.22(b)(6) of the final rule without change. The treatment of outflows for operational costs are discussed in section II.C.3.l of this Supplementary Information section.

5. Calculation of the HQLA Amount

Instructions for calculating the HQLA amount, including the calculation of the required haircuts and caps for level 2 liquid assets, were set forth in § __.21 of the proposed rule. The agencies received several comments relating to the calculation of the HQLA amount, particularly relating to the calculations of the adjusted level 1, adjusted level 2A, and adjusted level 2B liquid asset amounts that are used to calculate the adjusted excess HQLA amount and that incorporate the unwind of certain secured transactions as described below. After considering the comments, the agencies adopted the HQLA amount calculation instructions largely as proposed, with two modifications to the treatment of collateralized deposits and reserve balance requirements. The final rule sets forth instructions for calculating the HQLA amount in § __.21.

Under the final rule, the HQLA amount equals the sum of the level 1, level 2A and level 2B liquid asset amounts, less the greater of the unadjusted excess HQLA amount or the adjusted excess HQLA amount, as described below.

a. Calculation of Liquid Asset Amounts

For the purposes of calculating a covered company's HQLA amount under the proposed rule, each of the level 1 liquid asset amount, the level 2A liquid asset amount, and the level 2B liquid asset amount would have been calculated using the fair value of the eligible level 1 liquid assets, level 2A liquid assets, or level 2B liquid assets, respectively, as determined under GAAP, multiplied by the appropriate haircut factor prescribed for each level of HQLA.

Under the proposed rule, the level 1 liquid asset amount would have equaled the fair value of all level 1 liquid assets held by the covered company as of the calculation date, less required reserves under section 204.4 of Regulation D (12 CFR 204.4). Consistent with the Basel III Revised Liquidity Framework, and as discussed in section II.B.2 of this Supplementary Information section, the proposed rule would have applied a 15 percent haircut to level 2A liquid assets and a 50 percent haircut to level 2B liquid assets. These haircuts were meant to recognize that level 2 liquid assets generally are less liquid, have larger haircuts in the repurchase markets, and may have more volatile prices in the outright sales markets, particularly in times of stress. Thus, the level 2A liquid asset amount would have equaled 85 percent of the fair value of the level 2A liquid assets held by the covered company as eligible HQLA, and the level 2B liquid asset amount would have equaled 50 percent of the fair value of the level 2B liquid assets held by the covered company as eligible HQLA.

The agencies are adopting under § __.21(b) of the final rule the calculation of the level 1, level 2A and level 2B liquid asset amounts largely as proposed, with one clarification. In the calculation of the level 1 liquid asset amount, the agencies have clarified that the amount to be deducted from the fair value of all eligible level 1 liquid assets is the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5), not its entire reserve requirement. Therefore, under the final rule, the level 1 liquid asset amount equals the fair value of all level 1 liquid assets that are in the covered company's eligible HQLA as of the calculation date, less the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5). Similarly, the level 2A liquid asset amount equals 85 percent of the fair value of all level 2A liquid assets, and the level 2B liquid asset amount equals 50 percent of the fair value of all level 2B liquid assets, that are held by the covered company as of the calculation date that are eligible HQLA. All assets that are eligible HQLA at the calculation date are therefore to be included in these three liquid asset amounts.

b. Calculation of Unadjusted Excess HQLA Amount

Consistent with the Basel III Revised Liquidity Framework, the proposed rule would have capped the amount of level 2 liquid assets that could be included in the HQLA amount. Specifically, level 2 liquid assets could account for no more than 40 percent of the HQLA amount and level 2B liquid assets could account for no more than 15 percent of the HQLA amount. Under § __.21 of the proposed rule, if the amounts of level 2 liquid assets or level 2B liquid assets had exceeded their respective caps, the excess amounts as calculated under the proposed rule would have been deducted from the sum of the level 1 liquid asset, level 2A liquid asset, and level 2B liquid asset amounts. The level 2 caps were meant to ensure that level 2 liquid assets, which may provide less liquidity as compared to level 1 liquid assets, comprise a smaller portion of a covered company's total HQLA amount such that the majority of the HQLA amount is composed of level 1 liquid assets.

The unadjusted excess HQLA amount, under the proposed rule, equaled the sum of the level 2 cap excess amount and the level 2B cap excess amount. The calculation of the unadjusted excess HQLA amount applied the 40 percent level 2 liquid asset cap and the 15 percent level 2B liquid asset cap at the calculation date by subtracting from the sum of the level 1, level 2A and level 2B liquid asset amounts, the amount of level 2 liquid assets that is in excess of the limits. The unadjusted HQLA excess amount would have enforced the cap limits at the calculation date without unwinding any transactions.

The methods of calculating the level 2 cap excess amount and level 2B cap excess amounts were set forth in § __.21(d) and (e) of the proposed rule, respectively. Under those provisions, the level 2 cap excess amount would have been calculated by taking the greater of: (1) The level 2A liquid asset amount plus the level 2B liquid asset amount that exceeds 0.6667 (or 40/60, which is the ratio of the maximum allowable level 2 liquid assets to the level 1 liquid assets) times the level 1 liquid asset amount; or (2) zero. The calculation of the level 2B cap excess amount would have been calculated by taking the greater of: (1) The level 2B liquid asset amount less the level 2 cap excess amount and less 0.1765 (or 15/85, which is the maximum ratio of allowable level 2B liquid assets to the sum of level 1 and level 2A liquid assets) times the sum of the level 1 and level 2A liquid asset amount; or (2) zero. Subtracting the level 2 cap excess amount from the level 2B liquid asset amount when applying the 15 percent level 2B cap is appropriate because the level 2B liquid assets should be excluded before the level 2A liquid

assets when applying the 40 percent level 2 cap.

Several commenters requested that the agencies modify the level 2 and level 2B liquid assets caps, arguing that the agencies have not provided any analysis on the appropriateness of the caps. In particular, these commenters argued that the caps could cause banking organizations to ''hoard'' level 1 liquid assets, reducing the liquidity and volume of level 2A and level 2B liquid assets.

The agencies continue to believe that the majority of a covered company's HQLA amount should consist of the highest quality liquid assets, namely, level 1 liquid assets. In establishing the requirement that the level 1 liquid asset amount should represent at least 60 percent of the HQLA amount, the agencies are seeking to ensure that a covered company will be able to rapidly meet its liquidity needs in a period of stress. The agencies recognize that covered companies may make investment decisions pertaining to individual assets within HQLA categories and the agencies believe that there is adequate availability of level 1 liquid assets. In choosing the assets that would have qualified as level 1 liquid assets under the proposed rule, the agencies considered whether there would be adequate availability of such assets during a stress period, to ensure the appropriateness of the asset's designation as the highest quality asset under the proposed rule. Further, given the liquidity characteristics of the asset classes included in level 2B liquid assets, the agencies continue to believe that these assets should constitute no more than 15 percent of a covered company's HQLA amount. Therefore the final rule adopts the unadjusted calculations as proposed in § __.21(c)–(e).

c. Calculation of Adjusted Excess HQLA Amount

The agencies believed that the proposed level 2 caps and haircuts should apply to the covered company's HQLA amount both before and after the unwinding of certain types of secured transactions where eligible HQLA is exchanged for eligible HQLA in the next 30 calendar days, in order to ensure that the HQLA amount is appropriately diversified and not the subject of manipulation. The proposed calculation of the adjusted excess HQLA amount on this basis sought to prevent a covered company from being able to manipulate its eligible HQLA by engaging in transactions such as certain repurchase or reverse repurchase transactions because the HQLA amount, including the caps and haircuts, would be calculated both before and after unwinding those transactions.

Under the proposed rule, to determine its adjusted HQLA excess amount, a covered company would have been required to unwind all secured funding transactions, secured lending transactions, asset exchanges, and collateralized derivatives transactions, as defined by the proposed rule, in which eligible HQLA, including cash, were exchanged and that would have matured within 30 calendar days of the calculation date. The unwinding of these transactions and the calculation of the adjusted excess HQLA amount was intended to prevent a covered company from having a substantial amount of transactions that would have created the appearance of a significant level 1 liquid asset amount at the beginning of a 30 calendar-day stress period, but that would have matured by the end of the 30 calendar-day stress period. For example, absent the unwinding of these transactions, a covered company that held only level 2 liquid assets could have appeared to be compliant with the level 2 liquid asset composition cap at the calculation date by borrowing on an overnight term a level 1 liquid asset (such as cash or U.S. Treasuries) secured by level 2 liquid assets. While doing so would have lowered the covered company's amount of level 2 liquid assets and increased its amount of level 1 liquid assets, the covered company would have had a concentration of level 2 liquid assets above the 40 percent cap after the transaction was unwound. Therefore, the calculation of the adjusted excess HQLA amount and, if greater than unadjusted excess HQLA amount, its subtraction from the sum of the level 1, level 2A, and level 2B liquid asset amounts, would have prevented a covered company from avoiding the level 2 liquid asset cap limitations.

In order to calculate the adjusted excess HQLA amount, the proposed rule would have required a covered company, for this purpose only, to calculate adjusted level 1, level 2A, and level 2B liquid asset amounts. The adjusted level 1 liquid asset amount would have been the fair value, as determined under GAAP, of the level 1 liquid assets that are held by a covered company upon the unwinding of any secured funding transaction, secured lending transaction, asset exchanges, or collateralized derivatives transaction that matures within a 30 calendar-day period and that involves an exchange of eligible HQLA, or cash. Similarly, the adjusted level 2A and adjusted level 2B liquid asset amounts would only have included the unwinding of those transactions involving an exchange of eligible HQLA or cash. After unwinding all the appropriate transactions, the asset haircuts of 15 percent and 50 percent would have been applied to the level 2A and 2B liquid assets, respectively.

The adjusted excess HQLA amount calculated pursuant to § __.21(g) of the proposed rule would have been comprised of the adjusted level 2 cap excess amount and adjusted level 2B cap excess amount calculated pursuant to § __.21(h) and § __.21(i) of the proposed rule, respectively.

The adjusted level 2 cap excess amount would have been calculated by taking the greater of: (1) The adjusted level 2A liquid asset amount plus the adjusted level 2B liquid asset amount minus 0.6667 (or 40/60, which is the maximum ratio of allowable level 2 liquid assets to level 1 liquid assets) times the adjusted level 1 liquid asset amount; or (2) zero. The adjusted level 2B cap excess amount would be calculated by taking the greater of: (1) The adjusted level 2B liquid asset amount less the adjusted level 2 cap excess amount less 0.1765 (or 15/85, which is the maximum ratio of allowable level 2B liquid assets to the sum of level 1 liquid assets and level 2A liquid assets) times the sum of the adjusted level 1 liquid asset amount and the adjusted level 2A liquid asset amount; or (2) zero. The adjusted excess HQLA amount would have been the sum of the adjusted level 2 cap excess amount and the adjusted level 2B cap excess amount.

One commenter requested that the agencies remove the unwind requirement from the rule because of the operational complexity required to calculate the covered institution's HQLA both before and after the unwind. Another commenter asked whether the agencies have considered permitting covered companies to calculate the value of their HQLA under the International Financial Reporting Standards method of accounting rather than GAAP.

The agencies believe that it is crucial for a covered company to assess the composition of its HQLA amount both on an unadjusted basis and on a basis adjusted for certain transactions that directly impact the composition of eligible HQLA. The agencies believe that these calculations are justified in order to ensure an HQLA amount of adequate quality of composition and diversification and to ensure that covered companies actually have the ability to monetize such assets during a stress period. The agencies do not

believe that it would be appropriate to use alternative methods of accounting beyond GAAP in determining the HQLA amount. The agencies note that for regulatory reporting purposes, generally, a covered company must report data using GAAP. It would likely increase burden on covered companies that typically apply GAAP, which includes the vast majority of covered companies, to use another method of accounting to calculate HQLA. In addition, to permit certain covered companies to use an alternate method of accounting would reduce the comparability of the information across covered companies. As noted above, the LCR is intended to be a standardized liquidity metric, designed to promote a consistent and comparable view of the liquidity of covered companies. The agencies are finalizing the adjusted excess HQLA amount calculation with two amendments to the proposed rule. First, the agencies are clarifying that, in a manner similar to the calculation of the level 1 liquid asset amount, the adjusted level 1 liquid asset amount (used solely for the purpose of calculating the adjusted excess HQLA amount) must include the deduction of the covered company's reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5). Second, the agencies are exempting certain secured funding transactions from inclusion in the unwind as described below.

d. Unwind Treatment of Collateralized Deposits

A number of commenters pointed out that certain deposits are legally required to be collateralized. For instance, deposits placed by states and municipalities, known as preferred deposits, are often required to be collateralized under state law. Commenters further pointed out that in some instances, deposits are required to be collateralized by specific collateral which would not have been HQLA under the proposed rule. Additionally, federal law requires certain corporate trust deposits to be collateralized.[57] Several commenters highlighted that these types of collateralized deposits would have been treated as secured funding transactions under the proposed rule, requiring a covered company to unwind these deposit relationships when determining the adjusted excess HQLA amount. Commenters argued that the unwind treatment effectively leads covered companies to exclude from their HQLA amounts both the cash from the deposits, which would be eligible HQLA, and also any collateral pledged to secure the deposit.

Several commenters pointed out that the agencies proposed the unwind treatment of secured transactions to ensure that banking organizations do not manipulate their HQLA amounts through repurchase and reverse repurchase transactions. These commenters contended that covered companies would not use preferred deposits and collateralized corporate trust deposits to inflate their HQLA amounts because of the long-term nature of the banking relationships. Commenters expressed the opinion that collateralized deposits represent stable, relationship-based deposits and are generally placed in connection with certain operational services provided by the bank. These commenters maintained that collateralized deposits are very different in nature from other secured funding transactions, such as repurchase agreements where collateralization is a function of the transaction between counterparties, rather than imposed by a third party, and should not raise the concerns the agencies were seeking to address with the unwind calculation relating to the manipulation of the HQLA amount.

Commenters urged the agencies to exclude collateralized deposits from the requirement to unwind secured funding transactions for the purposes of determining a covered company's adjusted excess HQLA amount. These commenters contended that the proposed unwind treatment of municipal fund deposits would have a major impact, limiting the choice of banks from which state and municipal treasurers could obtain treasury management and other banking services. Certain commenters asserted that the proposed rule would lead banks to accept limited municipal fund deposits, thereby increasing the costs to municipalities who rely on earning credits generated by deposits to pay for banking services. Commenters also were concerned that applying the unwind mechanism to preferred public sector deposits would discourage banks from accepting these deposits because of the potential negative impact on their LCR calculations. This in turn could raise the cost of capital for municipalities and undermine public policy goals of infrastructure maintenance and development. These commenters stated that banking organizations likely would have to limit the amount of preferred deposits and collateralized corporate trust deposits they accept, further reducing the interest paid on preferred deposits and corporate trust deposits, or eliminating earnings credits extended to state and municipal depositors. Furthermore, as preferred deposits may be collateralized with municipal securities, commenters contended that banks' decreased appetite for accepting municipal fund deposits would also lead to reduced investments in municipal securities.

Finally, several commenters requested that, if the agencies do not exclude collateralized deposits from the secured transaction unwind, that the agencies should apply a maximum outflow for such deposits that (for example, 15 or 25 percent), irrespective of the collateral being used to secure the deposit.

In response to commenters' concerns, the final rule does not require a covered company to unwind certain secured funding transactions that are collateralized deposits. As several commenters noted, the proposed unwind methodology was intended to prevent a covered company from manipulating the composition of its HQLA amount by engaging in transactions such as repurchase or reverse repurchase agreements that could ultimately unwind within the 30 calendar-day stress period. The agencies are aware that certain preferred deposits and corporate trust deposits are required to be collateralized under applicable law and agree with commenters that the longer-term, deposit banking relationships associated with preferred deposits and collateralized corporate trust deposits can be different in nature from shorter-term repurchase and reverse repurchase agreements. After considering commenters' concerns, the agencies believe that certain collateralized deposits do not raise the concerns the agencies were seeking to address with the unwind calculation. The agencies believe that a covered company would be unlikely to pursue these collateralized deposit relationships for the purposes of manipulating the composition of their HQLA amounts. Therefore, the final rule does not require a covered company to unwind secured funding transactions that are collateralized deposits as defined in the final rule when determining its adjusted excess HQLA amount. The agencies highlight that these deposits continue to be subject to an outflow assumption, as addressed in section II.C.3.j.(ii) of this Supplementary Information section.

[57] Pursuant to OCC regulations, a national bank or federal savings association may place funds for which the bank is a fiduciary on deposit in the bank (such deposits are often referred to as ''self-deposits''). The regulations require that the bank set aside collateral to secure self-deposits to the extent they are not insured by the FDIC. *See* 12 CFR 9.10(b) (national banks); 12 CFR 150.300–50.320 (federal savings associations).

In the final rule, the agencies included a definition for collateralized deposits in order to implement the exclusion of these specific types of transactions from the unwind calculation and to identify the transactions as potentially eligible for certain outflow rates. The final rule defines collateralized deposits as either: (1) A deposit of a public sector entity held at the covered company that is secured under applicable law by a lien on assets owned by the covered company and that gives the depositor, as holder of the lien, priority over the assets in the event the covered company enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding, or (2) a deposit of a fiduciary account held at the covered company for which the covered company is a fiduciary and sets aside assets owned by the covered company as security under 12 CFR 9.10 (national banks) or 12 CFR 150.300 through 150.320 (Federal savings associations) and that gives the depositor priority over the assets in the event the covered company enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

e. Unwind Treatment of Transactions Involving Eligible HQLA

One commenter requested that the agencies clarify that only transactions that are conducted by or for the benefit of the liquidity management function receive unwind treatment when a covered company calculates its adjusted excess HQLA amount. The commenter expressed the view that the proposed rule did not limit the unwind methodology to only transactions involving the eligible HQLA that were under the control of the liquidity management function for purposes of § __.20(d)(2) in the proposed rule. This commenter urged that transactions undertaken outside of the liquidity management function would be reflected in the calculation of net cash outflows and should not be incorporated in the HQLA amount calculation. Moreover, the commenter contended that excluding secured funding transactions that are not under the liquidity management function is consistent with the agencies' intent to capture only those transactions that a covered company may use to manipulate its HQLA amount. Lastly, the commenter noted that the Basel III Revised Liquidity Framework only applied the unwind methodology to transactions that met operational requirements.

In response to the commenter's request, the agencies are clarifying that a covered company should apply the unwind treatment to secured funding transactions (other than secured funding transactions that are collateralized deposits), secured lending transactions, asset exchanges and collateralized derivatives where the maturity of the transaction within 30 calendar days of the calculation date will involve the covered company providing an asset that is eligible HQLA or cash and the counterparty providing an asset that will be eligible HQLA or cash. Eligible HQLA meet the operational requirements set forth in § __.22 of the final rule, including the requirement that the eligible HQLA are under the control of the liquidity management function. Consistent with the Basel III Revised Liquidity Framework, the agencies believe that a covered company should not be required to unwind transactions involving assets that do not meet or will not meet these operational requirements when calculating its adjusted excess HQLA amount. A covered company should, however, consider all such transactions in determining its net cash outflow amount under the final rule.

Consistent with the Basel III Revised Liquidity Framework and § __.32(j)(1) of the final rule, secured funding transactions maturing within 30 calendar days of the calculation date that involve the exchange of eligible HQLA are those where the HQLA securing the secured funding transaction would otherwise qualify as eligible HQLA if they were not already securing the particular transaction in question.

Similarly, and consistent with § __ .33(f)(1) of the final rule, secured lending transactions that involve the exchange of eligible HQLA are those where the assets securing the secured lending transaction are: (1) Eligible HQLA at the calculation date, or (2) would be eligible HQLA at the calculation date if they had not been reused to secure a secured funding transaction, or delivered in an asset exchange, maturing within 30 calendar days of the calculation date and which is also being unwound in determining the adjusted level 1, adjusted level 2A, and adjusted level 2B liquid asset amounts.

Consistent with § __.32(j)(3) and § __ .33(f)(2) of the final rule, asset exchange transactions involving the exchange of eligible HQLA are those where the covered company will, at the maturity of the asset exchange transaction within 30 calendar days of the calculation date: (1) Receive assets from the asset exchange counterparty that will be eligible HQLA upon receipt, and (2) the assets that the covered company must post to the counterparty are either: (a) eligible HQLA at the calculation date, or (b) would be eligible HQLA at the calculation date if they were not already securing a secured funding transaction, or delivered in an asset exchange, that will mature within 30 calendar days of the calculation date and which is also being unwound in determining the adjusted level 1, adjusted level 2A, and adjusted level 2B liquid asset amounts.

f. Example HQLA Calculation

The following is an example calculation of the HQLA amount that would be required under the final rule. Note that the given liquid asset amounts and adjusted liquid asset amounts already reflect the level 2A and 2B haircuts.

(a) Calculate the liquid asset amounts (§ __ .21(b))

The following values are given:

Fair value of all level 1 liquid assets that are eligible HQLA: 17
Covered company's reserve balance requirement: 2
Level 1 liquid asset amount (§ __.21(b)(1)): 15
Level 2A liquid asset amount: 25
Level 2B liquid asset amount: 140
Sum of level 1, level 2A, and level 2B liquid asset amounts: 180

(b) Calculate unadjusted excess HQLA amount (§ __.21(c))

Step 1: Calculate the level 2 cap excess amount (§ __.21(d)):

Level 2 cap excess amount = Max (level 2A liquid asset amount + level 2B liquid asset amount—0.6667*level 1 liquid asset amount, 0)
= Max (25 + 140 − 0.6667*15, 0)
= Max (165—10.00, 0)
= Max (155.00, 0)
= 155.00

Step 2: Calculate the level 2B cap excess amount (§ __.21(e)).

Level 2B cap excess amount = Max (level 2B liquid asset amount—level 2 cap excess amount—0.1765*(level 1 liquid asset amount + level 2A liquid asset amount), 0)
= Max (140 − 155.00—0.1765*(15+25), 0)
= Max (− 15—7.06, 0)
= Max (− 22.06, 0)
= 0

Step 3: Calculate the unadjusted excess HQLA amount (§ __.21(c)).

Unadjusted excess HQLA amount = Level 2 cap excess amount + Level 2B cap excess amount
= 155.00 + 0
= 155

(c) Calculate the adjusted liquid asset amounts, based upon the unwind of certain transactions involving the exchange of eligible HQLA or cash (§ __.21(f)).

The following values are given:

Adjusted level 1 liquid asset amount: 120
Adjusted level 2A liquid asset amount: 50
Adjusted level 2B liquid asset amount: 10

(d) Calculate adjusted excess HQLA amount (§ __.21(g)).

Step 1: Calculate the adjusted level 2 cap excess amount (§ __.21(h)).

Adjusted level 2 cap excess amount = Max (adjusted level 2A liquid asset amount + adjusted level 2B liquid asset amount—0.6667*adjusted level 1 liquid asset amount, 0)
= Max (50 + 10—0.6667*120, 0)
= Max (60—80.00, 0)
= Max (−20.00, 0)
= 0

Step 2: Calculate the adjusted level 2B cap excess amount (§ __.21(i)).

Adjusted level 2B cap excess amount = Max (adjusted level 2B liquid asset amount—adjusted level 2 cap excess amount—0.1765*(adjusted level 1 liquid asset amount + adjusted level 2A liquid asset amount, 0)
= Max (10—0—0.1765*(120+50), 0)
= Max (10—30.00, 0)
= Max (−20.00, 0)
= 0

Step 3: Calculate the adjusted excess HQLA amount (§ __.21(g)).

Adjusted excess HQLA amount = adjusted level 2 cap excess amount + adjusted level 2B cap excess amount
= 0 + 0
= 0

(e) Determine the HQLA amount (§ __.21(a)).

HQLA Amount = Level 1 liquid asset amount + level 2A liquid asset amount + level 2B liquid asset amount—Max (unadjusted excess HQLA amount, adjusted excess HQLA amount)
= 15 + 25 + 140—Max (155, 0)
= 180—155
= 25

C. Net Cash Outflows

Subpart D of the proposed rule established the total net cash outflows (the denominator of the LCR), which sets the minimum dollar amount that is required to be offset by a covered company's HQLA amount. As set forth in the proposed rule, a covered company would have first determined outflow and inflow amounts by applying a standardized set of outflow and inflow rates to various asset and liability balances, together with off-balance-sheet commitments, as specified in §§ __.32 and 33 of the proposed rule. These outflow and inflow rates reflected key aspects of liquidity stress events including those experienced during the most recent financial crises. To identify when outflow and inflow amounts occur within the 30 calendar-day period following the calculation date, a covered company would have been required to employ a set of maturity assumptions, as set forth in § __.31 of the proposed rule. A covered company would have then calculated the largest daily difference between cumulative inflow amounts and cumulative outflow amounts over a period of 30 calendar days following a calculation date (the peak day approach) to arrive at its total net cash outflows.

The agencies received comments requesting modification to the calculation of net cash outflows and to the maturity assumptions set forth in the proposed rule. In addition, commenters argued that some of the proposed outflow and inflow rates should be adjusted. To address commenters' concerns, the agencies are modifying the net outflow calculation by including an add-on, as well as modifying the provisions on determining maturity. With respect to outflow and inflow rates, the agencies are generally finalizing the rule as proposed with few changes.

1. The Total Net Cash Outflow Amount

Under the proposed rule, the total net cash outflow amount would have equaled the largest daily difference between cumulative inflow and cumulative outflow amounts, as calculated over the 30 calendar days following a calculation date. For purposes of this calculation, outflows addressed in § __.32(a) through § __.32(g)(2) of the proposed rule that did not have a contractual maturity date would have been assumed to occur on the first day of the 30 calendar-day period. These outflow amounts included those for unsecured retail funding, structured transactions, net derivatives, mortgage commitments, commitments, collateral, and certain brokered deposits. Also, the proposed rule treated transactions in § __.32(g)(3) through § __.32(l) as maturing on their contractual maturity date or on the first day of the 30 calendar-day period, if such transaction did not have a contractual maturity date. These transactions included certain brokered deposits, unsecured wholesale funding, debt securities, secured funding and asset exchanges, foreign central bank borrowings, and other contractual and excluded transactions. Inflows, which would have been netted against outflows on a daily basis, included derivatives, retail cash, unsecured wholesale funding, securities, secured lending and asset exchanges, and other inflows. Inflows from transactions without a stated maturity date would have been excluded under the proposed rule based on the assumption that the inflows from such non-maturity transactions would occur after the 30 calendar-day period. Allowable inflow amounts were capped at 75 percent of aggregate cash outflows.

The proposed rule set the denominator of the LCR as the largest daily net cumulative cash outflow amount within the following 30 calendar-day period rather than using total net cash outflows over a 30 calendar-day period, which is the method employed by the Basel III Revised Liquidity Framework. The agencies elected to employ this peak day approach to take into account potential maturity mismatches between a covered company's outflows and inflows during the 30 calendar-day period; that is, the risk that a covered company could have a substantial amount of contractual inflows that occur late in a 30 calendar-day period while also having substantial outflows that occur early in the same period. Such mismatches have the potential to threaten the liquidity position of the organization during a time of stress and would not be apparent under the Basel III Revised Liquidity Framework denominator calculation. By requiring the recognition of the largest net cumulative outflow day within the 30 calendar-day period, the proposed rule aimed to more effectively capture a covered company's liquidity risk and foster more sound liquidity management.

As noted above, cumulative cash inflows would have been capped at 75 percent of aggregate cash outflows in the calculation of total net cash outflows. This limit would have prevented a covered company from relying exclusively on cash inflows, which may not materialize in a period of stress, to cover its liquidity needs and ensure that covered companies maintain a minimum HQLA amount to meet unexpected liquidity demands during the 30 calendar-day period.

Comments related to the method of calculation of the total net cash outflow amount in § __.30 of the proposed rule focused around two general concerns: the peak day approach calculation and the 75 percent inflow cap.

a. Peak Day Approach

Commenters expressed mixed views on the requirement to calculate the total net cash outflow amount using the largest daily difference between cumulative cash outflows and inflows. Some commenters recognized the concerns of the agencies in addressing the risk that a banking organization may not have sufficient liquidity to meet all its obligations throughout the 30 calendar-day period. One commenter supported the approach, noting the importance of measuring a covered company's ability to withstand the largest liquidity demands within a 30 calendar-day period. However, several commenters expressed concern that the

approach deviated too far from the Basel III Revised Liquidity Framework and was unrealistic or impractical in assuming that cash flows without contractual maturity dates would occur on the first day of a 30 calendar-day period, thereby effectively rendering a 30-day liquidity standard a one-day standard. Some of these commenters suggested that the agencies adopt a different treatment for non-maturity outflows, such as assuming that the outflows occur consistently throughout the month, i.e., a straight-line approach, or more rapidly at the beginning of the month, i.e., a front-loaded approach. Further, a number of commenters asserted that the peak day approach created operational complexities and requested that the agencies perform additional diligence before implementing this requirement in the final rule.

Many commenters argued that the peak day approach was a significant departure from the Basel III Revised Liquidity Framework that could have international competitive repercussions, as U.S. covered companies could be required to hold more HQLA than their foreign counterparts. Several commenters indicated that requirements to determine net cash outflows using the ''worst day'' over the 30 calendar-day period was not contemplated in the Basel III Revised Liquidity Framework, and thus should not be incorporated into the final rule. Other commenters were concerned about the international challenges that could result from a divergence and argued that the peak day approach should first be implemented internationally to provide a greater acceptance and understanding of the requirement. A few commenters requested that the agencies conduct a quantitative study and analysis to form the basis of any net cash outflow calculation that addresses maturity mismatches.

Commenters indicated that assumptions underlying the net cumulative peak day approach were unrealistic, involved significant operational challenges, and could cause unintended consequences. Commenters argued that deposits with indeterminate maturities, including operational deposits, could not all be drawn on the first day of a stress scenario because a banking organization does not have the necessary operational capability to fulfill such outflow requests. Several commenters had specific concerns relating to retail deposits being drawn on the first day of a 30 calendar-day period, arguing that such an assumption materially overstates a banking organization's liquidity needs in the early portion of a 30 calendar-day period. Another commenter stated that the largest U.S. banking organizations did not experience a 100 percent runoff on any single day for any class of deposits during the most recent financial crisis and that such a runoff would be impossible because withdrawals of that magnitude could not be processed by the U.S. Automated Clearing House system. Commenters further argued that certain assumptions were unrealistic by stating that no market would even be deep enough to absorb the volume of HQLA monetized to meet the assumed outflows. Another commenter argued that the proposed rule could reduce banking organizations' provision of non-deposit, non-maturity funding, such as floating rate demand notes, due to the higher outflow assumption and the accelerated maturity assumption.

The agencies are addressing commenters' concerns by modifying the proposed net cumulative peak day approach. First, as in the proposed rule, a covered company would calculate its outflow and inflow amounts by applying the final rule's standardized set of outflow and inflow rates to various asset and liability balances, together with off-balance-sheet commitments. However, unlike the proposed rule and in response to commenters' concerns, the modified calculation does not assume that all transactions and instruments that do not have a contractual maturity date have an outflow amount on the first day of the 30 calendar-day period. Instead, the calculation would use an add-on approach that would substantively achieve the proposal's goal of addressing potential maturity mismatches between a covered company's outflows and inflows.

The add-on approach involves two steps. First, cash outflows and inflows over the 30 calendar-day period are aggregated and netted against one another, with the aggregated inflows capped at 75 percent of the aggregated outflows. This first step is similar to the method for calculating net cash outflows in the Basel III Revised Liquidity Framework. The second step calculates the add-on, which requires a covered company to identify the largest single-day maturity mismatch within the 30 calendar-day period by calculating the daily difference in cumulative outflows and inflows that have set maturity dates, as specified by § __.31 of the final rule, within the 30 calendar-day period. The day with the largest difference reflects the net cumulative peak day. The covered company then calculates the difference between that peak day amount and the net cumulative outflow amount on the last day of the 30 calendar-day period for those same outflow and inflow categories that have maturity dates within the 30 calendar-day period. This difference equals the add-on.

In calculating the add-on, both the net cumulative peak day amount and the net cumulative outflow amount on the last day of the 30 calendar-day period cannot be less than zero. The categories of inflows and outflows included in the add-on calculation comprise those categories that are the most likely to expose covered companies to maturity mismatches within the 30 calendar-day period, such as repurchase agreements and reverse repurchase agreements with financial sector entities, whereas outflows such as non-maturity retail deposits are not a part of the add-on calculation. The final rule clarifies that the only non-maturity outflows included in the calculation of the add-on are those that are determined to have a maturity date of the day after the calculation date, pursuant to § __ .31(a)(4) as described below.

The amounts calculated in steps one and two are then added together to determine the total net cash outflow. This approach ensures that the final rule avoids potential unintended consequences by eliminating the proposed rule's assumption that all non-maturity outflows occur on the first day of a 30 calendar-day period while still achieving the underlying goal of recognizing maturity mismatches. The agencies recognize that the revised approach involves calculations and operational complexity not contemplated by the Basel III Revised Liquidity Framework and could potentially require some covered companies to hold more HQLA than under the Basel III Revised Liquidity Framework. However, the agencies have concluded that the liquidity risks posed by maturity mismatches are significant and must be addressed to ensure that the LCR in the U.S. will be a sufficiently rigorous measure of a covered company's liquidity resiliency.

Table 1 illustrates the final rule's determination of the total net cash outflow amount using the add-on approach. Using Table 1, which is populated with similar values as the corresponding table in the proposed rule, a covered company would implement the first step of the add-on approach by aggregating the cash outflow amounts in columns (A) and (B), as calculated under § __.32, and subtract from that aggregated amount the lesser of 75 percent of that aggregated amount and the aggregated

cash inflow amounts in columns (D) and (E), as calculated under § __.33. The second step of the add-on approach calculates the add-on. The covered company would cumulate the cash outflows determined under § __.32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) (column C) and cash inflows determined under § __.33(c), (d), (e), and (f) (column F) that have maturity dates pursuant to § __.31 for each day within the 30 calendar-day period. The covered company would then determine (G), the net cumulative cash outflows, by subtracting column (F) from column (C) for each day. The net cumulative peak day amount would be the largest value of column (G). The greater of that peak value and zero less the greater of the day 30 value of column (G) and zero is the add-on. To determine the total net cash outflow amount, the covered company would add the aggregated net cash outflow amount calculated in the first step and the add-on.

TABLE 1—DETERMINATION OF TOTAL NET CASH OUTFLOW USING THE ADD-ON APPROACH

	Non-maturity outflows and outflows that have a maturity date pursuant to section 31, but not under sections 32(g), (h)(1), (h)(2), (h)(5), (j), (k), (l)	Outflows determined under sections 32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date pursuant to section 31	Cumulative outflows determined under sections 32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date pursuant to section 31	Inflows that have a maturity date pursuant to section 31, but not under sections 33(c), (d), (e), and (f)	Inflows determined under sections 33(c), (d), (e), and (f) that have a maturity date pursuant to section 31	Cumulative inflows determined pursuant to sections 33(c), (d), (e), and (f) that have a maturity date pursuant to section 31	Net cumulative maturity outflows
	A	B	C	D	E	F	G
Day 1		100	100		90	90	10
Day 2		20	120		5	95	25
Day 3		10	130		5	100	30
Day 4		15	145		20	120	25
Day 5		20	165		15	135	30
Day 6		0	165		0	135	30
Day 7		0	165		0	135	30
Day 8		10	175		8	143	32
Day 9		15	190		7	150	40
Day 10		25	215		20	170	45
Day 11		35	250		5	175	75
Day 12		10	260		15	190	70
Day 13		0	260		0	190	70
Day 14		0	260		0	190	70
Day 15		5	265		5	195	70
Day 16		15	280		5	200	80
Day 17		5	285		5	205	80
Day 18		10	295		5	210	85
Day 19		15	310		20	230	80
Day 20		0	310		0	230	80
Day 21		0	310		0	230	80
Day 22		20	330		45	275	55
Day 23		20	350		40	315	35
Day 24		5	355		20	335	20
Day 25		40	395		5	340	55
Day 26		8	403		125	465	−62
Day 27		0	403		0	465	−62
Day 28		0	403		0	465	−62
Day 29		5	408		10	475	−67
Day 30		2	410		5	480	−70
Total	300	410		100	480		

Total Net Cash Outflows = Aggregated Outflows − MIN (.75*Aggregated Outflows,Aggregated Inflows) + Add-On.
= 300 + 410 − MIN (100 + 480, .75 * (300 + 410)) + (MAX (0,85) − MAX(0, −70)).
= 710 − 532.5 + (85 − 0).
= 262.5.

b. Inflow Cap

Under the proposed rule, a covered company's total cash inflow amount would have been capped at 75 percent of its total cash outflows. This was designed to ensure that covered companies would hold a minimum HQLA amount equal to at least 25 percent of total cash outflows. The agencies received a number of comments on this provision of the proposed rule, including requests for modifications to the cap. However, for the reasons discussed below, the agencies are adopting this provision of the rule largely as proposed, except for a modification relating to the netting of certain foreign currency derivative transactions.

One commenter noted that while there is a recognizable policy rationale for the 75 percent inflow cap, application of the rule in all circumstances may result in unwarranted or unintended outcomes. Some commenters suggested application of the inflow cap to individual types of inflows rather than as a restriction on the entire LCR denominator. For instance, one commenter recommended that the agencies make a distinction between contractual and contingent inflows, and only apply the inflow cap to the latter category. The commenter also noted that the application of the cap could cause asymmetric treatment of certain categories of transactions that may be perceived as being linked in the normal course of business. For example, the commenter suggested that the inflow leg of a foreign exchange swap transaction should not be subject to the 75 percent inflow cap. Rather, the full amount of the inflow leg should be counted and netted against the

corresponding outflow leg in the net derivative outflow amount (under § __.32(c) of the proposed rule). Other commenters requested that loans of securities to cover customer short positions be exempt from the 75 percent inflow cap in the final rule where the covered company obtains the security through a repurchase agreement because all related transactions would unwind simultaneously and net out. Commenters opined that the application of the proposed rule's inflow cap would result in a net liquidity outflow across the secured transactions despite the transactions' symmetry and result in an overestimation of net outflows, instead of full recognition of secured lending inflows where the banking organization has the contractual right and practical ability to terminate the loan and receive cash back from a counterparty in response to a change in offsetting customer positions.

Other commenters indicated that the release of previously segregated funds held to comply with Rule 15c3–3 should not be subject to the 75 percent inflow cap, but should be given full inflow credit.[58] Another commenter noted that certain covered nonbank companies cannot deposit excess cash in Federal Reserve Banks, and instead tend to deposit such funds in third-party commercial banks. This commenter recommended that the inflows from such deposits should not be subject to the 75 percent cap. Several commenters requested that the agencies eliminate the application of inflow caps for covered subsidiaries of covered companies in the calculation of the subsidiaries' own LCR.

The agencies continue to believe the total inflow cap is a key requirement of the LCR calculation because it ensures covered companies hold a minimum HQLA amount equal to 25 percent of total cash outflows that will be available during a stress period. The agencies believe it is critical for firms to maintain on-balance sheet assets to meet outflows and not be overly reliant on inflows that may not materialize in a stress scenario. The agencies decline to significantly modify this provision to relax the cap on inflows because, without it, a covered company may be holding an amount of HQLA that is not commensurate with the risks of its funding structure under stress conditions. Reducing the inflow cap and allowing covered companies to rely more heavily on inflows to offset outflows likely would increase the interconnectedness of the financial system, as a substantial amount of inflows are from other financial institutions. Consequently, the agencies are retaining the limitation of inflows at 75 percent of total cash outflows in the final rule. No inflow cap will apply to the calculation of the maturity mismatch add-on.

Notwithstanding the agencies' general view regarding the inflow cap, the agencies have made a change to the proposed rule in response to the comments received. Certain foreign currency exchange derivative cash flows are to be treated on a net basis and have therefore effectively been removed from the gross inflow cap calculation. This change is described in more detail in section II.C.3.c of this Supplementary Information section.

2. Determining Maturity

Section __.31 of the proposed rule would have required a covered company to identify the maturity date or date of occurrence of a transaction that is the most conservative when calculating inflow and outflow amounts; that is, the earliest possible date for outflows and the latest possible date for inflows. In addition, under § __.30 of the proposed rule, a covered company's total net outflow amount as of a calculation date would have included outflow amounts for certain instruments that do not have contractual maturity dates and outflows and inflows that mature prior to or on a day 30 calendar days or less after the calculation date. Section __.33 of the proposed rule would have expressly excluded instruments with no maturity date from a covered company's total inflow amount.

The proposed rule described how covered companies would have determined whether certain instruments mature or transactions occur within the 30 calendar-day period when calculating outflows and inflows. The proposed rule also would have required covered companies to take the most conservative approach when determining maturity with respect to any options, either explicit or embedded, that would have modified maturity dates and with respect to any notice periods. If such an option existed for an outflow instrument or transaction, the proposed rule would have directed a covered company to assume that the option would be exercised at the earliest possible date. If such an option existed for an inflow instrument or transaction, the proposed rule would have required covered companies to assume that the option would be exercised at the latest possible date. In addition, the proposed rule would have provided that if an option to adjust the maturity date of an instrument is subject to a notice period, a covered company would have been required to either disregard or take into account the notice period, depending upon whether the instrument was an outflow or inflow instrument and whether the notice requirement belonged to the covered company or its counterparty.

Many commenters expressed concern that the proposed requirements for determining maturity with respect to options may conflict with the legal agreements underlying those transactions. One commenter argued that the proposed rule would have assumed that covered companies would disregard customer contractual 30-day notice periods. The commenter requested that commitment outflows that are subject to a mandatory notice period of more than 30 days not be subject to an outflow amount because the notice period practically prevents an outflow and therefore the notice period should be recognized. Other commenters requested clarification as to whether an acceleration provision that may be exercised in the event of a default or other remote contingencies, such as the right to call certain funding facilities, would count as an option for the purposes of determining maturity. Another commenter argued that the proposed requirements for determining maturity should have taken into account the timing of a redemption period and whether or not the period had lapsed. Commenters also objected to the application of the ''nearest possible date'' assumption to commitment outflows supporting debt maturing within a 30 calendar-day period because it would assume that such commitment outflows would occur on the first day of a 30 calendar-day period rather than the debt instrument's actual maturity date.

Several commenters indicated that the assumptions underlying the requirements in § __.31 of the proposed rule were counterintuitive and not consistent with economic behavior. For instance, one commenter argued that requiring a covered company to assume that options are always exercised would imply that the covered company must always disadvantage itself in a stress scenario. Another commenter observed that no market expectation exists for a covered company to exercise a call option on long-term debt in a stressed environment and such behavior was not evident in the recent financial crisis, and therefore should not be an assumption of the final rule.

Several commenters requested that the agencies clarify the treatment of legal notice periods for obligations such

[58] 17 CFR 240.15c3–3.

as wholesale deposit agreements or revolving credit facilities. Another commenter argued that in times of stress, certain customers with non-maturity obligations, including retail or operational deposits, engage in ''flight to quality behavior,'' making it unlikely that all such customers would liquidate their positions simultaneously. Other commenters recognized that while covered companies might make certain disadvantageous decisions to benefit retail customer relations, they and their wholesale counterparties should be assumed to act rationally with respect to exercising options, and should be assumed to abide by their contractual obligations.

Commenters expressed concern that the maturity assumptions employed in the proposed rule overstated near-term liquidity risk. Several commenters argued that the maturity assumptions of the proposed rule would require that certain maturity deposits, including brokered time deposits, be treated as non-maturity deposits because the customer was provided an accommodation to allow for early withdrawal. These commenters requested that the agencies undertake an empirical analysis of the maturity assumptions for such instruments. Another commenter argued that the combination of a peak cumulative net cash outflow or ''worst day'' denominator requirement with the maturity assumptions were unrealistic and would have overstated a banking organization's liquidity risk. Several commenters requested clarification that a covered company would not be required to assume to have exercised call options or rights to redeem its own debt on wholesale funding instruments and long-term debt issued by the covered company.

The agencies have considered the comments and have modified the provisions on determining maturity in the final rule to ensure that all option types are addressed. The modifications result in a more accurate reflection of likely market behavior during a time of liquidity stress, based on comments and the agencies' observations. The provisions in the final rule for determining maturity remain conservative. The final rule contains the following maturity assumptions for options: (a) For an investor or funds provider holding an option to reduce the maturity of a transaction subject to § __.32, assume the option will be exercised; (b) for an investor or funds provider holding an option to extend the maturity of a transaction subject to § __.32, assume the option will not be exercised; (c) for a covered company holding an option to reduce the maturity of a transaction subject to § __.32, assume the option will be exercised; (d) for a covered company holding an option to extend the maturity of a transaction subject to § __.32, assume the option will not be exercised; (e) for a borrower holding an option to extend the maturity of a transaction subject to § __.33, assume the option will be exercised; (f) for a borrower holding an option to reduce the maturity of a transaction subject to § __.33, assume the option will not be exercised; (g) for a covered company holding an option to reduce the maturity of a transaction subject to § __.33, assume the option will not be exercised; and (h) for a covered company holding an option to extend the maturity of a transaction subject to § __.33, assume the option will be exercised.

The final rule makes an exception for longer-term callable bonds and treats the original maturity of the instrument as the maturity for purposes of the LCR. The final rule provides that when a bond issued by a covered company has an original maturity greater than one year and the call option held by the covered company does not go into effect until at least six months after the issuance, the original maturity of the bond will determine the maturity for purposes of the LCR. The agencies have adjusted this provision in the final rule because they have concluded that covered companies would not likely be susceptible during a period of liquidity stress to significant market pressure to exercise these call options. Similarly, the agencies are amending the maturity provisions of the final rule so that a covered company does not have to presume acceleration of the maturity of its obligation where the covered company holds an option permitting it to repurchase its obligation from a sovereign entity, U.S. GSE, or public sector entity. In those circumstances, the maturity of the obligation under the final rule will be the original maturity of the obligation. This change reflects the fact that, for example, the agencies believe there is less reputational pressure to exercise an option to redeem FHLB advances early.

Another of the final rule's modifications of the proposed maturity determination requirements clarifies how a covered company should address certain outflows and inflows that do not have maturity dates, as these were not explicitly addressed in the proposed rule. Under the proposed rule, all non-maturity inflows would have been excluded from the LCR. Under the final rule, transactions, except for operational deposits, subject to § __.32(h)(2), (h)(5), (j), or (k), or § __.33(d) or (f) that do not have maturity dates will be considered to have a maturity date on the first calendar day after the calculation date. This change will primarily affect certain transactions with financial sector entities. The maturity of these transactions is often referred to as ''open.'' The agencies believe these transactions are similar to overnight deposits from financial institutions and for purposes of the LCR, are treating them the same. Therefore, for these types of ''open'' transactions with financial sector entities and other transactions subject to § __.32(h)(2), (h)(5), (j), or (k), or § __.33(d) or (f) that do not have maturity dates and are not operational deposits, the final rule provides that for purposes of the LCR, the maturity date will be the first calendar day after the calculation date.

An additional change in the final rule for determining maturity pertains to matched secured lending transactions or asset exchanges with a contractual maturity of 30 days or less that generate an inflow to the covered company in the form of collateral (inflow-generating asset exchange) and the company then uses the received collateral in a secured funding transaction or asset exchange with a contractual maturity of 30 days or less that results in an outflow from the covered company in the form of collateral (outflow-generating asset exchange) (see section II.C.4.f below). In the final rule, the maturity date of secured lending transactions or inflow-generating asset exchanges will be the later of the contractual maturity date of the secured lending transaction or inflow-generating asset exchange and the maturity date of the secured funding transaction or outflow-generating asset exchange for which the received collateral was used. This treatment is a clarifying change consistent with the intent of the proposed rule, which was to prevent a covered company from recognizing inflows resulting from secured lending transactions or asset exchanges earlier in the 30 calendar-day period than outflows resulting from secured funding transactions or asset exchanges, even though the collateral needed to cover the maturing secured lending transaction or asset exchange will not be available until the related outflow occurs.

The final rule also adds to the maturity provisions of the proposed rule a clarification that any inflow amount available under § __.33(g) will be deemed to occur on the day on which the covered company or its consolidated subsidiary calculates the release of assets under statutory or regulatory

requirements for the protection of customer trading assets, such as Rule 15c3–3, consistent with the covered company's or consolidated subsidiary's past practice with respect to such calculation. Under the final rule, this inflow will be assumed to occur on the date of the next regular calculation. Therefore if, for example, a broker-dealer performs this calculation on a daily basis, the inflow would occur on the first day of the 30 calendar-day period, but if a broker-dealer typically performs the calculation on a weekly basis, the inflow would occur on the date of the next regularly scheduled calculation. This maturity determination provision is necessary because of the inclusion of the related inflow under § __.33(g) of the final rule, which was added in response to comments received by the agencies, as discussed below in section II.C.4.g.

Several commenters requested that the agencies clarify that time deposits that can be withdrawn at any time (subject to the forfeiture of interest) would be subject to the earliest possible maturity date assumption under the proposal, while deposits that cannot be withdrawn (but for death or incompetence) would be assumed to mature on the applicable maturity date. The agencies are clarifying that, for purposes of the final rule, deposits that can only be withdrawn in the event of death or incompetence are assumed to mature on the applicable maturity date, and deposits that can be withdrawn following notice or the forfeiture of interest are subject to the rule's assumptions for non-maturity transactions.

Though not resulting in a change in the final rule, the agencies are clarifying that remote contingencies in funding contracts that allow acceleration, such as withdrawal rights arising solely upon death or incompetence or material adverse condition clauses, are not considered options for determining maturity. The agencies did not change the treatment of notice periods in the final rule as commenters requested because reputational considerations may drive a covered company's behavior with regard to notice periods. Further, these reputational considerations exist for all types of counterparties, including wholesale and not just retail, and regardless of whether there are contractual provisions favoring the covered company. Regarding commenters' arguments that the proposed requirements for determining maturity do not reflect a likely flight to quality during a period of liquidity stress, the agencies believe that such behavior cannot be relied upon and may not occur for all institutions, so the conservative assumptions in the proposed and final rule with respect to maturity are appropriate. The agencies understand that the requirements for determining maturity may not comport with the stated requirements for call options in some legal agreements, but believe that the conservative assumptions in the final rule ensure a more accurate assessment of a covered company's liquidity resiliency through the LCR. Similarly, the agencies believe that taking a more conservative view of likely behavior during a liquidity stress event is critical to achieving this goal. With respect to commenters' request that the agencies provide data for the maturity assumptions in the final rule, the agencies note that during the recent financial crisis, many options were exercised in a manner that was disadvantageous to the banking organization or financial institution to protect its market reputation.

3. Outflow Amounts

The proposed rule set forth outflow categories for calculating cash outflows and their respective outflow rates, each as described below. The outflow rates were designed to reflect the 30 calendar-day stress scenario that formed the basis of the proposed rule, and included outflow assumptions for the following categories: (a) Unsecured retail funding; (b) structured transactions; (c) net derivatives; (d) mortgage commitments; (e) commitments; (f) collateral; (g) brokered deposits for retail customers or counterparties; (h) unsecured wholesale funding; (i) debt securities; (j) secured funding; (k) foreign central bank borrowing; (l) other contractual outflows; and (m) excluded amounts for intragroup transactions. The agencies proposed outflow rates for each category, ranging from zero percent to 100 percent, in a manner generally consistent with the Basel III Revised Liquidity Framework. Under the proposed rule, the outstanding balance of each category of funding or obligation that matured within 30 calendar days of the calculation date (under the maturity assumptions described above in section II.C.2) would have been multiplied by these outflow rates to arrive at the applicable outflow amount.

a. Retail Funding Outflow Amount

The proposed rule defined retail customers or counterparties to include individuals and certain small businesses. Under the proposal, a small business would have qualified as a retail customer or counterparty if its transactions had liquidity risks similar to those of individuals and were managed by a covered company in a manner comparable to the management of transactions of individuals. In addition, to qualify as a small business, the proposed rule would have required that the total aggregate funding raised from the small business be less than $1.5 million. If an entity provides $1.5 million or more in total funding, has liquidity risks that are not similar to individuals, or the covered company manages the customer like a corporate customer rather than an individual customer, the entity would have been a wholesale customer under the proposed rule.

The proposed rule included in the category of unsecured retail funding retail deposits (other than brokered deposits) that are not secured under applicable law by a lien on specifically designated assets owned by the covered company and that are provided by a retail customer or counterparty. The proposed rule divided unsecured retail funding into subcategories of: (i) Stable retail deposits, (ii) other retail deposits, and (iii) funding from a retail customer or counterparty that is not a retail deposit or a brokered deposit provided by a retail customer or counterparty, each of which would have been subject to the outflow rates set forth in § __ .32(a) of the proposed rule, as explained below. Outflow rates would have been applied to the balance of each unsecured retail funding outflow category regardless of maturity date.

i. Stable Retail Deposits

The proposed rule defined a stable retail deposit as a retail deposit, the entire amount of which is covered by deposit insurance, and either: (1) Held in a transactional account by the depositor, or (2) where the depositor has another established relationship with a covered company, such that withdrawal of the deposit would be unlikely.[59] Under the proposed rule, the established relationship could have been another deposit account, a loan, bill payment services, or any other service or product provided to the depositor, provided that the banking organization demonstrates to the satisfaction of its appropriate Federal banking agency that the relationship would make withdrawal of the deposit highly unlikely during a liquidity stress event. The proposed rule assigned stable retail deposit balances an outflow rate of 3 percent.

[59] For purposes of the proposed rule, ''deposit insurance'' was defined to mean deposit insurance provided by the FDIC and did not include other deposit insurance schemes.

ii. Other Retail Deposits

The proposed rule categorized all deposits from retail customers that are not stable retail deposits, as described above, as other retail deposits. Supervisory data supported a higher outflow rate for deposits that are partially FDIC-insured as compared to entirely FDIC-insured. The agencies proposed an outflow rate of 10 percent for those retail deposits that are not entirely covered by deposit insurance or that otherwise do not meet the proposed criteria for a stable retail deposit.

iii. Other Unsecured Retail Funding

Under the proposed rule, the other unsecured retail funding category included funding provided by retail customers or counterparties that is not a retail deposit or a retail brokered deposit and received an outflow rate of 100 percent. This outflow category was intended to capture all other types of retail funding that were not stable retail deposits or other retail deposits, as defined by the proposal.

iv. Comments on Retail Funding Outflows

Comments related to the unsecured retail funding outflow category addressed applicable definitions, the types of transactions that would qualify as retail funding, the treatment of retail maturities, requirements related to deposit insurance, applicable outflow rates, and requests for additional information from the agencies.

Several commenters requested a broadening of the definition of retail customer or counterparty to include additional entities and to exclude certain transactions from the other unsecured retail funding category. For example, two commenters argued that the proposed $1.5 million limit on aggregate funding, which would apply to small businesses in the retail customer or counterparty definition, should be raised to $5 million, which would be consistent with annual receipts criteria used by the U.S. Small Business Administration's definition for small business. Other commenters requested a broadening of the retail funding category to include certain trusts and other personal fiduciary accounts, such as personal and charitable trusts, estates, certain payments to minors, and guardianships formed by retail customers, because they exhibit characteristics of retail funding. Another commenter argued that revocable trusts should qualify as retail funding because such trusts have risk characteristics similar to that of individuals, in that the grantor keeps control of the assets and has the option to terminate the trust at any point in the future.

One commenter stated that a 3 percent outflow rate in cases where the entire deposit is covered by deposit insurance was appropriately low, but that a 10 percent outflow rate did not sufficiently reflect the stability of deposits partially covered by deposit insurance. Another commenter requested zero outflows relating to prepaid cards issued by nonbank money transmitter subsidiaries because they are functionally regulated by individual states and are subject to collateral requirements similar to those for secured transactions. This commenter indicated that certain non-deposit, prepaid retail products covered by FDIC insurance that is deemed to ''pass-through'' the holder of the account to the owner of the funds should merit an outflow rate significantly less than 100 percent, as these products are similar to retail deposits and have exhibited stability throughout economic cycles, including during the recent financial crisis.

Some commenters also requested that the definition of deposit insurance be expanded beyond FDIC insurance to include foreign deposit insurance programs where (i) insurance is prefunded by levies on the institutions that hold insured deposits; (ii) the insurance is backed by the full faith and credit of the national government; (iii) the obligations of the national government are assigned a zero percent risk weight under the agencies' risk-based capital rules; and (iv) depositors have access to their funds within a reasonable time frame. The commenters also requested that the outflow rate assigned to partially-insured deposits reflect the benefit of partial insurance, rather than treating the entire deposit as uninsured. This would lead to treatment of the portion of a deposit that is below the $250,000 FDIC insurance limit as a stable retail deposit subject to a 3 percent outflow, and any excess balance as a less stable retail deposit subject to the 10 percent outflow rate.

Finally, some commenters requested the agencies share the empirical data that was the basis for the proposed rule's retail funding outflow requirements. Specifically, commenters requested information regarding the stability of insured deposits, partially insured deposits, term deposits, and deposits without a contractual term during the recent financial crisis.

v. Final Rule

In considering the comments on retail funding outflows, the agencies continue to believe that the outflow rates applicable to stable deposits and other retail deposits, 3 percent and 10 percent, respectively, are appropriate based on supervisory data and for the reasons outlined in the proposed rule and, accordingly, have retained those outflow rates in the final rule.[60] The agencies used substantial supervisory data, including data reflecting the recent financial crisis, to inform the outflow rates. This data indicated that depositors withdrawing funds usually withdraw the entire amount, and not just the amount that is not covered by FDIC insurance. As a result, the agencies are retaining the treatment of partially insured retail deposits.

In response to comments received about other retail funding, the agencies have reconsidered the 100 percent outflow rate in § __.32(a)(3) of the proposed rule. In the final rule, the agencies have lowered the outflow rate to 20 percent for deposits placed at the covered company by a third party on behalf of a retail customer or counterparty that are not brokered deposits, where the retail customer or counterparty owns the account and where the entire amount is covered by deposit insurance. In addition, partially insured deposits placed at the covered company by a third party on behalf of a retail customer or counterparty that are not brokered deposits and where the retail customer or counterparty owns the account receive a 40 percent outflow rate under the final rule. The 20 percent and 40 percent outflow rates are designed to be consistent with the final rule's treatment of wholesale deposits, which the agencies believe have similar liquidity risk as deposits placed on behalf of a retail customer or counterparty. Finally, all other funding from a retail customer or counterparty that is not a retail deposit, a brokered deposit provided by a retail customer or counterparty, or a debt instrument issued by the covered company that is owned by a retail customer or counterparty, which includes items such as unsecured prepaid cards, receives a 40 percent outflow rate. The agencies believe these changes better reflect the liquidity risks of categories of unsecured retail funding that have liquidity characteristics that more closely align with certain types of third-party funding in § __.32(g) of the proposed rule.

Additionally, the final rule clarifies that the outflow rates for retail funding apply to all retail funding, regardless of whether that funding is unsecured or secured. This reflects the nature of retail

[60] 78 FR 71835–71836.

funding, which is less likely to involve a secured transaction, and the relatively low outflow rates already assigned to the funding.

The agencies decline to revise most of the definitions and key terms employed in the retail funding section of the proposed rule. With respect to the commenters' request to raise the limit on aggregate funding that applies to small businesses, the annual receipts criteria within the U.S. Small Business Administration's definition for small business would include businesses that are large and sophisticated and should not be treated similarly to retail customers or counterparties in terms of liquidity risks. The agencies therefore continue to believe that $1.5 million is the appropriate limit. The agencies considered whether foreign deposit insurance systems should be given the same treatment as FDIC deposit insurance in the final rule. The agencies believe there would be operational difficulties in evaluating a foreign deposit insurance system for the purposes of a U.S. regulatory requirement. For the reasons discussed in the preamble to the proposed rule, the agencies are recognizing only FDIC deposit insurance in defining stable retail deposits.[61]

However, the agencies have concluded that certain trusts pose liquidity risks substantially similar to those posed by individuals, and the agencies are modifying the final rule to clarify that living or testamentary trusts that have been established for the benefit of natural persons, that do not have a corporate trustee, and that terminate within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years (in states that have a rule against perpetuities) can be treated as retail customers or counterparties. The agencies believe that these trusts are ''alter egos'' of the grantor and thus should be treated the same as an individual for purposes of the LCR. If the trustee is a corporate trustee that is an investment adviser, whether or not required to register as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), however, the trust will be treated as a financial sector entity.

Apart from the changes to the final rule discussed above, the agencies have finalized the rule as proposed with regard to retail funding and believe that the changes incorporated appropriately capture the key liquidity characteristics of the retail funding market.

[61] 78 FR 71836.

b. Structured Transaction Outflow Amount

The proposed rule's structured transaction outflow amount, set forth in § __.32(b) of the proposed rule, would have captured obligations and exposures associated with structured transactions sponsored by a covered company, without regard to whether the structured transaction vehicle that is the issuing entity is consolidated on the covered company's balance sheet. The proposed rule assigned as an outflow rate for each structured transaction sponsored by the covered company the greater of: (1) 100 Percent of the amount of all debt obligations of the issuing entity that mature 30 days or less from a calculation date and all commitments made by the issuing entity to purchase assets within 30 calendar days or less from the calculation date, and (2) the maximum contractual amount of funding the covered company may be required to provide to the issuing entity 30 calendar days or less from such calculation date through a liquidity facility, a return or repurchase of assets from the issuing entity, or other funding agreement. The agencies proposed the 100 percent outflow rate because such transactions, including potential obligations arising out of commitments to an issuing entity, whether issued directly or sponsored by covered companies, caused severe liquidity demands at covered companies during times of stress as observed during the recent financial crisis.

Comments regarding § __.32(b) of the proposed rule focused on specific structured transactions (such as bank customer securitization credit facilities and those vehicles where a banking organization securitizes its own assets) and requested clarification around which types of transactions should be treated as a structured transaction under § __.32(b) and which transactions should be treated as facilities under § __.32(e)(1)(vi) of the proposed rule. A commenter noted that the agencies did not draw a distinction between a structured transaction vehicle that is consolidated on the covered company's balance sheet and transactions that are sponsored, but not owned by the covered company. The commenter argued that the proposed rule would impact all private label MBS that are sponsored by a covered company by assigning a 100 percent outflow rate to the obligations of the issuing entity that mature in 30 calendar days or less. Moreover, the commenter also requested clarification as to whether variable interest entity (VIE) liabilities relating to SPEs that are to be included in the net cash outflow of a covered company can be offset with cash flows from the assets in the SPE even if they are not consolidated on the covered bank's balance sheet.

Some commenters also indicated that those securitizations that meet the definition of ''traditional securitization'' in the agencies' regulatory capital rules, where the sponsor securitizes its own assets, should be exempt from the outflow amount in § __.32(b), so long as the covered company does not extend credit or liquidity support. These commenters relied on the fact that the issuing entity would have no legal obligation to make a payment on a security as a result of a shortfall of cash from underlying assets, irrespective of whether the covered company is required to consolidate the issuing entity onto its balance sheet to justify the exemption request.

Several commenters also expressed concern regarding the proposed rule's assumption of a significant cash outflow on the first day of the 30 calendar-day period (without a corresponding inflow that would be assumed to occur at a later date) and that the proposed rule did not include a clear explanation for this assumption. Commenters requested that the outflow be deemed to occur on the scheduled maturity date of the debt. Several commenters also expressed concern that potential double counting of outflow amounts could occur in that transactions captured under § __.32(e)(1)(vi) of the proposed rule could also be subject to § __.32(b) without further clarification.

The agencies continue to believe the 100 percent outflow rate applicable to structured transactions sponsored by a covered company is generally reflective of the liquidity risks of such transactions. Structured transactions can be a source of unexpected funding requirements during a liquidity crisis, as demonstrated by the experience of various financial firms during the recent financial crisis. This outflow rate is also generally consistent with the outflow for commitments made to financial counterparties and SPEs that issue commercial paper and other securities, as provided in § __.32(e) of the final rule and discussed below.

The agencies recognize that banking regulations may prohibit some covered companies from providing certain forms of support to funds that are sponsored by covered companies.[62] However, the

[62] *See, e.g.,* OCC, Board, FDIC, and SEC, ''Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Certain Relationships With, Hedge Funds and Private Equity Funds,'' 79 FR 5536, 5790 (January 31, 2014); OCC, Board, and FDIC, ''Interagency Policy

100 percent outflow rate recognizes that covered companies may still provide significant support to structured transactions that they sponsor while complying with regulatory requirements that prohibit certain forms of support.

To address the commenters' concern regarding potential double counting of outflow amounts, the final rule excludes from the outflows in § __.32(e)(1)(vii) through (viii) those commitments described in the structured transaction outflow amount section. Although the structured transaction outflow amount and the commitment outflow amount sections (§ __.32(b) and § __.32(e), respectively) are similar in that both apply outflow rates to commitments made to an SPE, the structured transaction outflow amount also includes outflows beyond contractual commitments because a sponsor may provide support despite the absence of such a commitment.

The agencies are making a clarifying change in the final rule by applying the structured transaction outflow amount provision only to issuing entities that are not consolidated with the covered company. If the issuing entity is consolidated with the covered company, then the commitments from the covered company to that entity would be excluded under § __.32(m) as intragroup transactions. However, even though the commitments would be excluded, any outflows and inflows of the issuing entity would be included in the covered company's outflow and inflows because they are consolidated.

The agencies did not define the term ''sponsor'' in the proposed rule and are not defining it in the final rule because the agencies believe that the term is generally understood within the marketplace. Furthermore, the agencies intend § __.32(b) to apply to all covered companies that would have explicit or implicit obligations to support a structured transaction of an issuing entity that is not consolidated by the covered company during a period of liquidity stress. Generally, the agencies consider covered companies to be sponsors when they have significant control or influence over the structuring, organization, or operation of a structured transaction.

The agencies agree with commenters' concern that the maturity assumptions in the proposed rule would cause structured transaction payments to fall on the first day of the 30 calendar-day period and that this treatment would not be appropriate. The changes to the peak day approach described above in section II.C.1 of this Supplementary Information section would result in structured transaction payments not being assumed to occur on the first day of a 30 calendar-day window because they are not included in the calculation of the add-on. Instead, these commitments would be assumed to occur on the transaction's scheduled maturity date. Finally, the agencies believe that the definitions and key terms employed in this section of the proposed rule accurately capture the key characteristics related to structured transactions sponsored by a covered company and decline to provide a different treatment for the funding of VIE liabilities that are part of a structured securitization, structured securitizations involving SPEs, structured securitization credit facilities to finance the receivables owned by a corporate entity, or where the sponsor securitizes its own assets. Likewise, private label MBS that meet the definition of a structured transaction will be subject to this provision because of the liquidity risks incumbent in such transactions. Accordingly, the agencies are adopting as final this provision of the rule as proposed with the clarifying change regarding consolidated issuing entities.

c. Net Derivative Outflow Amount

The proposed rule would have defined a covered company's net derivative cash outflow amount as the sum of the payments and collateral that a covered company would make or deliver to each counterparty under derivative transactions, less the sum of payments and collateral due from each counterparty, if subject to a valid qualifying master netting agreement.[63] This calculation would have incorporated the amounts due to and from counterparties under the applicable transactions within 30 calendar days of a calculation date. Netting would have been permissible at the highest level permitted by a covered company's contracts with a counterparty and could not include offsetting inflows where a covered company is already including assets in its HQLA that the counterparty has posted to support those inflows. If the derivative transactions were not subject to a qualifying master netting agreement, then the derivative cash outflows for that counterparty would be included in the net derivative cash outflow amount and the derivative cash inflows for that counterparty would be included in the net derivative cash inflow amount, without any netting and subject to the proposed rule's cap on total inflows. Under the proposed rule, the net derivative cash outflow amount would have been calculated in accordance with existing valuation methodologies and expected contractual derivatives cash flows. In the event that the net derivative cash outflow for a particular counterparty was less than zero, such amount would have been required to be included in a covered company's net derivative cash inflow amount for that counterparty.

A covered company's net derivative cash outflow amount would not have included amounts arising in connection with forward sales of mortgage loans or any derivatives that are mortgage commitments subject to § __.32(d) of the proposed rule. However, net derivative cash outflows would have included outflows related to derivatives that hedge interest rate risk associated with mortgage loans and commitments.

Many commenters were concerned that the treatment of derivative transactions created an asymmetric treatment for certain offsetting derivative transactions (such as foreign exchange swaps) because covered companies would be required to compute the cash flows on a gross basis with a cash outflow and a cash inflow subject to the 75 percent inflow cap as described above, even if in practice the settlement occurred on a net basis. Accordingly, these commenters proposed that foreign exchange transactions that are part of the same swap should be treated as a single transaction on a net basis.

For the reasons discussed in the proposal, the agencies continue to believe the 100 percent outflow rate applicable to net derivative outflows is reflective of the liquidity risks of these transactions and therefore are retaining this outflow rate in the final rule. The agencies are, however, making a significant change to how this outflow rate is applied to foreign currency exchange derivative transactions to address concerns raised by commenters.

Specifically, foreign currency exchange derivative transactions that meet certain criteria can be netted under

on Banks/Thrifts Providing Financial Support to Funds Advised by the Banking Organization or its Affiliates,'' OCC Bulletin 2004–2, Federal Reserve Supervisory Letter 04–1, FDIC FIL–1–2004 (January 5, 2004).

[63] Under the proposal, a ''qualifying master netting agreement'' was defined as a legally binding agreement that gives the covered company contractual rights to terminate, accelerate, and close out transactions upon the event of default and liquidate collateral or use it to set off its obligation. The agreement also could not be subject to a stay under bankruptcy or similar proceeding and the covered company would be required to meet certain operational requirements with respect to the agreement, as set forth in section 4 of the proposed rule. This is the same definition as under the agencies' regulatory capital rules. See 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

the provisions of § __.32(c)(2) of the final rule. Cash flows arising from foreign currency exchange derivative transactions that involve a full exchange of contractual cash principal amounts in different currencies between a covered company and a counterparty within the same business day may be reflected in the net derivative cash outflow amount for that counterparty as a net amount, regardless of whether those transactions are covered by a qualifying master netting agreement. Thus, the inflow leg of a foreign currency exchange derivative transaction in effect is not subject to the 75 percent inflow cap as long as it settles on the same date as the corresponding outflow payment of that derivative transaction.[64]

d. Mortgage Commitment

The proposed rule would have required a covered company to apply an outflow rate of 10 percent for all commitments for mortgages primarily secured by a first or subsequent lien on a one-to-four family property that can be drawn upon within 30 calendar days of a calculation date.

One commenter was concerned about the treatment of VIE liabilities (and particularly non-consolidated VIEs). Specifically, this commenter requested that MBS VIE liabilities be excluded from the outflow calculation or if included, that these outflow amounts be netted against the estimated cash inflows from linked assets in the securitization trust, even if those assets are not on the company's balance sheet. Additionally, the commenter requested that mortgage commitment outflows be netted against sales from projected to-be-announced inflows. Further, the commenter requested clarification regarding cash outflows for commercial and multifamily loans and whether outflows for partially funded loans would be limited to the amount of the loan that is scheduled to be funded during the 30 calendar-day period or the entire unfunded amount of the loan.

The agencies are adopting the mortgage commitment outflow rates of the proposed rule, with the following clarifications that address concerns raised by commenters. For the reasons discussed in the proposal, the agencies continue to believe that the 10 percent outflow rate applicable to mortgage commitments reflects the liquidity risks of these transactions and have adopted this outflow rate in the final rule. In response to the comment regarding the netting of mortgage commitment amounts against certain transactions, such as VIE liabilities, the forward sale of projected to-be-announced mortgage inflows, and GSE standby facilities, the agencies are clarifying that such inflows may not be netted against the overall mortgage commitment amount. The agencies believe that in a crisis, such inflows may not fully materialize, and thus do not believe that such inflows should be allowed under the final rule or netted against the mortgage commitment outflow amount.

Also, the agencies are confirming that the outflow amount for mortgage commitments is based upon the amount the covered company has contractually committed for its own originations of retail mortgages that can be drawn upon 30 calendar days or less from the calculation date and not the entire unfunded amount of commitments that cannot be drawn within 30 calendar days.

e. Commitments Outflow Amount

The commitment category of outflows under the proposed rule would have included the undrawn portion of committed credit and liquidity facilities provided by a covered company to its customers and counterparties that could have been drawn down within 30 calendar days of the calculation date. The proposed rule would have defined a liquidity facility as a legally binding agreement to extend funds at a future date to a counterparty that is made expressly for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. A liquidity facility also would have included an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program, or conduit in the event that funds are required to repay maturing asset-backed commercial paper. Liquidity facilities would have excluded general working capital facilities, such as revolving credit facilities for general corporate or working capital purposes. Facilities that have aspects of both credit and liquidity facilities would have been deemed to be liquidity facilities for the purposes of the proposed rule. An SPE would have been defined as a company organized for a specific purpose, the activities of which are significantly limited to those appropriate to accomplish a specific purpose, and the structure of which is intended to isolate the credit risk of the SPE.

The proposed rule would have defined a credit facility as a legally binding agreement to extend funds upon request at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes. Under the proposed rule, a credit facility would not have included a facility extended expressly for the purpose of refinancing the debt of a counterparty that is otherwise unable to meet its obligations in the ordinary course of business. Under the proposed rule, a liquidity or credit facility would have been considered committed when the terms governing the facility prohibited a covered company from refusing to extend credit or funding under the facility, except where certain conditions specified by the terms of the facility—other than customary notice, administrative conditions, or changes in financial condition of the borrower—had been met. The undrawn amount for a committed credit or liquidity facility would have been the entire undrawn amount of the facility that could have been drawn upon within 30 calendar days of the calculation date under the governing agreement, less the fair value of level 1 liquid assets or 85 percent of the fair value of level 2A liquid assets, if any, that secured the facility. In the case of a liquidity facility, the undrawn amount would not have included the portion of the facility that supports customer obligations that mature more than 30 calendar days after the calculation date. A covered company's proportionate ownership share of a syndicated credit facility would have been included in the appropriate category of wholesale credit commitments.

Section __.32(e) of the proposed rule would have assigned various outflow amounts to commitments that are based on the counterparty type and facility type. First, in contrast to the outflow rates applied to other commitments, those commitments between affiliated depository institutions that are subject to the proposed rule would have received an outflow rate of zero percent because the agencies expect that such institutions would hold sufficient liquidity to meet their obligations and would not need to rely on committed facilities. In all other cases, the outflow rates assigned to committed facilities were meant to reflect the characteristics of each class of customers or counterparties under a stress scenario, as well as the reputational and legal risks that covered companies face if they were to try to restructure a commitment during a crisis to avoid drawdowns by customers.

An outflow rate of 5 percent was proposed for retail facilities because

[64] This treatment is consistent with the Frequently Asked Questions on Basel III's January 2013 Liquidity Coverage Ratio framework (April 2014), available at *http://www.bis.org/publ/bcbs284.htm.*

individuals and small businesses would likely have a lesser need for committed credit and liquidity facilities in a stress scenario when compared to institutional or wholesale customers (that is, the correlation between draws on such facilities and the stress scenario of the LCR is considered to be lower). An outflow rate of 10 percent was proposed for credit facilities and 30 percent for liquidity facilities to entities that are not financial sector entities based on their typically longer-term funding structures and lower correlation of drawing down the commitment during times of stress. The proposed rule would have assigned a 50 percent outflow rate to credit and liquidity facilities committed to depository institutions, depository institution holding companies, and foreign banks (other than commitments between affiliated depository institutions). Commitments to all other regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies (or to a consolidated subsidiary of any of the foregoing) would have been assigned a 40 percent outflow rate for credit facilities and 100 percent for liquidity facilities. The agencies proposed a 100 percent outflow rate for a covered company's credit and liquidity facility commitments to SPEs given SPEs' sensitivity to emergency cash and backstop needs in a short-term stress environment, such as those experienced during the recent financial crisis.

The agencies also proposed that the amount of level 1 or level 2A liquid assets securing the undrawn portion of a commitment would have reduced the outflow associated with the commitment if certain conditions were met. The amount of level 1 or level 2A liquid assets securing a committed credit or liquidity facility would have been the fair value (as determined under GAAP) of all level 1 liquid assets and 85 percent of the fair value (as determined under GAAP) of level 2A liquid assets posted or required to be posted upon funding of the commitment as collateral to secure the facility, provided that: (1) The pledged assets had met the criteria for HQLA as set forth in § __.20 of the proposed rule during the applicable 30 calendar-day period; and (2) the covered company had not included the assets in its HQLA amount as calculated under subpart C of the proposed rule during the applicable 30 calendar-day period.

The comments on § __.32(e) were generally focused on: (i) SPEs; (ii) dual use facilities; and (iii) other concerns such as calibration of the outflow rates. At a high level, commenters asserted that the treatment for SPEs was overly harsh, that the approach for financing vehicles that employed both credit and liquidity facilities should conform to the Basel III Revised Liquidity Framework, and that a host of specific entities, such as central counterparties (CCPs) and financial market utilities, deserved unique treatments.

i. Special Purpose Entities Comments

Overall, commenters asserted that the agencies had defined SPEs too broadly for purposes of § __.32(e) of the proposed rule, and argued that a 100 percent outflow rate was too high, recommending instead a ''look-through'' approach depending on the type of counterparty that sponsors or owns the SPE; for example, whether the counterparty is an operating company that develops or manages real estate, a securitization facility that functions as a financing vehicle, a CCP, a Tender Option Bond (TOB) issuer, a fund subject to the Investment Company Act of 1940 (40 Act Fund), or a commercial paper facility. Commenters argued that funding provided through an SPE should receive the outflow specified in § __.32(e) for the ''underlying'' counterparty rather than the 100 percent outflow rate applied to SPEs. A few commenters also requested that the agencies distinguish between those SPEs intended to be captured by § __ .32(e)(vi) of the proposed rule that were a source of liquidity stress in the last financial crisis and those SPEs that a borrower uses to finance, through a securitization credit facility, the receivables owned by a corporate entity (a so-called ''bank customer securitization credit facility''). These commenters proposed the agencies look through to the sponsor or owner of the SPE and set the outflow rates for the undrawn amounts based on the sponsor at: 50 percent for depository institutions, depository institution holding companies, or foreign banks; 40 percent for regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies; and 10 percent for other wholesale customers. Commenters proposed specific criteria to define bank customer securitization credit facilities, which provided guidelines related to the sponsor, financing, customers, underlying exposures, and other particular aspects of this type of SPE. These commenters also stated that failure to implement their suggestion and retention of the proposed rule's treatment of SPEs would reduce the provision of credit in the U.S. economy by restricting access to securitized lines of credit, a major source of funding.

Other commenters requested that the look-through approach be applied to the undrawn amount of credit commitments of any bank customer securitization credit facility irrespective of whether it is funded by the bank or through an asset-backed commercial paper conduit facility that is set up by the sponsoring borrower for the sole purpose of purchasing and holding financial assets, because these facilities function as a substitute or complement to traditional revolving credit facilities. These commenters argued that such securitizations act as a ''credit enhancement'' by allowing the borrower to borrow against a pool of bankruptcy remote assets. Further, these commenters argued that such borrowing structures left lenders less exposed to counterparty credit risk than a traditional revolving facility because the amount drawn on such facilities in a stressed environment would be wholly limited by a borrowing base derived from the underlying eligible financial assets.

Commenters argued that certain SPEs, such as SPEs established to hold specific real estate assets, have a similar risk profile to conventional commercial real estate borrowers and therefore should receive a lower outflow rate. Commenters argued that these SPE structures are passive, with all decisions made by the operating company parent, rather than the SPE itself. They further argued that this structure enhances the ability to finance a real estate project because the lender receives greater comfort that the primary asset will be shielded from many events that might prevent the lender from foreclosing on its loan and that the punitive treatment in the proposed rule will hamper this type of financing. Some commenters requested that SPEs that own and operate commercial and multi-family real estate be assigned a much lower outflow rate or no outflow rate. Moreover, commenters further argued that commitments to SPEs established to ring-fence the liabilities of a real estate development project do not merit a 100 percent outflow rate because in practice, the drawdowns (in crises and in normal times) could only amount to a modest portion of the overall unfunded commitment over a 30 calendar-day period due to contractual milestones reflected in the loan documentation (e.g., obtaining permits, completing a certain percentage of the project, selling or renting a certain percentage of units, or that a certain stage of the real estate development project has been completed). These commenters requested that the agencies limit the

undrawn amount of such facilities to the amount that could legally be withdrawn during the next 30 calendar days.

Another commenter expressed concern over the outflow rate applied to TOBs, stating that TOBs did not draw on liquidity facilities during the recent crisis because they rely on the remarketing process for the liquidity needed to satisfy TOB holders exercising the tender option. The commenter argued that the outflow rate should be lower for TOBs because such programs are significantly over-collateralized, and a liquidation of underlying bonds would cover liquidity needed to satisfy TOB investors, even in an environment when bond prices are falling. The commenter requested that the outflow rate be set at a maximum of 30 percent. Another commenter expressed concern that the proposed rule assigned unduly high outflow rates to mutual funds and their foreign equivalents, which are subject to statutory limitations on borrowed funds, and suggested that the outflow rate for non-financial sector companies (10 percent and 30 percent for committed credit and liquidity facilities, respectively) would be more appropriate for such funds.

ii. Dual Use Facilities Comments

Some commenters were concerned about key terms and definitions referenced in § __.32(e) of the proposed rule. For example, one commenter requested clarity regarding how to treat certain commercial paper backup facilities arguing that it was unclear how the proposed rule should be applied because most commercial paper backup facilities (that is, liquidity facilities) can also serve other general corporate purposes (akin to credit facilities). Commenters requested that multipurpose commitment facilities (which have aspects of both liquidity and credit facilities) should not automatically default to a liquidity facility and argued for employing the treatment of the Basel III Revised Liquidity Framework, which sets a portion of the undrawn amount of a commitment as a committed credit facility. Another commenter requested that the outflow rate for commitment outflows be applied to the borrowing base (rather than the commitment amount) where a covered company would not as a practical matter fund the full amount of the commitment beyond the amount of collateral that is available in the LCR's 30-day measurement period.

iii. Other Commitment Outflows Comments

Commenters also expressed concern that the treatment of commitment outflows in the proposed rule could have adverse effects on the U.S. economy by reducing the provision of credit to businesses. In particular, commenters stated that the proposed rule's 10 percent outflow rate for undrawn, committed credit facilities, regardless of borrower rating, was far higher than necessary and would negatively impact a covered company's LCR due to the underlying size of the commitments. According to these commenters, this outflow rate could have a ''far-reaching'' impact on a covered company's ability to lend to small and medium enterprises. Accordingly, the commenters requested a zero percent outflow assumption for commitments to highly rated companies.

Some commenters requested that a number of other specific commitment facilities receive a lower outflow rate than provided in § __.32(e) of the proposed rule. For instance, one commenter noted that 40 Act Funds and their foreign equivalents have aspects that limit liquidity risks such as tenor, asset quality, diversification minimums and repayment provisions. Accordingly, the commenter argued, such commitments should be assigned a 10 percent outflow rate. One commenter requested that the outflow rate assigned to commitments used for the issuance of commercial paper be raised in light of the fact that commercial paper was a significant liquidity strain during the most recent crisis. The same commenter suggested that the outflow rate for liquidity facilities used to support the issuance of certain types of securities, such as auction rate securities, should be raised to 100 percent due to the drawdown rates of such facilities observed during the crisis.

A few commenters requested that commitments provided to CCPs should be treated in the same manner as commitments to regulated financial companies due to the requirement that CCPs comply with the principles for financial market infrastructures, which require CCPs to establish and maintain sufficient liquidity resources.[65] Two commenters requested that committed facilities offered by covered companies to CCPs be separately categorized with an outflow rate below the proposed rate of 100 percent due to their low historical drawdown rates and the Dodd-Frank Act's express clearing mandate, requiring that certain transactions be cleared through a CCP.[66] One commenter noted that the Basel III leverage ratio provides a specific delineation of commitments to CCPs and credit conversion factors and indicated that these reflect the operational realities of these commitments and requested the agencies to make a similar delineation in the LCR. This commenter also proposed to define credit facility as ''a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes and a qualified central counterparty facility for general operational purposes such as managing a clearing member unwind or disruption of services by a depository or payment system. Credit facilities do not include facilities extended expressly for the purpose of refinancing the debt of a counterparty that is otherwise unable to meet its obligations in the ordinary course of business (including through its usual sources of funding or other anticipated sources of funding).''

One commenter requested that the agencies conduct an empirical analysis of historic drawdown rates to calibrate drawdown assumptions. Another commenter requested that the agencies, at a minimum, clarify that commitments to financial market utilities that have not been designated by the Council as systemically important ''be treated no worse than commitments to 'regulated financial companies' for purposes of LCR outflow assumptions.''

In addition, one commenter claimed that bonds backed by letters of credit cannot be properly valued for purposes of the 30 calendar-day period because the process of drawing upon such a letter of credit usually requires notice of 30 days or more. The commenter requested that only the value of the debt maturing within the 30-day window be included in the outflow estimate.

v. Final Rule

The agencies are clarifying the definition of liquidity facility in the final rule by eliminating the requirement that the liquidity facility be made ''expressly'' for the purpose of refinancing debt. The definition in the final rule is intended to include

[65] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for financial market infrastructures* (April 2012), available at *http://www.bis.org/publ/cpss101a.pdf.*

[66] Pursuant to sections 723(a)(3) and 763(a) of the Dodd-Frank Act, certain swaps must be cleared through a CCP. 7 U.S.C. 2(h), 15 U.S.C. 78c-3.

commitments that are being used to refinance debt, regardless of whether there is an express contractual clause. This change captures the intent of the proposed rule by focusing on the function of the commitment.

The agencies are clarifying the treatment of letters of credit issued by a covered company. To the extent a letter of credit meets the definition of credit facility or liquidity facility, it will be treated as such. Thus, a covered company will have to review letters of credit to determine whether they should be treated as commitments in the LCR.

The agencies are also clarifying the differences among the types of commitments that are covered by § __.32(b), (d), and (e) of the proposed rule, which are consistent with the final rule. Section __.32(b) relates to a covered company's commitments to structured transactions that the covered company itself has sponsored. These commitments may take the form of committed liquidity facilities, but may also take the form of less formal support. In the final rule, § __.32(b) commitments have been expressly carved out of § __.32(e)(vii) and (viii). Section __.32(d) relates only to a covered company's commitments to originate retail mortgage loans. All other outflow amounts related to committed credit and liquidity facilities are subject to the provisions in § __.32(e) of the final rule.

In response to the aforementioned comments about commitment outflows amounts, the agencies have adopted changes in the final rule to the outflow amounts for commitments to SPEs (§ __.32(e)(1)) and the treatment for assessing the undrawn amount of a credit or liquidity facility (§ __.32(e)(2)).

The agencies agree with commenters that not all SPEs are exposed to the highest degree of liquidity risk. To that end, the agencies are clarifying that certain SPEs can be treated with an approach similar to the treatment for the other referenced commitments in § __.32(e)(1). Under the final rule, the agencies have limited the application of the 100 percent outflow rate to committed credit and liquidity facilities to SPEs that issue or have issued securities or commercial paper to finance their purchases or operations. These SPEs are highly susceptible to stressed market conditions during which they may be unable to refinance their maturing securities and commercial paper. As such, under the final rule:

- For SPEs that do not issue securities or commercial paper:
  - The outflow amount for a committed credit facility extended by the covered company to such SPE that is a consolidated subsidiary of a wholesale customer or counterparty that is not a financial sector entity is 10 percent of the undrawn amount;
  - The outflow amount for a committed liquidity facility extended by the covered company to such SPE that is a consolidated subsidiary of a wholesale customer or counterparty that is not a financial sector entity is 30 percent of the undrawn amount;
  - The outflow amount for a committed credit facility extended by the covered company to such SPE that is a consolidated subsidiary of a financial sector entity is 40 percent of the undrawn amount; and
  - The outflow amount for a committed liquidity facility extended by the covered company to an SPE that is a consolidated subsidiary of a financial sector entity is 100 percent of the undrawn amount.
- The outflow amount for either a committed credit or liquidity facility extended by the covered company to an SPE that issues or has issued commercial paper or securities, other than equity securities issued to a company of which the SPE is a consolidated subsidiary, to finance its purchases or operations is 100 percent of the undrawn amount.

The agencies agree with commenters that SPEs that are formed to manage and invest in real estate should not all be treated with a 100 percent outflow rate, provided that such SPEs do not issue securities or commercial paper. Instead, the agencies are employing the ''look through'' approach as described above. For example, under the final rule, funding provided to a non-financial sector entity for real estate activities via a committed credit facility to an SPE would receive a 10 percent outflow rate, and funding provided to a financial sector entity for real estate activities via a committed liquidity facility to an SPE would receive a 100 percent outflow rate.

The agencies also agree that the assessment of the undrawn amount for committed liquidity facilities should be narrowed to only include commitments that support obligations that mature in the 30 calendar-day period following the calculation date; however, pursuant to § __.31, notice periods for draws on commitments are not recognized. The agencies are thus clarifying that, if the underlying commitment's contractual terms are so limiting, the amount supporting obligations with maturities greater than 30 days would not be considered undrawn because they would not be available to be drawn within the 30 calendar-day period following the calculation date. In addition, if the underlying commitment's contractual terms do not permit withdrawal but for the occurrence of a contractual milestone that cannot occur within 30-calendar days, such amounts would not be included in the undrawn amount of the facility. Thus, with respect to undrawn amounts for all facilities, the agencies are clarifying in the final rule that the undrawn amount would only include the portion of the facility that a counterparty could contractually withdraw within the 30 calendar-day period following the calculation date.

The agencies have not included § __.32(e)(2)(ii)(B) of the proposed rule in the final rule. This provision that the undrawn amount of a committed facility is less that portion of the facility that supports obligations of a covered company's customer that do not mature 30 calendar days or less from such calculation date, and further provided that if facilities have aspects of both credit and liquidity facilities, the facility must be classified as a liquidity facility. First, the principle in the first clause of the deleted language is duplicative of the rule text set forth in § __.32(e)(2)(ii) of the final rule and therefore not only unnecessary but potentially confusing. Second, the second sentence of the deleted language has been included in the final rule's definition of liquidity facility, rather than in the section on outflows, where the agencies think it is more appropriate and will be easier for readers to find. Accordingly, the agencies have streamlined the text in the final rule.

The agencies are retaining the approach for those financing vehicles that employ both credit and liquidity facilities and treating those entities as liquidity facilities. The agencies believe it would be problematic to assess which portion of the assets securing the facility are meant to serve the liquidity facility and which portion of the assets are meant to serve the credit facility. At the same time, this treatment provides the agencies with a conservative approach for assessing dual purpose facilities. The agencies are also clarifying that facilities that may provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program, or conduit should be treated as a liquidity facility and not be treated as a credit facility.

The agencies disagree with commenters' recommendation that 40 Act Funds and their foreign equivalents be treated with an outflow rate equivalent to unsecured retail funding because the nature of the counterparty and the corresponding liquidity risks

are more akin to the liquidity risks of financial sector entities. Thus, the agencies decline to apply a unique rate for this category of commitments. The agencies also decline to create special exceptions for commitments related to TOBs, mutual funds, and other commitments to investment companies, because similar to other SPEs that issue, or have issued, securities or commercial paper, such entities have liquidity risks that are commensurate with a financial sector entity and their draws on commitments likely will be highly correlated with stress in the financial sector.

The agencies are not providing special treatment for CCPs or certain financial market utilities. The agencies believe it is critical for covered companies to maintain appropriate HQLA to support commitments that may necessitate the provision of liquidity in a crisis and believe that to be the case with respect to commitments to CCPs and certain financial market utilities. Further, the agencies understand that commitments to these entities generally require HQLA to be posted and because the commitment outflow amount is reduced by the amount of Level 1 and 2A HQLA required to support the commitment, the agencies have determined that special treatment for CCPs or certain financial market utilities is not necessary.

f. Collateral Outflow Amount

The proposed rule would have required a covered company to recognize outflows related to changes in collateral positions that could arise during a period of financial stress. Such changes could include being required to post additional or higher quality collateral as a result of a change in derivative collateral values or in underlying derivative values, having to return excess collateral, or accepting lower quality collateral as a substitute for already-posted collateral, all of which could have a significant impact upon a covered company's liquidity profile.

Various requirements of proposed § __.32(f) were of concern to certain commenters who generally believed that the provisions relating to changes in financial condition, potential collateral valuation changes, collateral substitution, and derivative collateral change required clarification or did not accurately reflect liquidity risks around the posting of collateral for derivative transactions. The following describes the subcategories of collateral outflows discussed in the preamble to the proposed rule.

i. Changes in Financial Condition

The proposed rule would have required a covered company to include in its collateral outflow amount 100 percent of all additional amounts that the covered company would have needed to post or fund as additional collateral under a contract as a result of a change in its own financial condition. A covered company would have calculated this outflow amount by evaluating the terms of such contracts and calculating any incremental additional collateral or higher quality collateral that would have been required to be posted as a result of triggering clauses tied to a change in the covered company's financial condition. If multiple methods of meeting the requirement for additional collateral were available (for example, providing more collateral of the same type or replacing existing collateral with higher quality collateral) the covered company was permitted to use the lower calculated outflow amount in its calculation.

Some commenters requested additional clarification regarding the requirements of § __.32(f)(1) of the proposed rule. One commenter requested that the agencies clarify that they do not view the existence of a material adverse change (MAC) clause in a contract as a provision that would be expected to impact the calculation of collateral outflows because these clauses by themselves do not necessarily trigger additional collateral, but require subjective analysis to determine whether they have been triggered. Another commenter noted that the Basel III Revised Liquidity Framework provides for credit ratings downgrades of up to three notches and requested clarity as to how to calculate the collateral outflow amount given the absence of an explicit downgrade threshold in the proposed rule. The same commenter urged the agencies to employ a standard approach (as opposed to allowing banking organizations to choose the lower outflow amount) in cases where multiple methods are available.

The agencies are clarifying in the final rule that when calculating the collateral outflow amount, a covered company should review all contract clauses related to transactions that could contractually require the posting or funding of collateral as a result of a change in the covered company's financial condition, including downgrade triggers, but not including general MAC clauses, which is consistent with the intent of the proposed rule. The agencies also are clarifying that covered companies should count all amounts of collateral in the collateral outflow amount that could be posted in accordance with the terms and conditions of the downgrade trigger clauses found in all applicable legal agreements. Covered companies should not look solely to credit ratings to determine collateral outflows from changes in financial condition, but the agencies note that collateral requirements based on credit rating changes constitute collateral requirements based on changes in financial condition under the final rule. The final rule continues to allow a covered company to choose the method for posting collateral that results in the lowest outflow amount, as the agencies believe a covered company will likely post collateral in the most economically advantageous way that it can. The agencies are finalizing the provision addressing changes in financial condition collateral outflow as proposed.

ii. Derivative Collateral Potential Valuation Changes

The proposed rule would have applied a 20 percent outflow rate to the fair value of any assets posted as collateral that were not level 1 liquid assets, in recognition that a covered company could be required to post additional collateral as the market price of the posted collateral fell. The agencies did not propose to apply outflow rates to level 1 liquid assets that are posted as collateral, as these are not expected to face substantial mark-to-market losses in times of stress.

Commenters requested that the agencies change and clarify certain requirements in § __.32(f)(2) of the proposed rule. For instance, one commenter requested that the agencies revise § __.32(f)(2) to base outflow rates on a net calculation on a security-by-security basis (for non-level 1 liquid assets) and only to include collateral posted on a net basis, not the pre-netting gross amount. Commenters also requested that, consistent with the Basel III Revised Liquidity Framework, the agencies clarify that § __.32(f)(2) only applies to collateral securing derivative transactions and not to collateral pledged for the secured funding transactions contemplated in § __.32(j) of the proposed rule. Another commenter requested that the agencies impose a 20 percent outflow rate for collateral value changes due to market stress.

The agencies have reviewed comments about potential valuation changes in § __.32(f)(2) of the proposed rule and are generally finalizing this

section of the rule as proposed. However, the agencies are clarifying in the final rule that, when determining the outflow amount for the potential valuation change of collateral, only collateral securing derivative transactions should be assessed, and not collateral supporting other transactions, such as that securing secured funding transactions under § __.32(j) of the proposed rule. Also, consistent with other derivative netting provisions employed in the proposal, the agencies are clarifying that covered companies can apply the rate to netted collateral, not the pre-netted gross amount, but only if the collateral can be netted under the same qualifying master netting agreement.

iii. Excess Collateral Outflow Amount

The proposed rule would have applied an outflow rate of 100 percent to the fair value of collateral posted by counterparties that exceeds the current collateral requirement in a governing contract. Under the proposed rule, this category would have included unsegregated excess collateral that a covered company may have been required to return to a counterparty based on the terms of a derivative or other financial agreement and which is not already excluded from the covered company's eligible HQLA.

There were no substantive comments received by the agencies regarding § __.32(f)(3) of the proposed rule. For the same reasons outlined in the proposed rule, the agencies are finalizing the excess collateral outflow requirements substantially as proposed.

iv. Contractually-Required Collateral Outflow

The proposed rule would have imposed a 100 percent outflow rate upon the fair value of collateral that a covered company was contractually obligated to post, but had not yet posted. Where a covered company has not yet posted such collateral, the agencies believe that, in stressed market conditions, a covered company's counterparties may demand all contractually required collateral.

There were no substantive comments about § __.32(f)(4) of the proposed rule. For the same reasons outlined in the proposed rule, the agencies are finalizing the contractually-required collateral outflow requirements substantially as proposed.

v. Collateral Substitution

The proposed rule's collateral substitution outflow amount would have equaled the difference between the post-haircut fair value of eligible HQLA collateral posted by a counterparty to a covered company and the post-haircut fair value of lower quality eligible HQLA collateral, or non-HQLA collateral, a counterparty could substitute under an applicable contract. Thus, if a covered company had received as collateral a level 1 liquid asset that counted towards its level 1 liquid asset amount, and the counterparty could have substituted it with an eligible level 2A liquid asset collateral, the proposed rule imposed an outflow rate of 15 percent, which resulted from applying the standardized haircut value of the level 2A liquid assets. Similarly, if a covered company had received as collateral a level 1 liquid asset that counted towards its level 1 liquid asset amount and under an agreement the collateral could have been substituted with assets that are not HQLA, a covered company would have been required to include in its outflow amount 100 percent of the collateral's market value. The proposed rule provided outflow rates for all permutations of collateral substitution.

One commenter stated that § __ .32(f)(5) of the proposed rule was excessively conservative because it did not take into account that a counterparty's right to substitute non-HQLA collateral is generally subject to an increase in a market haircut designed to mitigate the liquidity risk associated with the substitution. The commenter further stated that such substitutions are infrequent, and the requirement introduces an asymmetry by ignoring the reuse of the substituted collateral which could be posted to another counterparty. Accordingly, the commenter argued that collateral substitution outflows occur infrequently and do not warrant inclusion in the proposed rule.

The agencies are finalizing this section of the rule substantially as proposed. The agencies recognize that collateral related to transactions is subject to market haircuts. However, the standardized haircuts provided in the proposed rule permit the agencies to design a generally consistent standard that addresses certain potential risks that covered companies may face under a stressed environment. The agencies are clarifying that § __.32(f)(5) only applies to collateral that a counterparty has posted to the covered company as of the calculation date, and does not apply to collateral a covered company has posted to a counterparty, nor to any collateral that the covered company could repost to a counterparty after a collateral substitution has taken place.

vi. Potential Derivative Valuation Change

The proposed rule would have required a covered company to use a two-year look-back approach in calculating its market valuation change outflow amounts for derivative positions. Under the proposed rule, the derivative collateral outflow amount would have equaled the absolute value of the largest consecutive 30 calendar-day cumulative net mark-to-market collateral outflow or inflow resulting from derivative transactions realized during the preceding 24 months.

One commenter indicated that the two-year look-back approach of .32(f)(6) of the proposed rule was not a forward-looking estimate of potential collateral flows in a period of market stress, and that historic collateral outflows may be more indicative of closing out positions rather than liquidity strains. The same commenter requested that the agencies provide an alternative forward-looking approach that would replace the requirement of the proposed rule. Another commenter expressed concern that § __.32(f)(6) did not take into account current conventions regarding margin requirements that greatly reduce a covered company's exposure to derivative valuation changes, thereby making the proposed rule an onerous data exercise without an obvious benefit. Further, according to this commenter, there would be operational challenges as banking organizations have not previously retained this data.

While the agencies recognize the operational challenges raised by commenters, the agencies are finalizing this section of the rule largely as proposed because of the important liquidity risk it addresses. When a covered company becomes subject to the LCR, it should have relevant records related to derivatives to compute this amount. To the extent that the covered company's data is not complete, it should be able to closely estimate its potential derivative valuation change. Once subject to the LCR, the agencies expect that a covered company will collect data to make a precise calculation in the future. The agencies recognize that the calculation is not forward-looking and may not be entirely indicative of the covered company's derivative portfolio at the time of the calculation date, but the historical experience of the covered company with its derivatives portfolio should be a reasonable proxy for potential derivative valuation changes. Additionally, while the margin requirements in recent regulatory proposals may provide certain protections in derivatives transactions, this rule specifically addresses the risk of the potential future liquidity stress from derivative valuation changes. One clarifying change has been made to highlight that the look-back should only include collateral that is exchanged based on the actual valuation changes of derivative transactions (generally referred to as variation margin), and not collateral exchanged based on the initiation or close out of derivative transactions (generally referred to as initial margin).

Table 2 below illustrates how a covered company should calculate this collateral outflow amount. Note that Table 2 only presents a single 30-day period within a prior two-year calculation window. A covered company is required to repeat this calculation for each calendar day within every two-year calculation window, and then determine the maximum absolute value of the net cumulative collateral change, which would be equal to the largest 30-consecutive calendar day cumulative net mark-to-market collateral outflow or inflow realized during the preceding 24 months resulting from derivative transactions valuation changes.

TABLE 2—POTENTIAL DERIVATIVE VALUATION CHANGE OUTFLOW AMOUNT

	Mark-to-market collateral inflows due to derivative transaction valuation changes A	Mark-to-market collateral outflows due to derivative transaction valuation changes B	Net mark-to-market collateral change due to derivative transaction valuation changes (A)–(B) C	Cumulative net mark-to-market collateral change due to derivative transaction valuation changes D	Absolute value of cumulative net collateral change due to derivative transaction valuation changes E
Day 1	72	78	−6	−6	6
Day 2	78	0	78	72	72
Day 3	35	85	−50	22	22
Day 4	18	30	−12	10	10
Day 5	77	59	18	28	28
Day 6	9	53	−44	−16	16
Day 7	53	24	29	13	13
Day 8	81	92	−11	2	2
Day 9	66	2	64	66	66
Day 10	56	58	−2	64	64
Day 11	7	32	−25	39	39
Day 12	62	10	52	91	91
Day 13	96	90	6	97	97
Day 14	54	83	−29	68	68
Day 15	73	45	28	96	96
Day 16	11	62	−51	45	45
Day 17	65	55	10	55	55
Day 18	87	55	32	87	87
Day 19	1	43	−42	45	45
Day 20	96	99	−3	42	42
Day 21	3	89	−86	−44	44
Day 22	95	49	46	2	2
Day 23	18	90	−72	−70	70
Day 24	48	54	−6	−76	76
Day 25	18	100	−82	−158	158
Day 26	86	74	12	−146	146
Day 27	51	65	−14	−160	160
Day 28	48	19	29	−131	131
Day 29	40	74	−34	−165	165
Day 30	52	32	20	−145	145

g. Brokered Deposit Outflow Amount for Retail Customers and Counterparties

The proposed rule provided several outflow rates for retail brokered deposits held by covered companies. The proposed rule defined a brokered deposit as any deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the Federal Deposit Insurance Act (FDI Act).[67] The agencies' proposed outflow rates for brokered deposits from retail customers or counterparties was based on the type of account, whether

[67] 12 U.S.C. 1831f(g).

deposit insurance was in place, and the maturity date of the deposit agreement. Outflow rates for retail brokered deposits were further subdivided into reciprocal brokered deposits, brokered sweep deposits, and all other brokered deposits. The agencies received several comments arguing that: (i) The proposed outflow rates for each category of brokered deposits were too high; (ii) the applicable definitions and key terms lacked clarity and precision; and (iii) the proposed rule would have a number of unintended consequences, including potentially disrupting an important, stable funding source for many banking organizations.

The agencies are adopting many aspects of the proposed rule, with revisions to certain elements in response to commenters and to better reflect the liquidity risks of brokered funding, as described in this section. The agencies continue to believe that brokered deposits have the potential to exhibit greater volatility than funding from stable retail deposits, even in cases where the deposits are fully or partially insured, and thus believe that higher outflow rates, relative to some other retail funding, are appropriate. Brokered deposits are more easily moved from one institution to another, as customers search for higher interest rates. Additionally, brokered deposits can be subject to both regulatory limitations and limitations imposed by the facilitating deposit broker when an institution's financial condition deteriorates, and these limitations can become especially problematic during periods of economic stress when a banking organization may be unable to renew such deposits.

i. Retail Brokered Deposit Outflow Rates

Several commenters contended that the outflow rates for all categories of retail brokered deposits were too high, that they were inconsistent with the liquidity risks posed by these transactions, and that they should be lowered. Commenters argued that the liquidity characteristics of most brokered deposits warranted outflow rates consistent with the unsecured retail outflow rates specified in § __.32(a) of the proposed rule (for example, 3 percent for fully insured retail deposits and 10 percent for all other retail deposits).

As noted in the preamble to the proposed rule, the agencies consider brokered deposits for retail customers or counterparties to be a more volatile form of funding than stable retail deposits, even if deposit insurance coverage is present, because of the structure of the attendant third-party relationship and the potential instability of such deposits during a liquidity stress event. The agencies also are concerned that statutory restrictions on certain brokered deposits make this form of funding less stable than other deposit types under certain stress scenarios. Specifically, a covered company that becomes less than ''well capitalized'' is subject to restrictions on accepting deposits through a deposit broker. Additionally, the agencies disagree with commenters' views that brokered deposits are as low risk as other unsecured retail deposits. During the recent crisis, the FDIC found that: (i) Failed and failing banking organizations were more likely to have brokered deposits than other banking organizations; (ii) replacing core deposits with brokered deposit funding tended to raise a banking organization's default probability, and (iii) banking organizations relying on brokered deposits were more costly to resolve.[68] Because banking organizations that rely heavily on brokered deposits have been shown to engage in relatively higher-risk lending than institutions with more core deposits, banking organizations that rely heavily on brokered deposits are more likely to experience significant losses during stress conditions, which, in turn, may cause these banking organizations' capital levels to fall and, in turn, restrict their ability to replace brokered deposits that run off or mature.

The agencies continue to have the concerns noted above and are finalizing the treatment of retail brokered deposits largely as proposed. However, in response to commenters, the final rule modifies the treatment of certain non-maturity brokered deposits in retail transactional accounts to provide for a lower outflow rate, as described below.

(a). Non-Maturity Brokered Deposits in Transactional Accounts

Under the proposed rule, brokered deposits that mature within 30 calendar days of a calculation date that are not reciprocal deposits or brokered sweep deposits would have been subject to a 100 percent outflow rate. Several commenters argued this outflow rate was unrealistic and would disrupt a valuable source of funding. In particular, commenters argued that certain non-maturity brokered checking and transactional account deposits, such as affinity group deposits, are as stable as traditional retail deposits and should not be subject to the proposed rule's 100 percent outflow rate. According to the commenters, in many instances these deposits involve direct relationships between the banking organization and the retail customer with little continued involvement of the deposit broker. Likewise, commenters stressed that the LCR generally provides for lower treatment of retail-related outflows, and argued that this 100 percent outflow assumption is higher than the 40 percent outflow assumption for wholesale brokered deposits.

To address these commenters' concerns about the outflow rate applied to such deposits, the agencies are providing separate outflow rates for non-maturity brokered deposits in transactional accounts. Under the final rule, retail brokered deposits held in a transactional account with no contractual maturity date receive a 20 percent outflow rate if the entire amount is covered by deposit insurance and a 40 percent outflow rate if less than the entire amount is covered by deposit insurance. This outflow rate covers brokered deposits that are in traditional retail banking accounts and are used by the customers for their transactional needs, and would include non-maturity affinity group referral deposits and third-party marketer deposits where the deposit is held in a transactional account with the bank. The agencies believe these deposits have lower liquidity risk than other types of brokered deposits, but nevertheless warrant higher outflow treatment than the unsecured retail deposits in § __ .32(a) due to the presence of third-party intermediation by the deposit broker, which may result in higher outflows during periods of stress. The outflow rates under the final rule are intended to be consistent with the outflow rates for unaffiliated brokered sweep deposits, discussed below, and the agencies' treatment of professionally managed deposits that do not qualify as brokered deposits, discussed above under section II.C.3.a.

(b). Other Brokered Deposits

As noted above, under the proposed rule, all other brokered deposits would have been defined to include those brokered deposits that are not reciprocal brokered deposits or are not part of a brokered sweep arrangement. These deposits were subject to an outflow rate of 10 percent for deposits maturing more than 30 calendar days from the calculation date or 100 percent for deposits maturing within 30 calendar days of the calculation date. With respect to other brokered deposits

[68] *See* Federal Deposit Insurance Corporation, ''Study on Core Deposits and Brokered Deposits,'' Submitted to Congress pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (FDIC Brokered Deposit Study), at pages 34–45 (2011), available at *http://www.fdic.gov/regulations/reform/coredeposit-study.pdf.*

maturing within 30 calendar days of the calculation date, commenters argued that the 100 percent outflow rate for such deposits was unnecessarily high due to the rollover rates banking organizations observed for such deposits. In addition, one commenter argued that the agencies' treatment of deposits entirely covered by deposit insurance was inconsistent because a brokered sweep deposit that is not entirely insured is subject to a 40 percent outflow rate while an entirely insured brokered time deposit is subject to a 100 percent outflow rate if it matures within the 30-day period. The commenter suggested that all deposits that are fully insured (retail or wholesale) should receive the same treatment for the purposes of the LCR. Several commenters requested clarification regarding the treatment of retail brokered deposits that allow for early withdrawal upon the payment of a financial penalty, such as a certain amount of accrued interest.

As discussed in the proposal, the agencies believe the 100 percent outflow rate is appropriate for other brokered deposits maturing within the 30 calendar-day period because under stress, there is a greater probability that counterparties will not renew and that covered companies will not be able to renew brokered deposits due to associated regulatory restrictions. Therefore, the agencies believe covered companies should not rely on the renewal or rollover of such funding as a source of liquidity during a stress period. Accordingly, other than the changes for non-maturity brokered deposits in transactional accounts discussed above, the agencies are adopting this provision of the rule as proposed. The agencies are clarifying that, under the final rule, all retail brokered deposits, regardless of contractual provisions for withdrawal, are subject to the outflow rates provided in the proposed rule, including the 10 percent outflow rate for brokered deposits maturing more than 30 calendar-days after the calculation date.

In addition, several commenters suggested that the 10 percent outflow rate for other brokered deposits maturing outside the 30 calendar-day period was unnecessarily conservative, and urged the agencies to recognize the contractual terms in retail brokered deposit agreements that restrict early withdrawal. Several commenters requested clarification regarding the treatment of retail brokered deposits that allow for early withdrawal upon the payment of a financial penalty, such as a certain amount of accrued interest. A commenter requested that the agencies provide a rationale for diverging from the Basel III Revised Liquidity Framework, which applies a zero percent outflow rate to deposits that have a stated contractual maturity date longer than 30 days. Although many agreements for brokered deposits with contractual maturity provide for limited contractual withdrawal rights, as with non-brokered term retail deposits, the agencies believe that covered companies may agree to waive such contractual maturity dates for retail deposits. The agencies believe a brokered deposit should not obtain more favorable treatment than a non-brokered deposit because the relationship between the brokered deposit customer and the covered company is not as strong as the relationship between a direct retail customer and the covered company, as a brokered deposit interposes a third party. Accordingly, the agencies are adopting this provision of the rule as proposed.

(c). Brokered Sweep Deposits

Brokered sweep deposits involve securities firms or investment companies that ''sweep'' or transfer idle customer funds into deposit accounts at one or more depository institutions. Under the proposed rule, such deposits would have been defined as those that are held at the covered company by a customer or counterparty through a contractual feature that automatically transfers funds to the covered company from another regulated financial company at the close of each business day. The definition of ''brokered sweep deposit'' under the proposed rule would have covered all deposits under such arrangements, regardless of whether the deposit qualified as a brokered deposit under the FDI Act.

The proposed rule would have assigned these deposits progressively higher outflow rates depending on deposit insurance coverage and the affiliation between the bank and the broker sweeping the deposits. Under the proposed rule, brokered sweep deposits that are entirely covered by deposit insurance, and that are deposited in accordance with a contract between a retail customer or counterparty and a covered company, a covered company's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top-tier company (affiliated brokered sweep deposits), would have been assigned a 10 percent outflow rate. Brokered sweep deposits that are entirely covered by deposit insurance but that do not originate with a covered company, a covered company's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top-tier company of a covered company (unaffiliated brokered sweep deposits), would have been assigned a 25 percent outflow rate. All brokered sweep deposits that are not entirely covered by deposit insurance, regardless of the affiliation between the bank and the broker, would have been assigned a 40 percent outflow rate because they have been observed to be more volatile during stressful periods, as customers seek alternative investment vehicles or use those funds for other purposes. The agencies received a number of comments on the outflow rates for brokered sweep deposits. However, for the reasons discussed below and in the proposal, other than changing the level of affiliation required for the 10 percent affiliated brokered sweep deposit outflow rate to apply, the agencies are adopting in the final rule the proposed rule's treatment of brokered sweep deposits with respect to outflow amounts.

Several commenters maintained that the outflow rates applied to fully-insured brokered deposits (10 percent for reciprocal and affiliated brokered sweep deposits, and 25 percent for non-affiliated brokered sweep deposits) should be lowered to be more consistent with the fully insured rate of 3 percent to unsecured stable retail deposits. Similarly, commenters asserted that the outflow rates applicable to partially insured brokered deposits (25 percent for reciprocal brokered deposits and 40 percent for brokered sweep deposits) were too high and should be lowered to be more closely aligned with the corresponding outflow rate for less-stable unsecured retail deposits (10 percent). The agencies believe that the outflow rates for brokered sweep deposits as set forth in the proposed rule are appropriate in light of the additional liquidity risk arising as a result of deposit intermediation. In addition, in contrast to retail deposit accounts which are typically composed of funds used by the depositor for transactional purposes (for example, checking accounts), brokered sweep accounts are composed of deposits that are used for the purchase or sale of securities. During a period of significant market volatility and distress, customers may be more likely to purchase or sell securities and withdraw funds from such accounts. Moreover, the agencies believe that customers would be more likely to withdraw funds from their ancillary accounts, such as the brokered sweep accounts, prior to depleting resources in accounts used for day-to-day transactions. Accordingly, the

agencies are adopting in the final rule the relevant outflow rates as proposed.

Several commenters requested that the agencies not distinguish between affiliate and non-affiliate relationships in applying outflow rates to brokered sweep deposits. In particular, commenters argued that unaffiliated sweep arrangements operated by a program operator, where the customer controls the selection of the banking organizations in which deposits may be placed, have far lower outflow rates due to the limited intermediation of the program operator. According to these commenters, the program operator is required to place deposits in accordance with levels set forth in the contractual agreements with the banking organizations and broker-dealers, and in many cases, is required to reduce overall volatility in the deposits to amounts below the outflow rates in the proposed rule. Commenters requested a lower outflow rate for unaffiliated brokered sweep deposits that are subject to a contractual non-volatility requirement or a contractual arrangement that obligates a deposit broker to maintain a minimum amount with the depository institution. In addition, these commenters requested that the agencies recognize the impact of a depository institution's contracts with broker-dealers and treat outflows more favorably if that depository institution would contractually receive funds ahead of other institutions. One commenter requested that the agencies require that affiliated brokered sweep deposits be subject to agreements providing for substantial termination and withdrawal penalties to minimize accelerated client-driven withdrawal. Finally, one commenter stated that data from its own proprietary program shows that fully insured, unaffiliated brokered sweep deposits and fully insured, reciprocal brokered deposits are stickier than would be implied by the outflow rates assigned in the proposed rule. The commenter argued that customers could be deprived access to these insured sweep deposit programs if banking organizations reduce or eliminate their use of these deposits as a funding source because of application of a higher outflow rate to them. The commenter further stated that a substantial portion of these funds, which currently flow to these banking organizations, would be diverted to money market mutual funds or other investments outside the banking system were they subject to a higher outflow rate.

The agencies believe that affiliated brokered sweep deposits are more reflective of an overall relationship with the underlying retail customer, while non-affiliated sweep deposits are more reflective of a relationship associated with wholesale operational deposits. Affiliated brokered sweep deposits generally exhibit a stability profile associated with retail customers, because the affiliated sweep providers generally have established relationships with the retail customer that in many circumstances include multiple products with both the covered company and the affiliated broker-dealer. Affiliated brokered sweep deposit relationships are usually developed over time. Additionally, the agencies believe that because such deposits are swept by an affiliated company, the affiliated company would be incented to minimize harm to any affiliated depository institution.

In contrast, depository institutions in unaffiliated brokered sweep deposit programs have relationships only with a third-party intermediary, rather than with retail customers. Balances in an unaffiliated brokered sweep accounts are purchased and can fluctuate significantly depending on the type of contractual relationship the banking organization has with the unaffiliated broker. Additionally, the introduction of the third-party intermediary adds volatility to the deposit relationship in times of stress, as it is possible the third-party intermediary will move entire balances away from the bank. With respect to contractual requirements for the amount to be swept, although such requirements may add additional stability during normal market conditions, the agencies believe that during a period of significant market distress and volatility, deposit brokers may be unable to abide by such commitments as market transaction volumes rise.

One commenter requested clarification regarding the treatment of the agreement between the bank and a deposit broker relating to minimum balances over a period longer than 30 days, and whether such agreements cause brokered sweep deposits to be treated as deposits maturing greater than 30 days because of the aggregate balance requirement. The agencies are clarifying that such provisions do not alter the contractual maturity of the underlying deposit, which are typically non-maturity or overnight deposits, and do not cause such deposits to become deposits that mature more than 30 calendar days from a calculation date. Accordingly, other than the change to the level of affiliation required under the affiliated sweep deposit outflow rate, discussed below, the agencies are adopting this provision of the final rule as proposed.

(d). Reciprocal Brokered Deposits

The proposed rule would have applied a 10 percent outflow rate to all reciprocal brokered deposits at a covered company that are entirely covered by deposit insurance. Any reciprocal brokered deposits not entirely covered by deposit insurance received an outflow rate of 25 percent. A reciprocal brokered deposit was defined in the proposed rule as a brokered deposit that a covered company receives through a deposit placement network on a reciprocal basis such that for any deposit received, the covered company (as agent for the depositor) places the same amount with other depository institutions through the network and each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members. Reciprocal brokered deposits generally have been observed to be more stable than certain other brokered deposits because each institution within the deposit placement network typically has an established relationship with the retail customer or counterparty that is making the initial over-the-insurance-limit deposit that necessitates distributing the deposit through the network.

Several commenters contended that the outflow rate applied to fully-insured reciprocal deposits (10 percent) should be lowered to be more consistent with the fully insured rate of 3 percent to unsecured stable retail deposits, and that the rate for partially insured reciprocal deposits (25 percent) should be lowered to more closely align with the outflow rate for less-stable unsecured retail deposits (10 percent). The agencies continue to believe that reciprocal deposits, like other brokered deposits, present elevated liquidity risks. During periods of material financial distress or an idiosyncratic event involving a particular institution, depositors or program operators may terminate their relationships with a banking organization, resulting in a significant loss of funding. Accordingly, the agencies have adopted in the final rule the proposed definition and outflow rates for reciprocal brokered deposits.

(e). Empirical Data

Several commenters requested that the agencies provide data or an empirical analysis to support the proposed outflow rates for reciprocal and other brokered deposits. Many commenters concurred with the FDIC Brokered Deposit Study's conclusion that comprehensive, industry-wide data for different types of brokered deposits

is not available. As one commenter noted, while banking organizations are required to report their total brokered deposits on the Consolidated Report of Condition and Income (Call Report), there is no breakdown by type of deposit account, specific maturity of CDs, or interest rates. Thus, the commenter stated that banking organizations currently do not report the information necessary for a comprehensive examination of the brokered deposit market and its component parts. Some commenters submitted data to show that the proposed brokered deposit outflow rates were too conservative.

The agencies believe a conservative approach to setting brokered deposit outflow rates for the purposes of the LCR is appropriate in light of limited available data, the findings of the FDIC Brokered Deposit Study showing that increased reliance on brokered deposit rates is correlated with higher overall risk, and the strong incentives third-party brokers have to provide the highest possible returns for their clients by seeking accounts paying the highest interest rates. Moreover, the agencies believe the assumptions and provisions of § __.32(g) are consistent with the available sources of information, including the FDIC Brokered Deposit Study, guidelines provided in the Basel III Revised Liquidity Framework, and supervisory information reviewed by the agencies. Based on the information available to the agencies, the agencies continue to believe that brokered deposits represent a more volatile source of funding than typical retail deposits, thus warranting the outflow rates that were proposed.

(f). Other Comments

One commenter suggested that the agencies allow covered companies to use internal models to determine outflow rates instead of using the proposed rule's standardized outflow rates. While the internal stress-testing requirements of certain covered companies under the Board's Regulation YY [69] permit firms to use internally-developed models for liquidity stress testing, the LCR is a standardized metric that provides for comparability across all institutions subject to the rule. Accordingly, the agencies are not adopting provisions in the final rule that would allow covered companies to determine outflow rates using their internal models as an alternative to the standardized outflow rates outlined in the final rule.

[69] *See* 12 CFR part 252.

ii. Definitions and Key Terms

In connection with the treatment of brokered deposits, several commenters requested that key definitions and terms in the proposed rule be modified or updated to reflect a number of key characteristics. Specifically, commenters requested that the agencies modify the definitions of brokered deposit and consolidated subsidiary and requested that the agencies clarify the meaning of fully insured deposits, pass-through insurance, penalties for withdrawal, and a number of other terms.

(a). Definition of Brokered Deposit

A commenter expressed concern that the proposed rule incorporated the definition of brokered deposit from the FDI Act and the FDIC's regulations, which the commenter stated were developed many years ago for a different purpose and at a time when views of liquidity risks were different. Another commenter requested clarification whether the Board and the OCC would be interpreting the FDI Act's brokered deposit definitions for purposes of the LCR and whether the FDIC's prior interpretations remained binding. Two commenters stated that the FDI Act's definition of brokered deposit and the FDIC's interpretations would cover arrangements that would generally be considered retail stable deposits such as deposits placed by employees of affiliates of a bank. Finally, one commenter requested additional clarity regarding what type of deposits (those from affinity groups, affiliates or third parties) would count as other brokered deposits for purposes of § __.32(g)(1) and § __.32(g)(2) of the proposed rule.

The definition of brokered deposit is adopted as proposed because it continues to sufficiently capture the types of funding with increased liquidity risk that the LCR is designed to capture, including deposits provided by: (a) Persons engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and (b) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan. As noted by a commenter, this would include the placement or facilitation of the placement of deposits by an employee of an affiliate of a bank. The agencies believe that such intermediation by nonbank employees, like intermediation by third-parties, could result in greater liquidity risks.

In response to the comment about what types of transactions would be captured under § __.32(g)(1) and § __.32(g)(2) of the proposed rule, the agencies are clarifying that these provisions include all brokered deposits that are not reciprocal brokered deposits, brokered sweep deposits, or, under the new provision included in the final rule as discussed above, non-maturity brokered deposits that are in transaction accounts, which would include transactional accounts with no maturity date that are placed through certain marketers, affinity groups, and Internet deposit broker entities.

Finally, the agencies are clarifying that the FDIC's longstanding guidance and interpretations will remain in effect. The FDIC will remain the Federal banking agency primarily responsible for matters of interpretation relating to section 29(g) of the FDI Act, and will continue to work closely with the Board and OCC to ensure consistent application of the LCR to covered companies.

(b). Definition of ''Consolidated Subsidiary''

One commenter requested that the agencies change the definition of ''consolidated subsidiary'' for purposes of the affiliated brokered sweep deposit outflow rate so that subsidiaries that are controlled under the BHC Act or affiliates that are under common control under the BHC Act are subject to the lower outflow rate rather than solely subsidiaries and affiliates that are consolidated under GAAP. This commenter argued that the BHC Act affiliate relationship is well recognized in the U.S. bank regulatory scheme, notably Federal Reserve Act sections 23A and 23B, as implemented by the Board's Regulation W, and further noted that the commenter had structured its brokered sweep deposit arrangement with its affiliate to comply with these regulatory restrictions.

The agencies have concluded that it would be consistent with the purposes of the LCR to extend the scope of affiliated brokered sweep arrangements under the final rule to include relationships between affiliates that are ''controlled'' under the BHC Act. Such affiliates would be subject to all the requirements of the BHC Act, sections 23A and 23B of the Federal Reserve Act, and the Board's Regulation W, and thus such deposits are indistinguishable from those where the subsidiary or affiliated is consolidated. Accordingly, the agencies have modified the provision of

the rule relating to affiliated sweep arrangements such that any fully insured brokered sweep deposits that are deposited in accordance with a contract between the retail customer or counterparty and the bank, a controlled subsidiary of the bank, or a company that is a controlled subsidiary of the same top-tier company of which the bank is a controlled subsidiary are subject to a 10 percent outflow rate, while brokered sweep deposits not subject to such an agreement are subject to a 25 percent outflow rate.

(c). ''Fully Covered by Insurance''

One commenter raised the concern that it would be difficult to distinguish between fully insured and partially insured or uninsured deposits because, in the case of brokered sweep deposits, the covered company would not necessarily know the identity of the depositor and because recordkeeping would be done by the deposit provider and would be provided to the covered company only in the event of a bank failure. Another commenter requested that the agencies assess the cost for determining whether deposits are fully insured, particularly those deposits that receive pass-through insurance, and requested that the agencies clarify the level of certainty a covered company is required to have prior have in determining whether a deposit is below the deposit insurance threshold.

The agencies believe that a covered company should be able to identify the applicable treatment for all of its deposits under the proposed rule by obtaining the applicable information through the deposit provider, irrespective of a bank failure. The agencies note that banking organizations are expected to have adequate policies and procedures in place for determining whether deposits are above the applicable FDIC-insurance limits. Therefore, the agencies are adopting this provision as proposed.

(d). Pass-Through Insurance

Commenters raised the issue of the proposed rule's treatment of brokered deposits that are held in custody for a depositor by a conduit financial entity, such as a trust corporation, where the depositor, but not the custodial entity, is eligible for deposit insurance on a pass-through basis. Commenters noted that the proposed rule only looks to the identity of the custodial entity, but ignores the pass-through insurance to which such deposit accounts are subject. These commenters asserted that such brokered deposits should be treated as fully-insured retail deposits under the LCR.

The agencies are clarifying that the final rule does not alter the treatment of pass-through insurance for deposits, such that deposits owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s) if certain requirements are satisfied.[70] Under FDIC regulations, to qualify for pass-through insurance, the account records of a covered company must disclose the agency relationship among the parties. Second, the identities and interests of the actual owners must be ascertainable either from the account records of the covered company or records maintained by the agent or other party. Third, the agency or custodial relationship must be genuine.[71]

With respect to brokered deposits held by a fiduciary or an agent on behalf of a retail customer or counterparty, the agencies are clarifying that under the final rule, such deposits would be subject, as applicable, to the outflow rate of non-maturity brokered deposits in a transactional account, reciprocal deposits, brokered sweep deposits, or any other type of brokered deposits.

With respect to deposits that are held by a fiduciary, but do not qualify as brokered deposits under certain exceptions to the FDIC's brokered deposit regulations, the agencies have added § __.32(a)(3) and § __.32(a)(4) to reflect that a trustee or similar third party may deposit funds at a covered company as trustee for the benefit of retail customers or counterparties. These provisions complement the newly added provisions for non-maturity brokered deposits in a transactional account. In those cases, where the criteria of § __.32(a)(3) and § __.32(a)(4) are satisfied, a covered company may look through to the retail customer or counterparty and apply the 20 percent outflow rate to deposits that are fully covered by deposit insurance and the 40 percent outflow rate where less than the entire amount of the deposit is covered by deposit insurance.

(e). Penalties Versus Contractual Restrictions for Withdrawal

Similar to the Basel III Revised Liquidity Framework, commenters requested that the agencies differentiate between brokered deposits that are subject to withdrawal penalties (such as the loss of accrued interest), and those brokered deposits where no contractual right exists to withdraw the deposit or such rights are strictly limited.

As noted above, the agencies have clarified for purposes of the final rule that deposits that can only be withdrawn in the event of death or incompetence are assumed to mature on the applicable maturity date, and deposits that can be withdrawn following notice or the forfeiture of interest are subject to the rule's assumptions for non-maturity transactions. The agencies decline to treat the assessment of deposit penalties the same as contractual prohibitions to withdrawal, but for the occurrence of a remote contingency, because the assessment of the liquidity characteristics of such fees, and whether they deter withdrawal, would be difficult to undertake and could have unintended consequences for retail customers. Additionally, while typical agreements for brokered deposits that mature in more than 30 calendar days provide for more limited contractual withdrawal rights, the agencies decline to provide more favorable treatment for these deposits relative to similar retail deposits. Therefore, the agencies are adopting this provision of the rule as proposed.

(f). Additional Brokered Deposit Categories

One commenter requested that the agencies establish categories for additional types of brokered deposits, namely brokered checking accounts, brokered savings accounts, and deposits referred by affinity groups, affiliates, or third party marketers.

The agencies did not attempt to specifically identify every type of retail brokered deposit in the proposed rule. As discussed above, the agencies have included an additional category of outflows for non-maturity brokered deposits in transactional accounts. The agencies believe that all other types of brokered deposits are appropriately captured in § __.32(g)(1) of the final rule.

iii. Deposit Market Consequences

Several commenters asserted that the proposed requirements of § __.32(g) could adversely impact the brokered deposit markets, preclude covered companies from obtaining key sources of funding, affect investor perceptions about the risks of brokered deposits, and allocate funds away from the banking system as a result of elevated brokered deposit outflow rates, among other unintended consequences. One commenter suggested that the proposed rule would harm retail investing by broker-dealer clients, who would be

[70] 12 CFR 330.7.

[71] Id.

faced with elevated costs without any additional consumer protection benefit, and requested that the final rule exempt depository institution holding companies with substantial retail brokerage activities. Another commenter suggested that the proposed treatment for reciprocal deposits could impact community banks not subject to the LCR by distorting the market standards and pricing for these types of deposits. One commenter suggested that the proposal's treatment of brokered sweep deposits would cause the cost of such products to increase, leading investors to seek products outside of the banking sector, such as money market mutual funds, at a greater cost to financial stability. Another commenter suggested that applying the existing definition of brokered deposit in FDIC regulations would have unintended consequences, such as having employees who are primarily compensated by commissions versus salary being considered deposit brokers. One commenter stated that the FDI Act's treatment of brokered deposits at well-capitalized institutions, which allows for those institutions to accept brokered deposits without limit, warrants the same outflow rate as applicable to stable retail deposits. The commenter stated that the proposed rule appears to stigmatize brokered deposits and requested that the FDIC clarify its liquidity guidance. One commenter argued that the uniqueness of deposit insurance (for example, the relatively high insurance coverage, pass-through insurance, quick and orderly resolution of failed banks) should result in lower outflow rates for insured brokered deposits. This commenter stated that brokered deposits qualifying for full pass-through insurance should be subject to the same outflow rate as fully insured stable retail deposits. Finally, one commenter stated that the distinction between affiliated and unaffiliated brokered sweep deposits would create an unfair disadvantage for small broker-dealers and commercial banks without affiliated broker-dealers, which will face relatively higher pricing to place their swept deposits.

Despite the changes that the retail brokered deposit market will likely need to undertake in response to the application of the LCR, the agencies believe that the provisions and assumptions underlying § __.32(g) of the proposed rule are consistent with the potential risks posed by retail brokered deposits.[72] As noted above, the agencies continue to believe that brokered deposits have the potential to exhibit volatility, are more easily moved from one institution to another, and can be risky to rely upon as a source of liquidity on account of regulatory limitations. In sum, the agencies believe that the standard set forth in § __.32(g) will serve to strengthen the overall financial system as well as the retail brokered deposit market.

h. Unsecured Wholesale Funding Outflow Amount

The proposed rule included three general categories of unsecured wholesale funding: (i) Unsecured wholesale funding transactions; (ii) operational deposits; and (iii) other unsecured wholesale funding which would, among other things, encompass funding from a financial company. The proposed rule defined each of these categories of funding instruments as being unsecured under applicable law by a lien on specifically designated assets. Under the proposed rule, unsecured wholesale funding instruments typically would have included: Wholesale deposits;[73] federal funds purchased; unsecured advances from a public sector entity, sovereign entity, or U.S. GSE; unsecured notes; bonds, or other unsecured debt securities issued by a covered company (unless sold exclusively in retail markets to retail customers or counterparties), brokered deposits from non-retail customers, and any other transactions where an on-balance sheet unsecured credit obligation has been contracted.

i. Non-Financial Wholesale Counterparties and Financial Sector Entities

The agencies proposed to assign three separate outflow rates to non-operational unsecured wholesale funding, reflecting the stability of these obligations based on deposit insurance and the nature of the counterparty. Under the proposed rule, unsecured wholesale funding provided by an entity that is not a financial sector entity generally would have been subject to an outflow rate of 20 percent where the entire amount is covered by deposit insurance. Deposits that are less than fully covered by deposit insurance, or where the funding is a brokered deposit from a non-retail customer, would have been assigned a 40 percent outflow rate. However, the proposed rule would have required all unsecured wholesale funding provided by financial sector entities, including funding provided by a consolidated subsidiary or affiliate of the covered company, be subject to an outflow rate of 100 percent. This higher outflow rate is associated with the elevated refinancing or roll-over risk in a stressed situation and the agencies' concerns regarding the interconnectedness of financial institutions.

Two commenters suggested that wholesale reciprocal brokered deposits are as stable as retail reciprocal brokered deposits, and should be subject to the same outflow rates. These commenters stated that the impact of insurance coverage should be reflected in the case of wholesale brokered deposits (including wholesale reciprocal deposits) by assigning such deposits the same outflow rates that apply to non-brokered deposits; that is, 20 percent if fully-insured and 40 percent if not fully-insured.

One commenter argued that the proposed rule defines the term wholesale deposits broadly and improperly categorizes deposits placed by pension funds on behalf of a retail counterparty as wholesale deposits placed by a financial sector entity. The commenter argued that under FDIC regulations, deposit accounts held by employee benefit plans are insured on a pass-through basis to the benefit of plan beneficiaries and in many plans, a beneficiary can direct the investment of the funds, which merits retail treatment for such funds rather than wholesale treatment.

In addition, several commenters disagreed with the agencies' proposed outflow rate for unsecured wholesale funding provided by financial sector entities. One commenter recognized the agencies' concern regarding the interconnectivity of financial institutions, but cautioned against potential increased costs for correspondent banking and other services and for holding financial institution deposits for banks required to comply with the LCR. A commenter argued that the proposed rule's 100 percent outflow rate for wholesale deposits by financial sector entities effectively eliminates any incentive for a banking organization to take such deposits and that they would therefore cease doing so. The commenter further argued that this would severely disrupt the availability of correspondent deposit options for depository institutions. Another commenter suggested the agencies reconsider the 100 percent outflow rate that would apply to correspondent banking deposits in excess of amounts required for operational services, suggesting that the 40 percent outflow rate applicable to non-financial unsecured wholesale

[72] 78 FR 71840.

[73] Certain small business deposits are included within unsecured retail funding. *See* section II.C.3.a. *supra.*

corporate deposits would be more appropriate. Another commenter suggested treating correspondent banking relationships as operational and argued that assigning a 25 percent outflow rate to such deposits would help support the provision of correspondent banking services to client banks, thereby ensuring the ability of client banks to continue to service the cash management needs of organizations that drive the real economy. The commenter asked that the agencies take an activity-based approach to the classification of correspondent banking outflows, such that outflows generated by correspondent transactions with underlying commercial operations relating to banks and their customers would be classified as operational because they behave in a similar fashion to those of corporate operational relationship accounts. One commenter requested that all corporate trust deposits receive a 25 percent outflow rate regardless of whether the deposit qualified as an operational deposit.

Another commenter requested that the agencies re-examine the treatment of funding provided by a subsidiary of a covered company and: (i) Not treat as an outflow funding provided by a subsidiary of the covered company; (ii) not treat as an inflow amounts owed to the covered company by a subsidiary; and (iii) not treat as an outflow or an inflow funding provided by one consolidated subsidiary of the covered company to another consolidated subsidiary.

For the reasons discussed in the proposal, the agencies continue to believe the proposed outflow rates assigned to unsecured wholesale funding are appropriate. As evidenced in the recent financial crisis, funding from wholesale counterparties, which are generally more sophisticated than retail counterparties, presents far greater liquidity risk to covered companies during a stress period. With respect to wholesale brokered deposits (including wholesale reciprocal brokered deposits), the agencies continue to believe that the 40 percent outflow rate for all such deposits (regardless of insurance) is appropriate given the intermediation or matchmaking by the deposit broker. The 100 percent outflow rate applicable to other unsecured wholesale funding provided by financial sector entities mirrors the treatment for unsecured wholesale cash inflows contractually payable to the covered company from financial sector entities. The agencies note, however, that § __.32(a)(3) and § __.32(a)(4) have been added to the final rule to address the commenter's concern regarding pension fund deposits where the beneficiary can direct the investment of the funds. Such non-brokered deposits placed by a third party on behalf of a retail customer or counterparty may be treated as retail funding, as discussed above. In addition, as discussed above, to the extent such deposits placed by a pension fund meet the definition of retail brokered deposit, such deposits would be eligible for the retail brokered deposit outflow rates under § __.32(g) of the final rule.

With respect to funding provided by an affiliate of a covered company, to address commenters' concerns, the agencies are clarifying in the final rule that the 100 percent outflow rate for unsecured wholesale funding applies only to funding from a company that is a consolidated subsidiary of the same top-tier company of which the covered company is a consolidated subsidiary. This outflow rate does not apply to funding from a consolidated subsidiary of the covered company, which is entirely excluded from the LCR calculation in the final rule under § __.32(m), as discussed below. The agencies also have added paragraph (h)(2)(ii) to the final rule to clarify that debt instruments issued by a covered company that mature within a 30 calendar-day period, whether owned by a wholesale or retail customer or counterparty, will receive a 100 percent outflow rate.

The final rule is adopting the 100 percent outflow rate for unsecured wholesale funding provided by financial sector entities as proposed. The agencies continue to believe that the liquidity risk profile of financial sector entities are significantly different from that of traditional corporate entities. Based on the agencies' supervisory experience, during a period of material financial distress, financial sector entities tend to withdraw large amounts of funding from the financial system to meet their obligations. The agencies believe the outflow rates properly reflect the liquidity risk present in the types of products offered to financial sector entities. The agencies also are adopting in the final rule the 20 percent and 40 percent outflow rates for non-financial sector unsecured wholesale funding, as proposed.

ii. Operational Services and Operational Deposit

The proposed rule would have recognized that some covered companies provide services, such as those related to clearing, custody, and cash management, that increase the likelihood that their customers will maintain certain deposit balances with the covered company. These services would have been defined in the proposed rule as operational services and a deposit required for each of their provision was termed an operational deposit. The proposed rule would have applied a 5 percent outflow rate to an operational deposit fully covered by deposit insurance (other than an escrow deposit) and a 25 percent outflow rate to an operational deposit not fully covered by deposit insurance.

The agencies received a number of comments regarding: (1) The proposed rule's definition of operational deposit and operational services; (2) the operational criteria required to be met for a covered company to treat a particular deposit as an operational deposit; and (3) the proposed rule's outflow rates for operational deposits. In response to the comments received, the agencies have made certain modifications to these requirements, as discussed below.

Although many commenters appreciated the agencies' recognition of the provision of key services by many covered companies in the form of lower outflow rates for operational deposits, two commenters suggested that a model that segregates operational deposits from other deposits is inconsistent with how covered companies and their customers structure their banking operations. One commenter suggested that application of this model could lead to unnecessary confusion and could push excess depository balances into shadow banking. Another commenter argued that the proposed rule's broad definition of operational deposit could result in a lack of consistent application among covered companies, as they would reflect their own clients and product mixes in applying the definition. One commenter called for a simplified definition that could be applied uniformly across the industry, stating that it would be preferable to have a slightly higher outflow rate in exchange for such simplicity.

For the reasons discussed in the proposal and below, the agencies continue to believe that the underlying structure of the proposal's approach to defining an operational deposit, which is consistent with the Basel III Revised Liquidity Framework, is appropriate. As noted by commenters, many customers place deposits with covered companies as a result of their provision of key services, such as payroll processing and cash management. Because such deposits are tied to the provision of specific services to the customer, these deposits present less liquidity risk during a stress period. The agencies

have made some changes to the definition of operational deposit, but have retained the definition's structure as proposed because it unambiguously aligns a particular operational deposit with an operational service, thereby providing a standardized method for identifying operational deposits. Accordingly, the agencies are adopting in the final rule the structure for defining operational deposit as proposed with the modifications discussed below.

(a). Definition of ''Operational Deposit''

The proposed rule would have defined an operational deposit as unsecured wholesale funding that is required to be in place for a covered company to provide operational services as an independent third-party intermediary to the wholesale customer or counterparty providing the unsecured wholesale funding.

Many commenters indicated that an operational deposit should be one that is ''necessary'' rather than ''required'' for the banking organization to provide in light of the operational services enumerated in the proposed rule, which would better align with industry practice. The commenters stated that using ''necessary'' would make clear that such deposits are functionally necessary as opposed to contractually required. Commenters also requested that the agencies recognize that certain operational services may be provided by a covered company not only as an independent third-party intermediary, but also as an agent or administrator. Finally, several commenters requested that certain collateralized deposits that otherwise meet the eligibility criteria for treatment as an operational deposit, such as preferred public sector deposits or corporate trust deposits, be subject to the outflow rates applicable to operational deposits.

In response to commenters' concerns, the agencies have revised the definition of operational deposit to state that the deposit is ''necessary'' for the provision of operational services rather than ''required.'' The term ''required'' implied that the deposit was a contractual requirement as opposed to incidental to the provision of the operational services, and may have inadvertently limited the definition's application. The agencies also have added ''agent'' and ''administrator'' as capacities in which a covered company may provide operational services that give rise to a need for an operational deposit, as there are circumstances, such as the provision of custody services, where a covered company acts as an agent or administrator, rather than merely as an independent third-party intermediary. Finally, the agencies have clarified in the final rule that secured funding transactions that are collateralized deposits, as defined under the final rule, are eligible for the operational deposit outflow rates if the deposits otherwise meet the final rule's criteria. However, as discussed in section II.C.3.j. below, such deposits would still be considered secured funding transactions and could be subject to lower outflow rates if the deposits are secured by level 1 liquid assets or level 2A liquid assets.

(b). Definition of ''Operational Services''

The proposed rule would have included eleven categories of operational services provided by covered companies that would correspond to an operational deposit. Consistent with the Basel III Revised Liquidity Framework, the operational services would have included: (1) Payment remittance; (2) payroll administration and control over the disbursement of funds; (3) transmission, reconciliation, and confirmation of payment orders; (4) daylight overdraft; (5) determination of intra-day and final settlement positions; (6) settlement of securities transactions; (7) transfer of recurring contractual payments; (8) client subscriptions and redemptions; (9) scheduled distribution of client funds; (10) escrow, funds transfer, stock transfer, and agency services, including payment and settlement services, payment of fees, taxes, and other expenses; and (11) collection and aggregation of funds.

Several commenters argued that the list of operational services should be expanded to include trustee services, the administration of investment assets, collateral management services, settlement of foreign exchange transactions, and corporate trust services. Other commenters requested that the agencies specifically include a number of operational services that are specific to the business of custody banks. One commenter requested that the final rule recognize that a covered company may provide these services as a trustee. One commenter suggested that the rule define operational services as those normal and customary operational services performed by a covered company, and use the rule's enumerated services as illustrative examples. Commenters also recommended that operational deposits include all deposits obtained under correspondent banking relationships. Another commenter requested that the final rule better align the criteria for operational services with the Basel III Revised Liquidity Framework to avoid excluding a substantial amount of deposits that are truly operational in nature.

After consideration, to address commenters' requests that services relating to the business of custody banks be included, the agencies have added a new subparagraph 2 to the definition of operational services to include the administration of payments and cash flows related to the safekeeping of investment assets, not including the purchase or sale of assets. This is intended to encompass certain collateral management payment processing provided by covered companies. Such operational services solely involve the movement of money, and not the transfer of collateral, and are limited to cash flows, and not the investment, purchase, or sale of assets. Moreover, the agencies wish to make clear that this prong of the operational services definition does not encompass any activity that would constitute prime brokerage services, as any deposit provided in connection with the provision of prime brokerage services by a covered company could not be treated as an operational deposit, as discussed in more detail below.

The agencies also have added ''capital distributions'' to the now renumbered subparagraph 8 of the operational services definition. This addition was necessary to clarify the intention of the agencies to include such payments as an operational service along with recurring contractual payments when performed as part of cash management, clearing, or custody services.

The agencies believe the final rule appropriately addresses the concerns of commenters while also treating as operational services those services that are truly operational in nature. Defining operational services as the customary operational services performed by a covered company, as suggested by one commenter, would have been overly broad and could have led to wide variations in the treatment of operational services across covered companies. Moreover, it is not necessary to add the entire suite of corporate trust services to the list of enumerated defined operational services in order to include those aspects of such business lines that have the inherent or essential qualities of operational services. The existing twelve categories of services, when performed as part of cash management, clearing, or custody services, will adequately capture those corporate trust services that should be captured by the operational service definition. With respect to correspondent banking and foreign exchange settlement activity, neither of

those services in isolation enhance the stability of the funding to warrant a lower outflow rate; however, to the extent that operational services are utilized by customers engaged in those activities, associated deposits may be included as operational deposits. With respect to the remaining operational services identified in the proposed rule, the agencies have adopted the final rule as proposed.

(c). Operational Requirements for Recognition of Operational Deposits

In addition to stipulating that the deposit be required for the provision of operational service by the covered company to the customer, the proposed rule would have required that an operational deposit meet eight qualifying criteria, each described below. The agencies received a number of comments on these operational criteria, and have made certain modifications to these criteria in their adoption of the final rule.

(d). Deposit Held Pursuant to Agreement and Subject to Termination or Switching Costs

Section __.4(b)(1) of the proposed rule would have required that an operational deposit be held pursuant to a legally binding written agreement, the termination of which was subject to a minimum 30 calendar-day notice period or significant termination costs to have been borne by the customer providing the deposit if a majority of the deposit balance was withdrawn from the operational deposit prior to the end of a 30 calendar-day notice period.

Many commenters stated that operational deposits are typically held in demand deposit accounts with no notice or termination restrictions. Instead, the associated operational services are provided pursuant to a written contract that contains the relevant termination and notice provisions. Commenters requested that the final rule require that the operational services, not the operational deposits, be subject to a legally binding written agreement. In addition, several commenters suggested that the agencies recognize, in addition to termination costs such as fees or withdrawal penalties, switching costs that would be borne by a customer transitioning operational services from one covered company to another and could inhibit the transfer of operational services to another provider.

In response to the comments, the agencies have revised § __.4(b)(1) of the final rule to require that the operational services, rather than the operational deposit, be provided pursuant to a written agreement. Additionally, the agencies have revised § __.4(b)(1) to reflect that, in addition to or in lieu of termination costs set forth in the written agreement covering the operational services, the final rule's criterion would be satisfied if a customer bears significant switching costs to obtain operational services from another provider. Switching costs include costs external to the contract for operational services, such as the significant information technology, administrative, and legal service costs that would be incurred in connection with the transfer of operational services to a new service provider. Switching costs, however, would not include the routine costs of moving an account from one financial institution to another, such as notifying counterparties of new account numbers or setting up recurring transactions. Rather, the favorable treatment for operational deposits under the final rule is premised on strong incentives for a customer to keep its deposits with the covered company.

(e). Lack of Significant Volatility in Average Deposit Balance

Section __.4(b)(2) of the proposed rule would have required that an operational deposit not have significant volatility in its average balance. The agencies proposed this requirement with the intent to exclude surges in balances in excess of levels that customers have historically held to facilitate operational services.

Commenters found the proposed requirement in § __.4(b)(2) confusing. One commenter questioned how the concept of ''average balance'' could be reconciled with ''significant volatility,'' as averaging would in practice subsume the variability. Several commenters observed that an operational deposit account, by definition, would experience volatility, as cash flows into and out of such an account over the course of a 30 calendar-day period. Commenters expressed concern that the ''significant volatility'' language could disqualify deposits based on these normal variations in deposit balances. Commenters suggested that the agencies' concerns regarding excess funds would be better addressed through the provisions of § __.4(b)(6), and that § __.4(b)(2) should be deleted.

To address these concerns, the agencies have eliminated significant volatility as a standalone criterion for qualification as an operational deposit in the final rule, but have incorporated consideration of volatility into the methodology that a covered company must adopt for identifying excess balances, as discussed below. Covered companies are still expected to assess whether there are operational reasons for any notable shifts in the average balances that occur over time.

(f). Deposit Must Be Held in Operational Account

In § __.4(b)(3) of the proposed rule, the agencies proposed that an operational deposit be held in an account designated as an operational account. Two commenters expressed the view that this provision was too restrictive because cash management practices allow customers to transfer funds across their entire banking relationship between sweep accounts, interest bearing accounts, investment accounts, and zero balance accounts. These commenters argued that a customer's funds need not be maintained in a transactional account specified as an operational account so long as the funds are liquid and available for operational use without penalty when needed.

After consideration of the comments, the agencies have retained the requirement in the final rule. The agencies believe this requirement allows covered companies to clearly identify the deposits that are eligible for operational deposit's lower outflow rate, and to prevent the intermingling of operational deposits with other deposits. Accordingly, under the final rule, an operational deposit must be held in an account designated as an operational account, which can be one or more linked accounts. Such an account need not take a specific form, but must be designated as an operational account for a specific customer so that it can be considered in identifying excess balances required under § __.4(b)(5) of the final rule and discussed further below.

(g). Primary Purpose of Obtaining Operational Services

Section __.4(b)(4) of the proposed rule would have required that an operational deposit be held by a customer at a covered company for the primary purpose of obtaining operational services from the covered company. Commenters suggested that the best way to address the relationship between the operational deposits and operational services would be to disqualify deposit balances that are in excess of amounts necessary to perform operational services; that is, through § __.4(b)(6) of the proposed rule. Accordingly, these commenters requested the deletion of this requirement from the final rule. Alternatively, one commenter suggested that the agencies use the language from paragraph 94 of the Basel III Revised

Liquidity Framework and allow a deposit to be treated only as an operational deposit to the extent that the customer depends on the covered company to perform the associated operational services.

After considering the comments, the agencies have adopted this requirement of the proposed rule without change. Based on their supervisory experience, the agencies understand that covered companies already review various characteristics, such as customer type, business line, product, and service, when classifying deposits as operational. The agencies expect that covered companies would review these same characteristics to categorize the primary purpose of the deposit in order to satisfy this provision of the rule.

(h). Prohibition of Economic Incentives To Maintain Excess Funds

Section __.4(b)(5) of the proposed rule would have required that an operational deposit account not be designed to incent customers to maintain excess funds therein through increased revenue, reduction in fees, or other economic incentives. Commenters remarked that a common feature of most operational deposit accounts, the earnings credit rate (ECR), would seem to violate this criterion and, therefore, disqualify many deposits from being treated as operational.[74] Commenters suggested that the ECR increases the strength of the relationship between a covered company and a customer, as it encourages the customer to continue to obtain operational services from the covered company. This, in turn, results in more stable operational deposit levels. Several commenters requested that the agencies remove this proposed criterion on the grounds that it essentially aims to limit excess balances, and this is already addressed in the proposed rule's § __.4(b)(6).

The agencies believe this criterion better ensures that a deposit is truly necessary for an operational service, and is not the result of an ancillary economic incentive. For that reason, the agencies are retaining this criterion in the final rule. However, the agencies are clarifying that some economic incentives, such as an ECR to offset expenses related to operational services, are acceptable, so long as they do not incent the maintenance of excess deposits. If an ECR or other economic incentive causes a customer to maintain deposit balances in excess of the amount necessary to serve the customer's operational needs, then those excess balances would not qualify as operational deposits.

(i). Exclusion of ''Excess'' Amounts

Section __.4(b)(6) of the proposed rule would have required that a covered company demonstrate that an operational deposit is empirically linked to an operational service and that the covered company has a methodology for identifying any deposits in excess of the amount necessary to provide the operational services, the amount of which would be excluded from the operational deposit amount. Commenters generally supported this criterion but requested clarification as to whether covered companies would be allowed to calculate excess balances on an aggregate basis rather than on a deposit-by-deposit or account-by-account basis. Commenters argued that absent such clarification, assessing operational deposits at an unnecessarily granular level would be overly burdensome for covered companies and supervisors. One commenter expressed concern that the proposed rule would have required covered companies to develop models for determining the excess amount and requested that the agencies provide clear criteria for determining excess deposits. One commenter suggested, however, that allowing each banking organization to have its own methodology could lead to protracted negotiation with local supervisors and inconsistent implementation. Commenters also expressed concerns regarding the identification of excess deposits in connection with particular operational services, such as cash management and corporate trust services and argued that the agencies should exempt such deposits from the excess operational deposit methodology.

The agencies believe it would be inappropriate to give excess operational deposit amounts the same favorable treatment as deposits that are truly necessary for operational purposes, as doing so could lead to regulatory arbitrage or distort the amount of unsecured wholesale cash outflows in the LCR calculation. Further, operational deposits are afforded a lower outflow rate due to their perceived stability arising from the nature of the relationship between a customer and covered company and the operational services provided, as well as factors, such as the switching costs associated with moving such deposits, as discussed above. In contrast, excess deposits are not necessary for the provision of operational services and therefore do not exhibit these characteristics.

The agencies are of the view that there is no single methodology for identifying excess deposits that will work for every covered company, as there is a range of operational deposit products offered and covered company data systems processing those products. Aggregation may be undertaken on a customer basis, a service basis, or both, but in all instances, a covered company's analysis of operational deposits must be conducted at a sufficiently granular level to adequately assess the risk of withdrawal in an idiosyncratic stress. The agencies expect covered companies to be able to provide supporting documentation that justifies the assumptions behind any aggregated calculations of excess deposits and expect that the higher (that is, the further from the individual account or customer) the level of aggregation, the more conservative the assumptions related to excess deposit amounts will be. A covered company's methodology must also take into account the volatility of the average deposit balance to ensure the proper identification of excess balances. Moreover, the agencies believe that it is inappropriate to exempt deposits received in connection with particular operational services from the requirement to identify excess balances because all excess balances may exhibit greater volatility than those that are necessary for the provision of operational services by a covered company. Accordingly, the agencies are adopting this provision of the rule as proposed, with a modification to explicitly require a covered company to take into account the volatility of the average operational deposit balance when designing its methodology for identifying excess deposit amounts.

(j). Exclusion of Deposits Relating to Prime Brokerage Services

Section __.4(b)(7) of the proposed rule would have excluded deposits provided in connection with the covered company's provision of prime brokerage services from the operational deposit outflow rates.[75] The agencies defined prime brokerage services as the provision of operational services to an investment company, non-regulated fund, or investment adviser. The agencies defined prime brokerage in this manner to cover the primary recipients of prime brokerage services.

Many commenters disagreed with the agencies' approach in the proposed rule,

[74] An ECR is a rate used by certain banking organizations in noninterest bearing accounts to reduce the amount of fees a customer would be required to pay for bank services. The ECR would be applied to the entire balance of the account, and thus, a larger balance would provide for a greater reduction in fees.

[75] Basel III Revised Liquidity Framework at ¶ 99.

stating that defining prime brokerage services in terms of customer type resulted in an operational deposit exclusion that was too broad, and several argued that it would likely exclude a broad range of operational deposits from custody banks, which provide safekeeping and asset administration services to investment companies that are wholly unrelated to prime brokerage services, as well as clearly operational services such as employee compensation payroll services for a mutual fund complex. Several commenters suggested that rather than focus on the type of client, the final rule should focus on the specific prime brokerage services to be excluded from the definition of operational services. One commenter argued that this proposed alternative treatment would be beneficial in that, consistent with the Basel III Revised Liquidity Framework, it would not exclude stable deposits related to operational servicing relationships with mutual funds and their foreign equivalents. Commenters noted that while many prime brokerage services overlap with core operational services such as cash management, clearing, or custody, prime brokerage services differ from those services in that a prime broker generally facilitates the clearing, settling, and carrying of client trades that are executed by an executing broker. A second distinguishing feature of prime brokerage services identified by these commenters is the provision of financing (for example, margin lending) by the prime broker to facilitate the investment strategies of the client. According to commenters, these financing agreements require the client to authorize the prime broker to rehypothecate client assets pledged to secure margin lending, as contrasted with investment company assets held by a custodian for safe-keeping, which by law must be segregated.[76]

With respect to the exclusion of non-regulated funds, one commenter requested that the rule be revised to instead apply a higher outflow rate to the types of non-regulated funds that are likely to withdraw deposits in a period of stress. The commenter further suggested that closed-end funds that do not issue redeemable securities be excluded from the definition of non-regulated funds, as well as a consolidated subsidiary of a non-regulated fund.[77] Another commenter argued that investment companies, such as U.S. mutual funds and their foreign equivalents, should not be included in this category because they do not use prime brokerage services in their ordinary business operations.

The agencies have concluded that the proposed rule's approach of defining prime brokerage services by counterparty could have been overly broad in application, potentially excluding many types of truly operational services from the proposed rule's preferential treatment of operational deposits. Therefore, in response to concerns raised by commenters, the agencies have defined prime brokerage services in the final rule using the key aspects of the prime brokerage relationship. In addition to the execution, clearing and settling of transactions, the agencies believe it is the financing services and the retention of rehypothecation rights by the prime broker that distinguish prime brokerage from other operational services. This financing and rehypothecation aspect of prime brokerage services merits exclusion from operational services, as highly-levered customers and the reuse of assets can expose covered companies to significant liquidity risk. Under the final rule, prime brokerage services are those services offered by a covered company whereby the covered company executes, clears, settles, and finances transactions entered into by a customer with the covered company or a third-party entity on behalf of the customer (such as an executing broker). The covered company must also have a right to use or rehypothecate assets provided to the covered company by the customer, including in connection with the extension of margin lending or other financing to the customer. The final rule clarifies that prime brokerage services would include operational services provided to a non-regulated fund. The final rule explicitly states that prime brokerage services include those provided to non-regulated funds because of the higher liquidity risks posed by the provision of these services to hedge and private equity funds. The agencies believe these changes capture the intent of the proposed rule, in that deposits that are less stable do not qualify as operational deposits under the final rule. Accordingly, all deposits of a non-regulated fund will not be eligible for treatment as an operational deposit, regardless of the provision of operational services by the covered company.

(k). Exclusion of Certain Correspondent Banking Activities

Section __.4(b)(8) of the proposed rule would have excluded from the definition of operational deposits a subset of correspondent banking arrangements pursuant to which a covered company (as correspondent) holds deposits owned by another depository institution (as respondent) and the respondent temporarily places excess funds in an overnight deposit with the covered company. The agencies specifically excluded these deposits from treatment as an operational deposit under the proposed rule because, although they may meet some of the requirements applicable to operational deposits, they historically have exhibited instability during stressed liquidity events. In doing so, the agencies did not intend to exclude all banking arrangements with correspondents, only those specifically described in § __.4(b)(8) of the proposed rule.

Several commenters argued that the agencies' proposed exclusion is broader than that in the Basel III Revised Liquidity Framework and requested that the agencies clarify that the exclusion for deposits provided in connection with correspondent banking services is limited to the settlement of foreign currency transactions. In addition, several commenters argued that this exclusion would exclude all deposits under correspondent banking relationships from application of the operational deposit outflow rate.

The agencies continue to believe that excess funds from a depository institution placed in an overnight deposit account are not stable, and have retained the exclusion of them from operational deposits. However, the agencies have modified the final rule to remove the phrase ''correspondent banking'' from the proposed provision in § __.4(b)(8) to address commenters' concerns that the exclusion applies to all correspondent banking arrangements.

The proposed rule would have allowed correspondent banking deposits that meet all operational requirements to be included as operational deposits; however, deposits arising from correspondent banking relationships that were not operational in nature would not have been categorized as operational. The proposal would not have excluded from operational deposits those correspondent banking arrangements under which a correspondent bank held deposits owned by respondent banks and provided payment and other services in order to settle foreign currency transactions. The final rule provides for the same treatment.

[76] 15 U.S.C. 80a–17(f).

[77] With respect to commenters' requests regarding non-regulated funds, the agencies have addressed these comments in section II.B.2.b.iv above.

(l). Operational Deposit Outflow Rates

As noted above, the proposed rule would have applied a 5 percent outflow rate to operational deposits fully covered by deposit insurance (other than escrow deposits) and a 25 percent outflow rate to operational deposits not fully covered by deposit insurance and all escrow deposits. One commenter argued that operational deposits are unlikely to run off during a 30 calendar-day period because customers likely would not terminate the attendant operational services, which are provided via legal contracts with notice and termination provisions, and thus requested that the agencies adopt lower outflow rates for such deposits. The commenter further argued that certain operational services, such as investment company custody services, are mandated by law, and providers of operational services generally have a diverse customer base. Other commenters argued that operational deposits should be subject to lower outflow rates on the basis of evidence indicating that such deposit amounts tend to increase during times of stress.

A commenter provided data to justify lowering the 25 percent outflow rate for operational deposits where less than the entire amount of the deposit is covered by deposit insurance, requesting that the treatment of operational deposits be consistent with the Basel III Revised Liquidity Framework. Commenters also argued for the inclusion of both fully insured accounts and the insured portions of accounts that are over the FDIC insurance limits in the 5 percent outflow category of operational deposits. Throughout the final rule, the agencies are drawing a distinction between fully insured deposits on the one hand and less than fully insured deposits on the other, because, as discussed above, based on the agencies' supervisory experience, the entire balance of partially insured deposits behave more like uninsured deposits, with customers withdrawing the entire deposit amount, including amounts below the deposit insurance limit. Thus, the agencies have adopted this provision of the rule as proposed.

The agencies recognize the stable nature of operational deposits, which is reflected in the proposed and final rule's 5 percent outflow rate for fully insured operational deposits. However, the agencies continue to believe that deposits that are not fully covered by insurance will experience higher outflow rates in a macroeconomic stress scenario as covered companies' counterparties will likely find themselves subject to the same stress, thereby reducing their operational deposit balances as their business slows. While operational deposits are more stable than non-operational funding, the agencies believe that in the event of idiosyncratic stress, counterparties likely would reduce the amount of their operational deposits. Accordingly, all other unsecured operational deposits are assigned a 25 percent outflow rate in the final rule, as in the proposed rule.

One commenter criticized the agencies' decision not to assign fully insured escrow deposits a 5 percent outflow rate that other fully insured operational deposits would have received, arguing that deposits in mortgage escrow accounts are no more likely to be withdrawn in a period of financial stress than any other operational deposits at the same bank from the same depositor.

The agencies believe that, although escrow deposits are operational, it is their nature that there will be outflows based on the occurrence of a specified event, regardless of the amount of deposit insurance coverage. Thus, during a period of overall macroeconomic distress, the amount of operational escrow deposits would shrink as business slowed, regardless of deposit insurance. Further, the agencies believe that given the general volatility of escrow deposits, affording them a 3 or 10 percent outflow rate would not properly reflect the lack of funding stability in these deposits. The 25 percent outflow rate appropriately reflects the outflow risk of escrow deposits, and has therefore been adopted in the final rule as proposed.

iii. Other Unsecured Wholesale Funding

The proposed rule would have assigned an outflow rate of 100 percent to all other unsecured wholesale funding. This category was designed to capture all other funding not given a specific outflow rate elsewhere in the proposed rule, including funding provided to a financial sector entity as described above. The agencies have adopted this category in the final rule as proposed.

i. Debt Security Outflow Amount

The agencies proposed that where a covered company is the primary market maker for its own debt securities, the outflow rate for such funding would equal 3 percent for all debt securities that are not structured securities that mature outside of a 30 calendar-day period and 5 percent for all debt securities that are structured debt securities that mature outside of a 30 calendar-day period. This outflow amount was proposed in addition to any debt security-related outflow amounts maturing within a 30 calendar-day period that must have been included in net cash outflows. Based on historical experience, including the recent financial crisis during which institutions went to significant lengths to ensure the liquidity of their debt securities, the agencies proposed what they considered to be relatively low outflow rates for a covered company's own debt securities. The proposed rule differentiated between structured and non-structured debt on the basis of data from stressed institutions indicating the likelihood that structured debt requires more liquidity support. In such cases, a covered company may be called upon to provide liquidity to the market by purchasing its debt securities without having an offsetting sale through which it can readily recoup the cash outflow.

A few commenters suggested that these proposed outflow rates were too high, arguing that the actual volume of any repurchases made by a banking organization may be lower than the proposed outflow rates because investors may not be willing to have the banking organization repurchase the debt securities during a stress scenario at a price which would result in the investor recognizing a significant loss. A commenter suggested that covered companies be allowed to set their own outflow rates, reflecting the fact that different covered companies might take different approaches to addressing franchise or reputational risk. This commenter argued that, in any event, while outflow rates of 3 and 5 percent seem low, once one takes into account the amount of securities that a covered company may have outstanding, a materially significant outflow amount is possible, which the commenter found unreasonable. Two other commenters requested clarification regarding how the debt security outflow amount would work in practice. A commenter argued that the scope of debt securities subject to this section should be modified to apply an outflow rate only to the senior unsecured debt of the covered company in which it is the primary market maker. The commenter also argued that to the extent that a covered company's offering documents disclose that it is not obligated to provide liquidity for such securities, the securities should not be subject to a predetermined outflow rate.

Another commenter argued that the proposed rule's provision of cash outflow rates for primary market makers would likely discourage covered companies from supporting their own or other covered companies' debt securities and asked that the agencies clarify the definition and the intent of

this provision. After considering the comments received on this section of the proposed rule, the agencies are finalizing § __.32(i) as proposed with one minor change. Recognizing that a limited number of covered companies are primary market makers for their own debt securities, the agencies have clarified that the debt security buyback outflow will be triggered when either a covered company or its consolidated subsidiary is the primary market maker for debt securities issued by the covered company.

The agencies are adopting the outflow rates as proposed for several reasons. First, one purpose of the LCR is to implement a standardized quantitative liquidity stress measure and this, in turn, counsels toward not allowing covered companies discretion in determining outflow rates. Second, these outflow rates are not intended to measure the cost to a covered company of addressing franchise or reputational risk through participation in the market. Rather, as the primary market maker for a security, the market expects that the covered company or its consolidated subsidiary will continue to purchase the securities, especially if they issued the securities. Thus, the 3 percent and 5 percent rates are reasonable. Third, with regard to investors not being willing to repurchase securities at a given price, the price will be the then-market price, which reflects the outflow the market maker will have if it is required to purchase securities from a counterparty that it cannot then re-sell. That reduced price is reflected in the outflow rate. Historical experience in past bear markets and the recent financial crisis shows that market makers will continue to make markets in most debt issuances, particularly when such market makers or their consolidated subsidiaries are the issuers of a particular security.

The agencies further believe that these outflow rates are appropriate to address the potential future support a covered company will provide with regard to its primary market making role for its own debt, and would not directly discourage any such support. In addition, the outflow rates only apply to debt securities issued by a covered company or its consolidated subsidiary. It would not apply to a covered company's efforts to provide secondary market liquidity to the securities of other banking organizations.

Moreover, a covered company would not be required to calculate this outflow amount unless it or its consolidated subsidiary is the primary market maker for its own debt securities. While the final rule does not define the term market maker, the agencies generally expect that if a covered company or its consolidated subsidiary routinely stands ready to purchase and sell its debt securities and is willing and available to quote, purchase and sell, or otherwise to enter into long and short positions in its debt securities, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for such debt securities, that it is a market maker for those debt securities. The market will know who the primary market makers are for a particular security, and a covered company should know if it is the primary market maker for a particular security.

j. Secured Funding Transactions and Asset Exchange Outflow Amounts

i. Definitions and Outflow Rates

The proposed rule would have defined a secured funding transaction as a transaction giving rise to a cash obligation of a covered company that is secured under applicable law by a lien on specifically designated assets owned by the covered company that gives the counterparty, as holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution. As defined, secured funding transactions would have included repurchase transactions, FHLB advances, secured deposits, loans of collateral to effect customer short positions, and other secured wholesale funding arrangements with Federal Reserve Banks, regulated financial companies, non-regulated funds, or other counterparties.

Under the proposed rule, secured funding transactions maturing within 30 calendar days of the calculation date would have given rise to cash outflows during the stress period. This outflow risk, together with the potential for additional outflows in the form of collateral calls to support a given level of secured funding transactions, was reflected in the proposed secured funding transaction outflow rates. The agencies believed that rather than applying an outflow rate based on the nature of the funding provider, the proposed rule should generally apply an outflow rate based on the quality and liquidity of the collateral securing the funding. For secured funding transactions, the quality of the assets securing the transaction is a significant factor in determining the likelihood that a covered company will be able to roll over the transaction at maturity with a range of market participants and maintain the associated funding over time. In the proposed rule, secured funding outflow rates would have progressively increased depending upon whether the secured funding transaction was secured by level 1 liquid assets, level 2A liquid assets, level 2B liquid assets, or by assets that were not HQLA. These outflow rates were proposed as zero percent, 15 percent, 50 percent and 100 percent, respectively. Additionally, the proposed rule would have applied a 25 percent outflow rate to secured funding transactions with sovereigns, multilateral development banks, or U.S. GSEs that are assigned a risk weight of 20 percent under the agencies' risk-based capital rules, to the extent such transactions were secured by assets other than level 1 or level 2A liquid assets. Under the proposed rule, loans of collateral to facilitate customer short positions were secured funding transactions, subject to outflow rates generally as described above for other types of secured funding transactions.

Secured funding transactions in the form of customer short positions give rise to liquidity risk because the customer may abruptly close its positions, removing funding from the covered company. Further, customers may remove their entire relationship with the covered company, causing the firm to lose the funding associated with the short position. In the particular case where customer short positions were covered by other customers' collateral that does not consist of HQLA, the proposed rule would have applied an outflow rate of 50 percent, rather than the generally applicable 100 percent outflow rate for other secured funding transactions secured by assets that are not HQLA. The 50 percent outflow rate reflected the agencies' recognition of there being some interrelatedness between such customer short positions and other customer long positions within the covered company, and that customers in aggregate may not be able to close all short positions without also significantly reducing leverage. In the case of customers moving their relationships, closing short positions would also be associated with moving long positions for which the covered company may have been providing funding in the form of margin loans. The 50 percent outflow rate for these customer short positions was designed to recognize potential symmetry with the inflows generated from margin loans secured by assets that are not HQLA, to which the proposed rule applied an inflow rate of 50 percent, and that are described in section II.C.4.f. of this Supplementary Information section.

The agencies proposed to treat borrowings from Federal Reserve Banks the same as other secured funding

transactions because these borrowings are not automatically rolled over, and a Federal Reserve Bank may choose not to renew the borrowing. Therefore, the agencies believed an outflow rate based on the quality and liquidity of the collateral posted was most appropriate for such transactions. The agencies noted in the proposed rule that should the Federal Reserve Banks offer alternative facilities with different terms than the current primary credit facility, or modify the terms of the primary credit facility, outflow rates for the LCR may be modified.

In addition to secured funding transactions, which relate solely to a secured cash obligation, an asset exchange would have been defined under the proposed rule as a transaction that requires the counterparties to exchange non-cash assets. Asset exchanges can give rise to a change in a covered company's liquidity, such as where the covered company is obligated to provide higher-quality assets in return for less liquid, lower-quality assets. The proposal would have reflected this risk through the proposed asset exchange outflow rates, which would have been based on the HQLA levels of the assets exchanged and would have progressively increased as the assets to be relinquished by a covered company increased in quality relative to those to be received from the asset exchange counterparty. § __.32(j)(2) of the proposed rule set forth the outflow rates for various asset exchanges.

In general, commenters' concerns with the outflow rates for secured funding transactions pertained to perceptions of the relative liquidity of various asset classes and whether particular types of assets should have been classified as HQLA in the proposed rule, as described in section II.B above. For example, one commenter argued that a transaction secured by government MMFs should receive the same outflow rate as a transaction that is secured by level 1 liquid assets and, similarly, a transaction secured by other types of MMFs should have the same outflow rate as a transaction secured by level 2A liquid assets because MMFs have high credit quality and are liquid. Some commenters noted that, under the proposed rule, level 2B liquid assets that are common equity securities were limited to shares in the S&P 500 index, common shares recognized by local regulatory authorities in other jurisdictions, and, potentially, shares in other indices. These commenters requested that the agencies consider a narrow expansion of this asset category for the purposes of secured funding outflow rates (and secured lending inflow rates). These commenters also argued that all major indices in G–20 jurisdictions should qualify as level 2B liquid assets for the purposes of secured funding transaction cash flows.

Other commenters recommended applying an outflow rate that would ensure that secured funding transactions secured by assets that are not HQLA would not have an outflow rate that was greater than the outflow rate applied to an unsecured funding transaction with the same counterparty in order to avoid inconsistency. One commenter requested that the agencies limit the definition of secured funding transaction to only include repurchase agreements.

With respect to the definition of a secured funding transaction, the agencies continue to believe that the principle liquidity characteristics of an asset which were considered when determining the inclusion of an asset as HQLA also are applicable to the determination of the outflow rates for any transactions that are secured by those assets and that the definition of such transactions should include more than repurchase agreements. Accordingly, the agencies are adopting the definition of secured funding transaction largely as proposed, with a clarification that the definition of secured funding transaction only includes transactions that are subject to a legally binding agreement as of the calculation date. In addition and as described above under section II.C.3.a, the agencies have opted to treat secured retail transactions under § __.32(a) of the final rule. Accordingly, the secured funding transaction and asset exchange outflow rates under § __.32(j) of the final rule would apply only to transactions with a wholesale counterparty.

Consistent with the proposed rule, the final rule's outflow rates for secured funding transactions that mature within 30 calendar days of the calculation date are based upon the HQLA categorization of the assets securing the transaction and are generally as proposed (see Table 3a). Consistent with this treatment and as discussed in section II.B above, MMFs do not meet the definition of HQLA under the final rule and a secured funding transaction that is secured by an MMF generally will receive the 100 percent outflow rate associated with collateral that is not HQLA. Further, the agencies believe it would be inappropriate to establish an exception to this principle, whereby, for example, secured funding transactions secured by non-U.S. equity securities that are not level 2B liquid assets would be subject to the outflow rate applicable to level 2B liquid asset collateral. As discussed above in section II.B.2.f, the agencies believe that assets that are not HQLA may not remain liquid during a stress scenario. Accordingly, any secured funding transaction maturing in less than 30 calendar days that is secured by assets that are not HQLA may not roll over or could be subject to substantial haircuts. Thus, secured funding transactions that are secured by assets that are not HQLA under the final rule receive the outflow rate appropriate for this type of collateral and the relevant counterparty.

Although a covered company may have the option of reallocating the composition of the collateral that is securing a portfolio of transactions at a future date, the outflow rates for a secured funding transaction or asset exchange is based on the collateral securing the transaction as of the calculation date.

The agencies agree with certain commenters that, as a general matter, the outflow rate for a secured funding transaction should not be greater than that applicable to an equivalent wholesale unsecured funding transaction (that is not an operational deposit) from the same counterparty. Under § __.32(j)(2) of the final rule, in instances where the outflow rate applicable to a secured funding transaction (conducted with a counterparty that is not a retail customer or counterparty) would exceed that of an equivalent wholesale unsecured funding transaction (that is not an operational deposit) with the same counterparty, the covered company may apply the lower outflow rate to the transaction.[78] The reduced outflow rate would not, however, be applicable if the secured funding transaction was secured by collateral that was received by the covered company under a secured lending transaction or asset exchange. Additionally, the reduced outflow would still be considered a secured funding transaction outflow amount under § __.32(j) of the final rule for the purposes of reporting and determining the applicable maturity date (see Table 3a). Furthermore and as discussed below, for collateralized deposits as defined in the final rule, the outflow rate applicable to part or all of the

[78] The agencies note that, for counterparties that are financial sector entities, the applicable non-operational deposit unsecured wholesale funding outflow rate would be 100 percent under § __.32(h)(5) of the final rule. Thus, for such counterparties, the secured funding transaction outflow rates would be equivalent or higher depending on the collateral securing the transaction.

secured funding transaction amount may potentially be the outflow rate applicable to a wholesale operational deposit from the same counterparty, for the portion of the deposit that meets the remaining criteria for classification as an operational deposit.

Under the final rule, the treatment of asset exchange outflows is adopted generally as proposed (see Table 3b). However, the agencies are clarifying that in the case where a covered company will not have the required collateral to deliver to the counterparty upon the maturity of an asset exchange, the covered company should assume it will be required to make a cash purchase of the necessary security prior to the maturity of the asset exchange. Accordingly, and consistent with the Basel III Revised Liquidity Framework, the covered company should include in its outflow amount an outflow for the purchase of the security. As reflected in § __.32(j)(3)(x)–(xiii) of the final rule and in Table 3b, below, under these provisions, the outflow rate would be the fair value of the asset that the covered company would be required to purchase in the open market minus the value of the collateral that the covered company would receive on the settlement of the asset exchange, which is determined by the rule's haircuts for HQLA and non-HQLA.

The agencies are clarifying that assets collateralizing secured funding transactions as of a calculation date are encumbered and therefore cannot be considered as eligible HQLA at the calculation date. However, because outflow rates are applied to the cash obligations of a covered company under secured funding transactions subject to a legally binding agreement as of a calculation date, these outflow rates do not depend on whether the collateral securing the transactions at the calculation date was or was not eligible HQLA prior to the calculation date.

The agencies recognize that certain assets that are collateralizing a secured funding transaction (or a derivative liability or other obligation) as of a calculation date, and certain assets that have been delivered to a counterparty in an asset exchange, may be rehypothecated collateral that was made available to the covered company from a secured lending, asset exchange, or other transaction. As described in section II.C.2 above, the maturity date of any such secured lending transaction or asset exchange determined under § __.31 of the final rule cannot be earlier than the maturity date of the secured funding transaction or asset exchange for which the collateral has been reused. Furthermore, the agencies recognize that the remaining term of secured lending transactions, asset exchanges or other transactions that are secured by rehypothecated assets may extend beyond 30 calendar days from a calculation date, meaning that the covered company will have a continuing obligation to return collateral at a future date. The inflow rates that are to be applied to secured lending transactions and asset exchanges where received collateral has been reused to secure other transactions are described in section II.C.4 below.

In addition to comments broadly relating to definitions and outflow rates for secured funding transactions, commenters raised specific concerns regarding the treatment of collateralized municipal and other deposits as secured funding transactions, the outflow rates associated with certain prime brokerage transactions, and the treatment of FHLB secured funding.

ii. Collateralized Deposits

Under the proposed rule, all secured deposits would have been treated as secured funding transactions. Some commenters objected to the proposed rule's inclusion of collateralized public sector deposits as secured funding transactions on the grounds that such deposits are relationship-based, were more stable during the recent financial crisis, and are typically secured by a more stable portfolio of collateral than the collateral that secures secured funding transactions such as repurchase agreements. Commenters argued that during the recent financial crisis, state and local governments that placed deposits secured by municipal securities with banking organizations did not withdraw such funds due to concern over the quality of the collateral underlying their deposits. These commenters further argued that it is often the case that the collateral used to secure a government's deposits can be that government's own bonds.

As discussed in section II.B.5 of this Supplementary Information section, commenters argued that collateralized public sector deposits, which are required by law to be collateralized with high-quality assets, should not be treated like short-term, secured funding transactions, because collateralized public sector deposits are not the type of transactions susceptible to the risk of manipulation that commenters believed was the focus of the proposed rule. Commenters further argued that this classification would lead to unnecessary distortions that could increase the cost of these deposits for bank customers.

Commenters also contended that during a period of financial market distress, it is not plausible that a state or local government could withdraw a lower amount of unsecured deposits than secured public sector deposits, as contemplated by the outflow rates assigned to the applicable unsecured wholesale funding and secured funding categories.[79] Many commenters also argued that applying a higher outflow rate to collateralized municipal deposits versus unsecured municipal deposits could discourage banking organizations from accepting collateralized public sector deposits. Thus, several commenters requested that if collateralized public sector deposits are categorized as secured funding transactions in the final rule, the agencies should assign a lower outflow rate to these deposits. These commenters suggested that the agencies provide the same treatment for collateralized deposits as they do for unsecured deposits and take into consideration the historical behavior of the depositor to determine the appropriate outflow rate. Other commenters pointed out that the unsecured deposits of municipalities would have been subject to outflow rates in the range of 20 percent to 40 percent under the proposed rule, in contrast to the more stringent outflow rates applicable to secured funding transactions backed by lower quality collateral.[80] Additionally, some commenters stated that the secured funding transaction outflow rates that would have applied to collateralized public sector deposits under the proposed rule would have diverged from the Basel III Revised Liquidity Framework. These commenters argued that the Basel standard assigned a 25 percent outflow rate for secured funding transactions with public sector entities that have a risk-weight of 20 percent under the Basel capital standards. Likewise, one commenter recommended assigning collateralized public sector deposits an outflow rate of no more than 15 percent because, according to the commenter, bank Call Report data suggests that, even during the recent financial crisis, the peak secured municipal deposit outflow rates generally did not exceed approximately 15 percent. Another commenter also recommended that the agencies adopt a

[79] Under the proposed rule, secured funding transactions that are secured by collateral that is not HQLA, would have received a 100 percent outflow rate while unsecured non-operational wholesale funding that is not fully covered by deposit insurance would have received an outflow rate of 40 percent.

[80] However, other commenters also argued that the outflow rate for unsecured deposits of 40 percent under the proposed rule was unduly punitive.

30 percent maximum outflow rate assumption for deposits collateralized by municipal securities. Finally, other commenters requested clarification as to whether collateralized public sector deposits that otherwise meet the criteria for operational deposits would be eligible for the operational deposit outflow rates.

Further, because municipal securities would not have been included as HQLA under the proposed rule, commenters were concerned that in certain cases a banking organization could be required to hold HQLA equal to the deposits that a public entity had placed with the banking organization in addition to the collateral specified to be held against the deposit as a matter of state law in order to meet the outflow rates that the proposed rule would have assumed. A commenter proposed that the outflow rate for a collateralized deposit should only be applied to the deposit amount less the value of collateral posted by the covered company. A few commenters inquired as to whether preferred deposits secured by FHLB letters of credit would be assigned the same 15 percent outflow rate as secured funding transactions secured with U.S. GSE obligations or if those that satisfy the operational deposit criteria would receive an outflow rate no higher than 25 percent.[81]

Many commenters requested the exclusion of collateralized public sector deposits from the secured transaction unwind mechanism used to determine adjusted liquid assets amounts as addressed in section II.B.5.d above.

In addition to comments relating to public sector deposits, the agencies received a number of comments relating to corporate trust deposits. Commenters argued that funds in corporate trust accounts are very stable due to the specialized nature of the banking relationship and constraints imposed by governing documents. Moreover, due to the specialized nature of indentured trustee and agency engagements associated with corporate trust deposits, withdrawal and disbursements of funds may be strictly limited. However, certain corporate trust deposits would have met the definition of secured funding transactions under the proposed rule. Consistent with other comments received relating to secured funding transactions in general, commenters were concerned that the outflow rate applicable to a collateralized corporate trust deposit may be higher than that applied to an unsecured deposit from the same depositor. Other commenters requested clarification as to whether collateralized corporate trust deposits that otherwise met the criteria for operational deposits would be eligible for the operational deposit outflow rate. One commenter requested that collateralized corporate trust deposits be excluded from the LCR requirements entirely. A few commenters requested that collateralized corporate trust deposits be excluded from the unwind mechanism used to determine the adjusted excess HQLA amount as addressed in section II.B.5.d above.

The agencies recognize the particular characteristics of collateralized public sector and certain collateralized corporate trust deposits. The agencies acknowledge that a covered company's collateralized public sector deposits may, in part, be related to longer-term relationships with its counterparties, established through a public bidding process that is specific to the counterparties' requirements. The agencies also recognize that certain corporate trust deposits are required by federal law to be collateralized.[82] Such deposits are governed by complex governing documents, such as trust indentures, that may limit the customer's discretion to withdraw, pay, or disburse funds. The agencies further acknowledge that there may be relationship characteristics that influence the availability, volume, and potential stability of collateralized public sector and corporate trust deposits placed at covered companies. However, given the collateral requirements and potential collateral flows associated with such deposits, whether required by law or otherwise, the agencies continue to believe that the liquidity risk of collateralized public sector deposits, collateralized corporate trust deposits, and all other secured deposits is appropriately addressed through their treatment as secured funding transactions where the deposits meet the definition of such transactions. Under the final rule, the outflow rate assigned to all secured deposits, including collateralized public sector and corporate trust deposits, with a maturity as determined under § __.31 of the final rule of 30 calendar days or less will be principally based on the quality of the collateral used to secure the deposits. The outflow rate applicable to all secured deposits meeting the definition of a secured funding transaction that are secured by level 1 liquid assets will be zero percent, while the outflow rate for deposits secured by level 2A liquid assets will be 15 percent. As described above for secured funding transactions in general, the agencies are amending the final rule so that the outflow rate applicable to a secured deposit is not greater than the equivalent outflow rate for an unsecured deposit from the same counterparty.

The agencies believe this amendment addresses a number of the concerns expressed by commenters with respect to collateralized deposits. For example, while public sector deposits secured by level 2A liquid assets would be assigned a 15 percent outflow rate, similar deposits secured by FHLB letters of credit (which are not HQLA under the final rule) may receive the 40 percent outflow rate applicable to unsecured deposits from a wholesale counterparty that is not a financial sector entity (versus a 100 percent outflow rate). The agencies believe the application of outflow rates in this manner is appropriate and that a further reduced outflow rate specific to public sector deposits would not be appropriate. Additionally, because the secured funding transaction outflow rates are derived from the quality and liquidity profile of the collateral securing the deposit in a manner which is consistent with the liquidity value of that collateral if it were held unencumbered by the covered company, the agencies do not believe that it is appropriate to net the amount of the deposit by the collateral posted by the covered company.

Furthermore, specifically and solely in the case of a secured funding transaction that meets the definition of a collateralized deposit under the final rule, a covered company may assess whether such a collateralized deposit meets the criteria for an operational deposit under § __.4 of the final rule.[83] If such collateralized deposits meet the criteria for an operational deposit, the covered company may determine the amount of the collateralized deposit that would receive the 25 percent outflow rate applicable to an unsecured operational deposit that is not fully covered by deposit insurance (see Table 3a). Any portion of the collateralized deposit that is not an operational deposit under the covered company's excess operational deposit amount methodology will receive the outflow rate applicable to a wholesale unsecured non-operational deposit from the same counterparty. With respect to the requests by commenters to apply the 25 percent outflow rate to all collateralized

[81] As discussed above under section II.B.2.f.iv, FHLB letters of credit would not qualify as HQLA under the final rule.

[82] 12 CFR 9.10 (national banks) and 12 CFR 150.300–150.320 (Federal savings associations).

[83] All other secured deposits would not be eligible for the operational deposit outflow rates under the final rule.

public sector deposits that are secured by level 2B liquid assets or non-HQLA, the agencies believe that deposits not meeting the criteria for operational deposits would be less stable during a period of market stress due to the lack of an operational relationship tying the funds to the service provided by the covered company. Accordingly, the agencies have not made secured funding transactions with public sector entities eligible for the 25 percent outflow rate applicable to secured funding transactions with sovereign entities, multilateral development banks, and U.S. GSEs subject to a 20 percent risk-weight under the agencies' risk-based capital rules.

iii. Prime Brokerage Secured Funding Transactions Outflows

The agencies received several comments regarding the outflow treatment of secured funding transactions in the context of prime brokerage activities. As described above, in general under the proposed rule secured funding transactions, including certain loans of collateral to cover customer short positions, that are secured by assets that are not HQLA would have required an outflow rate of 100 percent. However, certain secured funding transactions that are customer short positions of collateral that do not consist of HQLA and are covered by another customer's collateral would have received a 50 percent outflow rate. As explained above, the 50 percent outflow rate reflected the agencies' recognition of some interrelatedness between such customer short positions and other customer long positions within the covered company, and the fact that customers in aggregate may not be able to close all short positions without also significantly de-leveraging, or in the case of moving their relationship, also moving the long positions for which the covered company may have been providing funding in the form of margin loans. Commenters argued that this section of the proposed rule did not address a covered company's internal process for deciding how to source collateral to cover short positions, such as the process for choosing between utilizing inventory securities, external borrowings, or using other customers' collateral. Commenters argued that when customer short positions are covered by inventory securities, these securities are frequently held as hedges to other customer positions. These commenters indicated that the source of the collateral covering the customer short position is irrelevant, and recommended applying a 50 percent outflow rate to all customer shorts that are covered by any collateral that is not HQLA, irrespective of the source, and also to customer short positions that are covered by other methods, such as hedges to customer swaps and securities specifically obtained by a prime broker to cover the customer short positions. These commenters argued that this treatment would better capture risk management practices that rely on symmetrical treatment of customer long and short positions. These commenters also argued that applying this approach to closing customer short positions would reflect customers' offsetting reduction in leverage irrespective of the source of collateral and would capture the risks related to internal coverage of short positions. One commenter suggested that the funding risk created by internalization, where collateral is provided by and utilized for various secured transactions within the covered company without being externally sourced, is more accurately assessed by measuring customer and CUSIP concentrations, rather than looking at the asset class or the type of long-short pair because more concentrated ownership impacts the risk of internalization providing stable funding.

Consistent with the Basel III Revised Liquidity Framework, the final rule prescribes the outflow amount for each secured funding transaction individually, while taking into account the potential dependency of certain secured transactions upon the source of the collateral securing the transaction. Cash obligations of a covered company to a counterparty that are generated through loans of collateral to cover a customer short position pose liquidity risks that are similar to other secured funding transactions as described above. For this reason, the agencies believe that funding from a customer short position should be treated as a secured funding transaction, and that the outflow associated with this funding should, in general, be consistent with all other forms of secured funding transactions. In the case where a covered company has received funding from, for example, the cash proceeds of a customer's short sale of an asset that is not HQLA, the closing out of the short position by the customer at its discretion may lead to the covered company being required to relinquish cash in return for the receipt of the borrowed asset. In general, the outflow rate applicable to an individual secured funding transaction secured by assets that are not HQLA is 100 percent under the final rule. The agencies believe that it would be inappropriate to apply an outflow rate of 50 percent to all customer short positions covered by assets that are not HQLA, irrespective of the source of the collateral. While the standardized framework of the final rule is not designed to reflect the individual collateral allocation or risk management practices of covered companies, the agencies expect that covered companies will have in place liquidity risk management practices commensurate with the complexity of their prime brokerage business activities, including collateral tracking, collateral concentration monitoring, and potential exposure resulting from the exercise of customer options to withdraw funding.

The outflow rate applicable to customer short positions that are covered by other customers' collateral that does not consist of HQLA is specifically intended to parallel the inflow rate applicable to secured lending transactions that are margin loans secured by assets that are not HQLA under § __.33(f)(1)(vii) of the final rule.[84] This 50 percent outflow rate reflects the agencies' recognition of some correlation between such customer short positions and other customer long positions within a covered company, and the fact that customers in aggregate may not be able to close all short positions without also significantly de-leveraging, or in the case of moving their relationship, also moving the long positions for which the covered company may have been providing funding in the form of margin loans. In contrast, if a customer short position is covered by the covered company's long positions of assets that are not HQLA, the outflow rate assigned to the customer short position would be that applicable to other secured funding transactions under the final rule.

Furthermore, the agencies recognize that prime brokerage activities may entail significant rehypothecation of assets to secure certain secured funding transactions. The agencies emphasize the treatment for determining the maturity of such transactions under § __.31 of the final rule and the inflows rates applicable to secured lending transactions and assets exchanges under § __.33(f) of the final rule.

iv. Federal Home Loan Bank Secured Funding Transactions

Under the proposed rule, secured funding transactions with sovereign entities, multilateral development banks, and U.S. GSEs that are assigned a 20 percent risk weight under the agencies' risk-based capital rules and

[84] Margin loans that are secured by assets that are not HQLA are assigned an inflow rate of 50 percent under the final rule.

that are not secured by level 1 or level 2A liquid assets would have received a 25 percent outflow rate. Several commenters requested clarification as to whether this 25 percent proposed outflow rate would have applied to all secured FHLB advances or only those secured by level 2B liquid assets. Some commenters stated that if the agencies intended to apply the 25 percent outflow rate only to advances secured by level 2B liquid assets, it would significantly increase the cost of FHLB advances to member institutions because such advances are typically secured by mortgages or mortgage-related securities that are not HQLA. Commenters recommended reducing the outflow rate applicable to FHLB advances to 3 percent, the outflow rate for stable retail deposits. Other commenters requested confirmation that FHLB advances are subject to a maximum outflow rate of 25 percent and posited that involuntary outflow rates for FHLB advances have approached zero historically. The agencies were also asked to clarify whether FHLB guarantees, including letters of credit that secure public sector deposits, would be subject to the same outflow rate as FHLB advances.

The agencies are aware of the important contribution made by the FHLB system in providing funding to banking organizations and of the general collateral used to support FHLB borrowings. The agencies are clarifying that, under the final rule, the preferential 25 percent outflow rate applicable to secured funding transactions with certain sovereigns, multilateral development banks and U.S. GSEs applies to secured funding transactions that are secured by either level 2B liquid assets or assets that are not HQLA and that mature within 30 calendar days of a calculation date. FHLB advances that mature more than 30 calendar days from a calculation date are excluded from net cash outflows. Given the broad range of collateral accepted by FHLBs and the possibility of collateral quality deterioration or increased collateral haircuts, the agencies do not believe that a lower outflow rate for FHLB advances, such as the 3 percent outflow rate proposed by a commenter, would be appropriate. The agencies recognize that FHLB advances may be secured by diverse pools of collateral, and that this collateral may potentially include HQLA. Under § __.22(b)(1)(ii) of the final rule, HQLA that is pledged to a central bank or U.S. GSE to secure borrowing capacity but is not securing existing borrowings may be treated as unencumbered for the purposes of identifying eligible HQLA. The agencies acknowledge that in cases where advances and undrawn FHLB capacity are secured by a pool of collateral, covered companies may wish to exercise the flexibility of designating which collateral pledged to a FHLB is securing currently outstanding borrowings and also designating which subset of such collateral is securing those advances maturing within 30 calendar days of a calculation date. The agencies believe allowing covered companies this flexibility is appropriate, but emphasize that no asset may be double counted as eligible HQLA and as securing a borrowing as of a calculation date.

Tables 3a and 3b summarize the secured funding transaction and asset exchange outflow rates under the final rule.

TABLE 3a—SECURED FUNDING TRANSACTION OUTFLOW RATES

Categories for maturing secured funding transactions	Secured funding outflow rate
Secured by level 1 liquid assets	0%.
Secured by level 2A liquid assets	15%.
Transactions with sovereigns, multilateral development banks and U.S. GSEs subject to a 20% risk weight not secured by level 1 or level 2A liquid assets.	25%.
Secured by level 2B liquid assets	50%.
Customer short positions covered by other customers' collateral that is not HQLA	50%.
Secured by assets that are not HQLA, except as above	100%.
If the outflow rate listed above is greater than that for a wholesale unsecured transaction (that is not an operational deposit) with the same wholesale counterparty.	Apply to the secured funding transaction amount the wholesale unsecured non-operational outflow rate for that counterparty.
For collateralized deposits where the secured funding transaction outflow rate listed above is greater than that for a wholesale unsecured transaction with the same wholesale counterparty.	Apply to each portion of the secured funding transaction amount the wholesale unsecured outflow rate applicable to that portion, for that counterparty, including amounts that may be operational deposits or excess operational deposit amounts.

TABLE 3b—ASSET EXCHANGE OUTFLOW RATES

Covered company must deliver at maturity	Covered company will receive at maturity	Asset exchange outflow rate
Where a covered company has the asset that it will be required to deliver at the maturity of an asset exchange or where the asset has been re-used in a transaction that will mature no later than the maturity date of the asset exchange such that the asset required to be delivered will be available at the maturity date, and where the:		
Level 1 liquid assets	Level 1 liquid assets	0%
Level 1 liquid assets	Level 2A liquid assets	15%
Level 1 liquid assets	Level 2B liquid assets	50%
Level 1 liquid assets	Assets that are not HQLA	100%
Level 2A liquid assets	Level 2A liquid assets	0%
Level 2A liquid assets	Level 2B liquid assets	35%
Level 2A liquid assets	Assets that are not HQLA	85%
Level 2B liquid assets	Level 2B liquid assets	0%
Level 2B liquid assets	Assets that are not HQLA	50%

TABLE 3b—ASSET EXCHANGE OUTFLOW RATES—Continued

Covered company must deliver at maturity	Covered company will receive at maturity	Asset exchange outflow rate
Where a covered company does not have the asset that it will be required to deliver at the maturity of an asset exchange and where the asset has not been reused in a transaction that will mature no later than the maturity date of the asset exchange, and where the:		
Level 1, 2A, 2B liquid assets, or assets that are not HQLA	Level 1 liquid assets	0%
	Level 2A liquid assets	15%
	Level 2B liquid assets	50%
	Assets that are not HQLA	100%

k. Foreign Central Bank Borrowings Outflow Amount

The agencies recognize central banks' lending terms and expectations differ by jurisdiction. Accordingly, for a covered company's borrowings from a particular foreign jurisdiction's central bank, the proposed rule would have assigned an outflow rate equal to the outflow rate that such jurisdiction has established for central bank borrowings under a minimum liquidity standard. The proposed rule would have provided further that if such an outflow rate has not been established in a foreign jurisdiction, the outflow rate for such borrowings would be treated as secured funding pursuant to § __.32(j) of the proposed rule.

The agencies received no comments on this section and have adopted proposed § __.32(k) without change in the final rule.

l. Other Contractual Outflow Amounts

The proposed rule would have applied a 100 percent outflow rate to amounts payable within 30 calendar days of a calculation date under applicable contracts that are not otherwise specified in the proposed rule. Some commenters argued that the 100 percent outflow rate would have applied to some contractual expenses payable within 30 calendar days of a calculation date, such as operating costs and salaries that are operational expenses and should be excluded from outflows. One commenter also argued that the proposed rule's treatment of such expenses was not consistent with the examples of ''other outflows'' illustrated in Paragraph 141 of the Basel III Revised Liquidity Framework, which includes outflows to cover unsecured collateral borrowings, uncovered short positions, dividends or contractual interest payments and specifically excludes from this category operating costs. The commenter requested that the final rule be consistent with the Basel III Revised Liquidity Framework. Further, one commenter argued that including contractual expenses that are operational in nature would result in such expenses being included as outflows, yet the inflows from non-financial revenues would be excluded. Therefore, this commenter argued, the final rule should exclude operational costs from outflows and exclude from inflows non-financial revenues that are not enumerated in § __.33(b)–(f) of the proposed rule and excluded under § __.33(g) of the proposed rule (other cash inflows). One commenter requested clarification that there was no outflow rate associated with trade finance instruments and letters of credit with performance requirements under the proposed rule. Another commenter asked for clarification of the treatment of contingent trade finance obligations under the final rule. Another commenter asked for guidance on the treatment of projected cash outflows for certain contingency funding obligations such as variable rate demand notes, stable value funds, and other similarly structured products, noting that while the proposed rule did not provide outflow rates for these categories, the Basel III Liquidity Framework provided for national discretion when determining rates for such products.

The agencies are clarifying that the final rule excludes from outflows operational costs, because the agencies believe that assets specifically designated to cover costs, such as wages, rents, or facility maintenance, generally would not be available to cover liquidity needs that arise during stressed market conditions.

The final rule does not provide a specific outflow rate for trade finance obligations that are subject to the movement of goods or the provision of services. This would include documentary trade letters of credit; documentary and clean collection; import and export bills; and guarantees directly related to trade finance obligations, such as shipping guarantees. Instead, a covered company should calculate outflow amounts for lending commitments, such as direct import or export financing for non-financial firms, in accordance with § __.32(e) of the final rule.

Under the final rule, variable rate demand note amounts payable within 30 calendar days of a calculation date will be treated as a committed liquidity facility to a financial sector entity and will receive a 100 percent outflow rate pursuant to § __.32(e)(1)(vii) of the final rule. The agencies believe that this treatment is appropriate because such payments would likely be made by a covered company to support amounts coming due within 30 calendar days of a calculation date. With respect to an implicit agreement to guarantee a covered company's sponsored product, covered companies may be prohibited from doing so under § __.13 of the BHC Act, and such support has long been discouraged by the agencies.[85] If, however, a covered company's guarantee is in the form of a guaranteed investment contract (GIC) or a synthetic GIC (commonly referred to as a wrapper), then it will be treated as a commitment to a financial sector entity or SPE as appropriate under § __.32(e)(1)(vii) or (viii) of the final rule.

m. Excluded Amounts for Intragroup Transactions

The proposed rule would have excluded from a covered company's outflows and inflows all transactions between the covered company and a consolidated subsidiary or between consolidated subsidiaries of a covered company. Such transactions were excluded on the grounds that they would not result in a net liquidity change for a covered company on a consolidated basis.

One commenter expressed concern that section 32(h) of the proposed rule was contrary to the symmetrical treatment of funding provided by and to

[85] *See, e.g.,* OCC, Board, FDIC, and SEC, ''Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Certain Relationships With, Hedge Funds and Private Equity Funds,'' 79 FR 5536, 5790 (January 31, 2014); ''Interagency Policy on Banks/Thrifts Providing Financial Support to Funds Advised by the Banking Organization or its Affiliates,'' OCC Bulletin 2004–2, Federal Reserve Supervisory Letter 04–1, FDIC FIL–1–2004 (January 5, 2004).

covered companies and its subsidiaries and between its subsidiaries in section 32(m)(1), which would have entirely excluded outflows arising from transactions between the covered company and its consolidated subsidiary. Consistent with the proposed rule's section 32(m), the final rule excludes from a covered company's outflows and inflows all transactions between the covered company and a consolidated subsidiary or between consolidated subsidiaries of a covered company. As discussed above under II.C.3.h, to address commenters concerns, the agencies have clarified that the 100 percent affiliate outflow rate under § __.32(h)(2) of the final rule applies solely to funding from a consolidated subsidiary of the same top-tier company of which the covered company is a consolidated subsidiary, but that is not a consolidated subsidiary of the covered company, due to the lack of the consolidation of the inflows and outflows with the covered company under applicable accounting standards. Accordingly, the agencies have removed the language from proposed § __.32(h)(2) that would have applied the outflow rate to funding from a consolidated subsidiary of the covered company.

4. Inflow Amounts

Under the proposed rule, a covered company's total cash inflow amount would be the lesser of: (1) the sum of the cash inflow amounts as described in § __.33 of the proposed rule; and (2) 75 percent of the expected cash outflows as calculated under § __.32 of the proposed rule. Similar to the total cash outflow amount, the total cash inflow amount would have been calculated by multiplying the outstanding balances of contractual receivables and other cash inflows as of a calculation date by the inflow rates described in § __.33 of the proposed rule. In addition, the proposed rule would have excluded certain inflows from the cash inflow amounts, as described immediately below. The agencies have adopted this structure for calculating total cash inflows in the final rule, with certain updates to the proposed inflow rates to address comments received.

a. Items Not Included as Inflows

Under the proposed rule, the agencies identified six categories of items that would have been explicitly excluded from cash inflows. These exclusions were meant to ensure that the denominator of the proposed LCR would not be influenced by potential cash inflows that may not be reliable sources of liquidity during a stressed scenario. The first excluded category would have consisted of any inflows derived from amounts that a covered company holds in operational deposits at other regulated financial companies. Because these deposits are made for operational purposes, the agencies reasoned that it would be unlikely that a covered company would be able to withdraw these funds in a crisis to meet other liquidity needs, and therefore excluded them. The final rule adopts this provision as proposed. The agencies expect covered companies to understand what deposits they have placed at other financial companies that are operational in nature and to use the same methodology to assess the operational nature of its deposits at other financial companies as it uses to assess the operational nature of their deposit liabilities from other financial companies.

A commenter requested clarification as to whether cash held at agent banks for other than operational purposes can count towards a covered company's HQLA or inflow amount. The agencies are clarifying that, depending on the manner in which the cash is held, it may qualify as an unsecured payment contractually payable to the covered company by a financial sector entity under § __.33(d)(1) of the final rule, in which case it would be subject to a 100 percent inflow rate. As discussed in section II.B.2.c above such placements do not meet the criteria for inclusion as HQLA.

The second category would have excluded amounts that a covered company expects to receive or is contractually entitled to receive from derivative transactions due to forward sales of mortgage loans and any derivatives that are mortgage commitments.

Two commenters recommended that the agencies distinguish forward sales of mortgage loans under GSE standby programs from other warehouse facilities, reasoning that the nature of the commitments provided under those programs and the creditworthiness of the GSEs should permit each covered company to include 100 percent of its notional balances under GSE standby programs as an inflow. Commenters argued that, unlike a warehouse facility, which involves the counterparty risk of a non-government-sponsored enterprise and the potential that loans will not close or will have incomplete loan documents, GSE standby programs include only closed and funded loans with the liquidity option provided directly by FNMA and FHLMC. According to the commenters, the loans are always eligible to be delivered to FNMA and FHLMC regardless of credit deterioration. Another commenter remarked on the asymmetry of the proposed rule's treatment of commitments, noting that if a covered company must include loan commitments in its outflows, then it should be allowed to include forward commitments to sell loans to GSEs in its inflows.

A commenter argued that the proposed rule would discourage covered companies from investing in the housing industry or GSE-backed securities because these would be subject to a 15 percent haircut when counted as HQLA and any expected inflow from mortgage commitments within the next 30 days would be excluded from the net outflow calculation. This commenter noted that it is unclear what impact this treatment would have on the mortgage markets.

The agencies recognize that covered companies may receive inflows as a result of the sale of mortgages or derivatives that are mortgage commitments within 30 days after the calculation date. However, the agencies believe that there are some potential liquidity risks from mortgage operations that should be captured in the LCR. During the recent financial crisis, it was evident that many institutions were unable to rapidly reduce mortgage lending pipelines even as market demand for mortgages slowed. Because of these liquidity risks, the final rule requires an outflow rate for mortgage commitments of 10 percent, with an exclusion of inflows. On balance, the agencies believe the 10 percent outflow rate for commitments coupled with no recognition of inflows is appropriate due to the risks evidenced in the recent financial crisis. The agencies are therefore finalizing this aspect of the rule as proposed.

The third excluded category would have comprised amounts arising from any credit or liquidity facility extended to a covered company. The agencies believe that in a stress scenario, inflows from such facilities may not materialize due to restrictive covenants or termination clauses. Furthermore, reliance by covered companies on inflows from credit facilities with other financial entities would materially increase the interconnectedness within the system. Thus, the material financial distress at one institution could result in additional strain throughout the financial system as the company draws down its lines of credit. Because of these likelihoods, the proposed rule would not have counted a covered company's credit and liquidity facilities as inflows.

Some commenters recommended that at least 50 percent of the unused portions of a covered company's committed borrowing capacity at a FHLB be treated as an inflow under the final rule. Commenters requested that the agencies allow a banking organization to increase its inflow amounts and thus decrease the denominator of its LCR by an amount equal to at least 50 percent of the unused borrowing commitments from an FHLB. The agencies have considered the role that FHLB borrowings played in the recent crisis and have decided not to recognize collateralized lines of credit in favor of promoting on-balance sheet liquidity.

A commenter requested that the agencies revisit the assumptions about asymmetric outflows and inflows under credit and liquidity facilities. The commenter proposed that a covered nonbank company be permitted to include amounts from committed credit and liquidity facilities extended to covered companies as inflows at the same rates at which it would be required to assume outflows if it extended the same facilities to the same counterparties, but only if the facilities do not contain material adverse change clauses, financial covenants, or other terms that could allow a counterparty to cancel the facility if the covered company experienced stress. According to the commenter, the balance sheet and funding profile of covered nonbank companies are substantially different from other covered companies.

The agencies continue to emphasize the importance of on-balance sheet liquidity and not the capacity to draw upon a facility, which, as stated above, may or may not materialize in a liquidity stress scenario even where the facilities do not contain material adverse change clauses or financial covenants. During a period of material financial distress, companies may not be in a position to extend funds under the facilities. Therefore, the agencies are adopting this provision in the final rule as proposed.

The fourth excluded category of inflows would have consisted of amounts included in a covered company's HQLA amount under § __.21 of the proposed rule and any amount payable to the covered company with respect to those assets. The agencies reasoned that because HQLA is already included in the numerator at fair market value, including such amounts as inflows would result in double counting. Consistent with the Basel III Revised Liquidity Framework, this exclusion also would have included all HQLA that mature within 30 calendar days of a calculation date. The agencies received no comments on this provision of the proposed rule and have adopted it in the final rule without change.

The fifth excluded category of inflows would have comprised amounts payable to the covered company or any outstanding exposure to a customer or counterparty that is a nonperforming asset as of a calculation date or that the covered company has reason to expect will become a nonperforming exposure 30 calendar days or less from a calculation date. Under the proposed rule, a nonperforming exposure was defined as any exposure that is past due by more than 90 calendar days or on nonaccrual status. This provision recognized the potential that a covered company will not receive the full inflow amounts due from a nonperforming customer. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule as proposed.

The sixth excluded category of inflows would have comprised items that have no contractual maturity date or items that mature more than 30 calendar days after a calculation date. The agencies are concerned that in a time of liquidity stress a covered company's counterparties will not pay amounts that are not contractually required in order to maintain their own liquidity or balance sheet. Items that mature more than 30 calendar days after a calculation date generally fall outside of the scope of the net cash outflow denominator.

The agencies received several comments relating to the treatment of the term of margin loans and, more generally, the maturity treatment of secured transactions that may be interrelated. The treatment of these secured transactions is described in section II.C.4.f, below.

Another commenter stated that loans that are offered on an open maturity basis and contractually due on demand, such as trade receivables, should be included as inflows rather than excluded as items that do not have a contractual maturity date under proposed § __.33(a)(6).

Section __.31 of the final rule describes how a covered company must determine the maturity date of a transaction for the purposes of the rule. The agencies have revised this provision to provide a maturity date for certain non-maturity transactions that would have otherwise been excluded as inflows under the final rule. Thus, as discussed below, certain unsecured wholesale cash inflows (including non-maturity deposits at other financial sector entities) and secured lending transactions, are treated as maturing on the first calendar day after the calculation date. The agencies recognize these specific inflows as day-one inflows to reflect symmetry in the outflow assumptions. Any other non-maturity inflow would be excluded under this provision.

b. Net Derivatives Cash Inflow Amount

In § __.33(b) of the proposed rule, the agencies proposed that a covered company's net derivative cash inflow amount would equal the sum of the payments and collateral that a covered company will receive from each counterparty to its derivative transactions, less, for each counterparty, if subject to a qualifying master netting agreement, the sum of payments and collateral that the covered company will make or deliver to each counterparty. This calculation would have incorporated the amounts due from and to counterparties under applicable transactions within 30 calendar days of a calculation date. Netting would have been permissible at the highest level permitted by a covered company's contracts with a counterparty and could not include off-setting inflows where a covered company has included as eligible HQLA any assets that the counterparty has posted to support those inflows. If the derivatives transactions are not subject to a qualifying master netting agreement, then the derivative cash inflows for that counterparty would have been included in the net derivative cash inflow amount and the derivative cash outflows for that counterparty would have been included in the net derivative cash outflow amount, without any netting. Under the proposed rule, the net derivative cash inflow amount would have been calculated in accordance with existing valuation methodologies and expected contractual derivative cash flows. In the event that the net derivative cash inflow for a particular counterparty was less than zero, such amount would have been required to be included in a covered company's net derivative cash outflow amount for that counterparty.

As with the net derivative cash outflow amount, pursuant to § __.33(a)(2), the net derivative cash inflow amount would not have included amounts arising in connection with forward sales of mortgage loans and derivatives that are mortgage commitments. The net derivative cash inflow amount would have included derivatives that hedge interest rate risk associated with a mortgage pipeline.

The agencies received no comments unique to this provision of the proposed

rule. All related comments focused on the net derivatives cash outflow amount provision. This provision was intended to complement the net derivatives cash outflow amount provision, and the provision that would apply at any given time would depend on whether the covered company had a net ''due to'' or ''due from'' position with the counterparty. In the final rule, the agencies have made changes to § __.33(b) that are consistent with the changes described above in section II.C.3.c that the agencies made to § __.32(c). In both cases, the agencies have permitted the netting of foreign currency exchange derivative transactions that result in the full exchange of cash principal payments in different currencies within the same business day. As with all net cash inflows, any resulting net derivatives cash inflow amount would be subject to the overall 75 percent cap on total net inflows.

c. Retail Cash Inflow Amount

The proposed rule would have allowed a covered company to count as an inflow 50 percent of all contractual payments it expects to receive within 30 calendar days from retail customers and counterparties. This inflow rate reflected the agencies' expectation that covered companies will need to maintain a portion of their retail lending activity even during periods of liquidity stress. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule as proposed.

d. Unsecured Wholesale Cash Inflow Amount

The agencies believed that for purposes of the proposed rule, all wholesale inflows (for example, principal and interest receipts) from financial sector entities (and consolidated subsidiaries thereof) and from central banks generally would have been available to meet a covered company's liquidity needs. Therefore, the agencies proposed to assign such inflows a rate of 100 percent.

The agencies also expect covered companies to maintain ample liquidity to sustain core businesses lines, including continuing to extend credit to retail customers and wholesale customers and counterparties that are not financial sector entities. Indeed, one purpose of the proposed rule was to ensure that covered companies would have sufficient liquidity to sustain such business lines during a period of liquidity stress. While the agencies acknowledge that, in times of liquidity stress, covered companies can curtail some activity to a limited extent, covered companies would likely continue to renew at least a portion of maturing credit and extend some new loans due to reputational and business considerations. Therefore, the agencies proposed to apply an inflow rate of 50 percent for inflows due from wholesale customers or counterparties that are not financial sector entities, or consolidated subsidiaries thereof. With respect to revolving credit facilities, already drawn amounts would not have been included in a covered company's inflow amount, and undrawn amounts would be treated as outflows under § __.32(e) of the proposed rule. This is based upon the agencies' assumption that a covered company's counterparty would not repay funds it is not contractually obligated to repay in a stressed scenario.

A commenter requested that the final rule provide a 100 percent inflow treatment for inflows due from trade financing activities with a residual maturity of 30 calendar days or less as of the calculation date, rather than the overall 50 percent outflow for non-financial sector entities. Trade finance receivables coming due from non-financial corporate entities that are contractually due within 30 days receive the same treatment as other loans coming due from non-financial counterparties and that is a 50 percent inflow. This recognizes that the covered company will likely have new lending and loan renewals for at least a portion of loans coming due within the next 30 days. The agencies continue to believe that these inflow rates accurately reflect the effect of material liquidity stress upon an institution, as described above, and are thus adopting this provision of the final rule as proposed.

One commenter requested clarification regarding the proposed rule's treatment of fee income. The commenter argued that unless fee income is included under wholesale payments, there appeared to be no provision or discussion of the possibility that fee income will greatly decline during market stress. The agencies consider fee income to be a contractual payment and its inflow rate would depend on whether the counterparty owing the fee is a retail customer or counterparty (in which case the inflow rate would be 50 percent under § __.33(c)), a financial sector entity or central bank (in which case the inflow rate would be 100 percent under § __.33(d)(1)), or a non-financial sector wholesale customer or counterparty (in which case the inflow rate would be 50 percent under § __.33(d)(2)).

e. Securities Cash Inflow Amount

The proposed rule would have provided that inflows from securities owned by a covered company that were not included in a covered company's HQLA amount and that would mature within 30 calendar days of the calculation date would have received a 100 percent inflow rate. Such amounts would have included all contractual dividend, interest, and principal payments due and expected to be paid to a covered company within 30 calendar days of a calculation date, regardless of their liquidity. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule.

f. Secured Lending and Asset Exchange Cash Inflow Amounts

i. Definitions and Inflow Rates

The proposed rule provided that a covered company would be able to recognize cash inflows from secured lending transactions that matured within 30 calendar days of a calculation date. The proposed rule would have defined a secured lending transaction as any lending transaction that gave rise to a cash obligation of a counterparty to a covered company that was secured under applicable law by a lien on specifically designated assets owned by the counterparty and included in the covered company's HQLA amount that gave the covered company, as a holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution. Secured lending transactions would have included reverse repurchase transactions, margin loans, and securities borrowing transactions.

The proposed rule would have assigned inflow rates to all contractual payments due to the covered company under secured lending transactions based on the quality of the assets securing the transaction. These inflow rates generally would have complemented the outflow rates on secured funding transactions under § __.32(j)(1) of the proposed rule. Consistent with the Basel III Revised Liquidity Framework, the inflow amount from secured lending transactions or the outflow amount from secured funding transactions would have been calculated on the basis of each transaction individually. However, the symmetry between the proposed inflow and outflow rates recognized the benefits of a matched book approach to managing secured transactions, where applicable. The proposed rule also would have assigned a 50 percent inflow rate to the contractual payments

due from customers that had borrowed on margin, where such margin loans were collateralized by assets that were not HQLA.

While the provisions relating to secured lending transactions governed the cash obligations of counterparties, the proposed rule would have defined asset exchanges as the transfer of non-cash assets. A covered company's liquidity position may improve in instances where a counterparty is contractually obligated to deliver higher quality assets to the covered company in return for less liquid, lower-quality assets. The proposed rule would have reflected this through the proposed asset exchange inflow rates, which were based on a comparison of the quality of the asset to be delivered by a covered company with the quality of the asset to be received from a counterparty. Asset exchange inflow rates progressively increased on a spectrum that ranged from a zero percent inflow rate where a covered company would be receiving assets that are the same HQLA level as the assets that it would be required to deliver through a 100 percent inflow rate where a covered company would be receiving assets that are of significantly higher quality than the assets that it would be required to deliver.

Many commenters noted that a contradiction existed between the definition of a secured lending transaction under the proposed rule, which would have been limited to transactions that were secured by assets included in the covered company's HQLA amount, and the proposed secured lending transaction cash inflow amounts which would have recognized inflows for secured lending transactions that are secured by assets that are not HQLA. Commenters therefore requested that the final rule clarify that the 100 percent inflow rate would be applied to transactions secured by assets that are not eligible HQLA. In addition, other commenters objected to the fact that the proposed rule applied inflow rates for secured lending transactions secured by level 1, level 2A, and level 2B liquid assets only when the assets were eligible HQLA. These commenters argued that the difference in phrasing could lead to uncertainty about the treatment of transactions secured by liquid assets that are not included in a company's eligible HQLA because the operational requirements are not satisfied. Moreover, the commenters argued that the perceived matched book parity of the proposed rule would not apply to a large number of transactions that actually have matched maturities.

As described in section II.B.3 of this Supplementary Information section, the agencies recognized the need to clarify the distinction between the criteria for assets identified as HQLA in § __.20 of the final rule and the requirements for eligible HQLA set forth in § __.22 of the final rule. The agencies recognize that secured lending transactions may be secured by assets that are not eligible HQLA and agree with commenters that the definition of secured lending transaction was too narrow and that it should be revised to remove the requirement that the collateral securing a secured lending transaction must be eligible HQLA. Therefore, under the final rule, secured lending transactions include the cash obligations of counterparties to the covered company that are secured by assets that are HQLA regardless of whether the HQLA is eligible HQLA and also include the cash obligations of counterparties that are secured by assets that are not HQLA. Accordingly, the agencies have amended the requirements for the secured lending transaction inflow amounts under § __.33(f) of the final rule to remove the references to the requirement that the assets securing a secured lending transaction be eligible HQLA.

The agencies continue to believe that the inflow rate for a secured lending transaction that has a maturity date (as determined under § __.31 of the final rule) within 30 calendar days should be based on the type of collateral that is used to secure that transaction. Generally, the agencies assume that upon the maturity of a secured lending transaction, the covered company may be obligated to return the collateral to the counterparty and receive cash from the counterparty in fulfilment of the counterparty's cash obligation. Therefore, for the purpose of recognizing a cash inflow, it is crucial that the collateral securing a secured lending transaction be identified as being available for return to the counterparty at the maturity of the transaction.

Under the final rule, the secured lending transaction inflow rates are designed to complement the outflow rates for secured funding transactions (that are not secured funding transactions conducted with sovereigns, multilateral development banks, or U.S. GSEs and are not customer short positions facilitated by other customers' collateral) secured by the same quality of collateral and, for collateral that is held by the covered company as eligible HQLA,[86] the haircuts for the various categories of HQLA.

In the case of a secured lending transaction that matures within 30 calendar days of a calculation date that is secured by an asset that is not held by the covered company as eligible HQLA, but where the collateral has not been rehypothecated such that the asset is still held by the covered company and is available for immediate return to the counterparty, the agencies have adopted a 100 percent inflow rate (except for margin loans secured by assets that are not HQLA, which will receive a 50 percent inflow rate). Unlike secured lending transactions where collateral is held as eligible HQLA and is therefore included in the calculation of the HQLA amount at the calculation date, the agencies determined that the inflow for transactions where collateral is not held as eligible HQLA but is available for immediate return to the counterparty should receive a 100 percent inflow reflecting the settlement of the counterparty's cash obligation at the maturity date.

Section II.C.4.ii below discusses instances where the collateral securing the secured lending transaction has been rehypothecated in another transaction as of a calculation date. The inflow rates applied to maturing secured lending transactions are shown in Table 4a.

With respect to asset exchange inflows, the agencies did not receive significant comments on the proposed rule's treatment of asset exchanges and are adopting them in the final rule largely as proposed (Table 4b.). However, the agencies are clarifying for purposes of the final rule that where a covered company has rehypothecated an asset received from a counterparty in an asset exchange transaction, a zero percent inflow rate would be applied to the transaction under the final rule, reflecting the agencies' concern that the covered company would be required to purchase the asset on the open market to settle the asset exchange, as described for assets exchange outflows in section II.C.3.j above.

ii. The Reuse of Collateral and Certain Prime Brokerage Transactions

The proposed rule would have applied a 50 percent inflow rate to inflows from collateralized margin loans that are secured by assets that are not HQLA and that are not reused by the covered company to cover any of its short positions. Several commenters

[86] The agencies reiterate that a covered company cannot treat an asset as eligible HQLA that it received with rehypothecation rights if the owner has the contractual right to withdraw the asset without an obligation to pay more than de minimis remuneration at any time during the prospective 30 calendar-day period per § __.22(b)(5) of the final rule.

requested that the agencies expand this inflow rate to also apply to collateralized margin loans that are secured by collateral that is eligible HQLA or otherwise held at the covered company and not reused in any other transaction.[87] These commenters also suggested this proposed 50 percent inflow rate should be applied regardless of the maturity of the loan because, although such margin loans may have a contractual maturity date that is more than 30 calendar days from a calculation date, the contractual agreements would require the customer to repay the loan in the event the customer's portfolio composition materially changes. Commenters argued that the agencies had not taken into account that a significant portion of prime brokerage business consists of short-term secured financing, such as margin loans and loans of securities to effect customer short positions. Commenters also expressed concern that the terms of certain contracts, such as term margin agreements, require customers to maintain market neutral portfolios with increasing margin requirements and reduced leverage or financing based on the level of asymmetry between customer long and short positions. In particular, commenters requested that the agencies recognize collateralized term margin loans not secured by HQLA as generating inflows regardless of maturity because financings under term margin loans are designed to be treated as overnight transactions that are due on demand if the customer does not satisfy the loan terms.

More generally, commenters asked that the agencies revise the proposed rule such that it more fully capture the matched secured lending and secured funding transactions that occur in prime brokerage and matched book activity. As addressed in section II.C.1. b of this Supplementary Information section, commenters also requested that certain related inflow amounts be excluded from the aggregate cap on inflows in calculating the net cash inflow amount. Commenters asked the agencies to reevaluate the treatment of matched transactions based on whether the collateral is rehypothecated or remains in inventory and based on the term of the secured funding transaction to determine the covered company's net cash outflow over a 30 calendar-day period.

The agencies recognize that prime brokerage, matched book, and other activities conducted at covered companies make significant use of the rehypothecation of collateral that may have been provided for use by the covered company through secured lending transactions and asset exchanges (together with derivative assets, other secured counterparty obligations, or other transactions). Beyond the reuse of specific collateral, the agencies also recognize the potential interrelationship of certain transactions within prime brokerage activities, both at an individual customer level (for example, through market neutrality requirements) and in the aggregate portfolio of customers. Consistent with the Basel III Revised Liquidity Framework, the agencies do not believe that a 100 percent inflow rate for all margin loans secured by assets that are not HQLA and that mature within 30 calendar days of a calculation date is appropriate. The 50 percent inflow rate on these margin loans recognizes that not all margin loans may pay down during a stress period and covered companies may have to continue to fund a proportion of margin loans over time. In requiring the 50 percent inflow rate on such margin loans, the agencies note the symmetry with the secured funding transaction outflow rate required for customer short positions that are covered by other customers' collateral that is not HQLA. The agencies believe this symmetrical treatment balances the general treatment of individual secured funding and secured lending transactions under the rule with certain relationships that may potentially apply within prime brokerage activities, including contractual market neutrality clauses applicable to certain customers and certain aggregate customer behaviors. The agencies are further clarifying that margin loans secured by HQLA are required to apply the inflow rates applicable to any other type of secured lending transaction secured by the same collateral, including inflow rates applicable to collateral that is eligible HQLA. As discussed in section II.C.1.b above, although the final rule permits the use of specified netting in the determination of certain transaction amounts, no individual inflow categories are exempt from the aggregate cap of inflows at 75 percent of gross outflows in the net cash inflow amount calculation.

The agencies believe that, consistent with other foundational elements of the final rule, secured lending transactions that have a maturity date as determined under the final rule of greater than 30 calendar days from a calculation date should be excluded from the LCR calculation. Similarly, the agencies believe this principle should be maintained in respect to margin loans with remaining contractual terms of greater than 30 calendar days from a calculation date because a covered company may not rely on inflows that are not required, by relevant contractual terms, to occur within the 30 calendar-day period of the LCR calculation. With respect to margin loans that are secured by HQLA, the agencies believe that the inflow rates applied to secured lending transactions, which are complementary to the outflow rates for secured funding transactions that are secured by HQLA, are appropriate given the cash obligation of the counterparty. Moreover, where margin loans are secured by assets that the covered company includes as eligible HQLA, the inflow rates applied to the secured lending transactions would be complementary to the haircut assumptions for the various categories of HQLA and also are appropriate given the cash obligation of the counterparty and the covered company's obligation to return the value of the HQLA.

The agencies are aware that collateral may be rehypothecated to secure a secured funding transaction or other transaction or obligation (or delivered in an asset exchange) that matures either within 30 calendar days of a calculation date, or that matures more than 30 calendar days after a calculation date. In either case, different inflow rates are applied under the final rule to the secured lending transaction (or asset exchange) that provides the collateral in order to address the interdependency with the secured funding transaction (or asset exchange) for which the collateral was reused.

If the transaction or obligation for which the collateral has been reused has a maturity date (as determined under § __.31 of the final rule) within 30 calendar days of a calculation date, the covered company may anticipate receiving, or regaining access to, the collateral within the 30-day period. Assuming that the maturities are matched or that the maturity of the secured lending transaction is later than that of the secured funding transaction, the covered company may therefore anticipate having the collateral available at the maturity of the secured lending transaction (or asset exchange) from which the collateral was originally obtained. Accordingly, under the final rule, if collateral obtained from a secured lending transaction (or received from a prior asset exchange) that

[87] As discussed above, the agencies have adopted a 100 percent inflow rate for all secured lending transactions that are secured by assets that are not eligible HQLA, have not been rehypothecated by the bank, and are available for the immediate return to the counterparty at any time.

matures within 30 calendar days of a calculation date is reused in a secured funding transaction (or delivered in a second asset exchange) that matures within 30 calendar days of a calculation date, the covered company may recognize an inflow from the secured lending transaction (or prior asset exchange) as occurring at the maturity date.[88] As required under § __.31 of the final rule, the maturity of this secured lending transaction (or prior asset exchange) must be no earlier than the secured funding transaction (or second asset exchange). This treatment will generally apply a symmetric treatment for outflows and inflows occurring within a 30 calendar-day period.

Consistent with the Basel III Revised Liquidity Framework, the final rule will not recognize inflows from secured lending transactions (or asset exchanges) that mature within 30 calendar days from a calculation date where the collateral received is reused in a secured funding transaction (or asset exchange) that matures more than 30 calendar days from the calculation date, or where the collateral is otherwise reused in a transaction or to cover any obligation that could extend beyond 30 calendar days from a calculation date. This is because a covered company should assume that such secured lending transaction (or asset exchange) may need to be rolled over and will not give rise to a cash (or net collateral) inflow, reflecting its need to continue to cover the secured funding transaction (or asset exchange or other transaction or obligation). For example, a covered company would not recognize an inflow from a margin loan that matures within 30 calendar days of a calculation date if the loan was secured by collateral that had been reused in a term repurchase transaction that matured more than 30 calendar days from a calculation date.

Tables 4a and 4b summarize the inflow rates for secured lending transactions and asset exchanges.

TABLE 4a—SECURED LENDING TRANSACTION INFLOW RATES

Categories for secured lending transactions maturing within 30 calendar days of the calculation date	Secured lending inflow rate applied to contractual amounts due from the counterparty
Where the asset securing the secured lending transaction is included in the covered company's eligible HQLA as of the calculation date, and the transaction is:	
Secured by level 1 liquid assets	0%
Secured by level 2A liquid assets	15%
Secured by level 2B liquid assets	50%
Where the asset securing the secured lending transaction is not included in the covered company's eligible HQLA as of the calculation date but is still held by the covered company and is available for immediate return to the counterparty, and the transaction is:	
Secured by level 1, level 2A or level 2B liquid assets	100%
A collateralized margin loan secured by assets that are not HQLA	50%
Not a collateralized margin loan and is secured by assets that are not HQLA	100%
Where the asset securing the secured lending transaction has been rehypothecated and used to secure, or has been delivered into, any transaction or obligation which:	
Will not mature or expire within 30 calendar days or may extend beyond 30 calendar days of the calculation date	0%
Where the asset securing the secured lending transaction has been rehypothecated and used to secure any secured funding transaction or obligation, or delivered in an asset exchange, that will mature within 30 calendar days of the calculation date,* and the secured lending transaction is:	
Secured by level 1 liquid assets	0%
Secured by level 2A liquid assets	15%
Secured by level 2B liquid assets	50%
A collateralized margin loan secured by assets that are not HQLA	50%
Not a collateralized margin loan and is secured by assets that are not HQLA	100%

* Under § __.31(a)(3) of the final rule, the maturity date of the secured lending transaction cannot be earlier than the maturity date of the secured funding transaction or asset exchange.

TABLE 4b—ASSET EXCHANGE INFLOW RATES

Covered company will receive at maturity	Covered company must post at maturity	Asset exchange inflow rate
Where the asset originally received in the asset exchange has not been rehypothecated to secure any transaction or obligation, or delivered in an asset exchange, that will mature or expire more than 30 calendar days from a calculation date or may extend beyond 30 calendar days of a calculation date: **		
Level 1 liquid assets	Level 1 liquid assets	0%
Level 1 liquid assets	Level 2A liquid assets	15%
Level 1 liquid assets	Level 2B liquid assets	50%
Level 1 liquid assets	Assets that are not HQLA	100%

[88] The amount of the inflow would be determined by whether the collateral that the covered company received in the secured lending transaction or prior asset exchange was HQLA or non-HQLA as summarized in Tables 4a and 4b.

TABLE 4b—ASSET EXCHANGE INFLOW RATES—Continued

Covered company will receive at maturity	Covered company must post at maturity	Asset exchange inflow rate
Level 2A liquid assets	Level 1 or level 2A liquid assets	0%
Level 2A liquid assets	Level 2B liquid assets	35%
Level 2A liquid assets	Assets that are not HQLA	85%
Level 2B liquid assets	Level 1 or level 2A or level 2B liquid assets	0%
Level 2B liquid assets	Assets that are not HQLA	50%
Where the asset originally received in the asset exchange has been rehypothecated to secure any transaction or obligation, or delivered in an asset exchange, which will mature or expire more than 30 calendar days from the calculation date or may extend beyond 30 calendar days of the calculation date:		0%

** Under § __.31(a)(3) of the final rule, the maturity date of the asset exchange cannot be earlier than the maturity date of the transaction or obligation for which the collateral was reused.

g. Segregated Account Inflow Amount

Several commenters noted that unlike the Basel III Revised Liquidity Framework, the proposed rule did not recognize inflows from the release of assets held in segregated accounts in accordance with regulatory requirements for the protection of customer trading assets, such as Rule 15c3–3.[89] A few commenters argued that Rule 15c3–3 is, in effect, a liquidity rule that ensures that broker-dealers have sufficient liquid assets to meet their obligations to customers. Another commenter argued that by failing to address these assets in the proposed rule, the agencies had failed to consider the SEC's functional regulation of broker-dealers. Commenters noted that because these inflows are not specifically addressed in the proposed rule, the assets would be treated as encumbered and would not be eligible to offset deposits subject to the outflow rate applicable to affiliated sweep deposits. A commenter argued that because of the regulatory regime that governs these segregated assets, there is no market risk to the banking organization. One commenter requested that the release of balances held in segregated accounts be subject to a 100 percent inflow rate.

The agencies recognize that segregated accounts required for the protection of customer trading assets are designed to meet potential outflows to customers under certain circumstances. The agencies also recognize, however, that such segregated amounts held as of an LCR calculation date will be amounts calculated by the covered company at or prior to the calculation date and generally on a net basis across existing customer free cash, loans, and short positions. The agencies acknowledge that these segregated amounts will necessarily be recalculated within a 30 calendar-day period, which could potentially lead to a reduction in the amount that is required to be segregated, and a corresponding release of a portion of the amount held as of a calculation date. Accordingly, the agencies have included a provision in the final rule that permits a covered company to recognize certain inflows from broker-dealer segregated account releases based on the change in fair value of the customer segregated account balances between the calculation date and 30 calendar days following the calculation date.

The agencies do not believe that 100 percent of the value of segregated accounts held as of a calculation date would be an appropriate inflow amount because this inflow amount may not, in fact, be realized by the covered company. As a general matter, the final rule requires outflow amounts and inflow amounts to be calculated by using only the balances and transaction amounts at a calculation date, and not based on anticipated future balances or obligation amounts. However, consistent with the Basel III Revised Liquidity Framework, the agencies have determined that the appropriate inflow amount for the release of broker-dealer segregated account assets is dependent on the anticipated amount of broker-dealer segregated account assets that may need to be held by the covered company 30 calendar days from a calculation date. The anticipated amount of broker-dealer segregated account assets that may need to be held 30 calendar days from a calculation date should be based on the impact of those outflow and inflow amounts described under the final rule that are specifically relevant to the calculation of the segregated amount under applicable law. The covered company must therefore calculate the anticipated required balance of the broker-dealer segregated account assets as of 30 calendar days from a calculation date, assuming that customer cash and collateral positions have changed consistent with the outflow and inflow calculations required under § __.32 and § __.33 of the final rule as applied to any transaction affecting the calculation of the segregated balance. If the calculated future balance of the segregated account assets is less than the balance at the calculation date, then the broker-dealer segregated account inflow amount is the value of assets that would be released from the segregated accounts.

In addition and as discussed above, the agencies have added a provision to the maturity date calculation requirements of § __.31(a)(5) of the final rule to clarify that broker-dealer segregated account inflow under § __.33(g) will not be deemed to occur until the date of the next scheduled calculation of the amount as required under applicable legal requirements for the protection of customer assets with respect to each broker-dealer segregated account, in accordance with the covered company's normal frequency of recalculating such requirements. If, for example, a broker-dealer performs this calculation on a daily basis, the inflow may occur on the day following a calculation date. If a broker-dealer typically performs the calculation on a weekly basis, the inflow would be deemed to occur the day of the next regularly scheduled calculation.

h. Other Cash Inflow Amounts

Under the proposed rule, the covered company's inflow amount, as of the calculation date, would have included zero percent of other cash inflow amounts not described elsewhere in the proposed rule. The agencies continue to believe that limiting inflow amounts in the final rule to those categories specified, which reflect certain stressed assumptions, is important to the calculation of the total cash inflow amount and the LCR as a whole. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule as proposed.

[89] 17 CFR 240.15c3–3.

i. Excluded Amount for Intragroup Transactions

Under the proposed rule, inflow amounts would not have included amounts arising out of transactions between a covered company and its consolidated subsidiary or amounts arising out of transactions between a consolidated subsidiary of a covered company and another consolidated subsidiary of that covered company. The agencies received no comments on this provision of the proposed rule and have retained it in the final rule.

III. Liquidity Coverage Ratio Shortfall

Although the Basel III Revised Liquidity Framework provides that a banking organization is required to maintain an amount of HQLA sufficient to meet its liquidity needs within a 30 calendar-day stress period, it also makes clear that it may be necessary for a banking organization to fall below the requirement during a period of liquidity stress. The Basel III Revised Liquidity Framework therefore provides that any supervisory decisions in response to a reduction of a banking organization's LCR should take into consideration the objectives of the Basel III Revised Liquidity Framework. This provision of the Basel III Revised Liquidity Framework indicates that supervisory actions should not discourage or deter a banking organization from using its HQLA when necessary to meet unforeseen liquidity needs arising from financial stress that exceeds normal business fluctuations.

The proposed rule included a supervisory framework for addressing a shortfall with respect to the rule's LCR that is consistent with the intent of having HQLA available for use during stressed conditions, as described in the Basel III Revised Liquidity Framework. This supervisory framework included notice and response procedures that would have required a covered company to notify its appropriate Federal banking agency of any LCR shortfall on any business day, and would have provided the appropriate Federal banking agency with flexibility in its supervisory response. In addition, if a covered company's LCR fell below the minimum requirement for three consecutive business days or if its supervisor determined that the covered company is otherwise materially noncompliant with the proposed rule, the proposed rule would have required the covered company to provide to its supervisor a plan for remediation of the liquidity shortfall.

Some commenters stated that the requirement in the proposed rule to report non-compliance to the appropriate Federal banking agency appears to contradict the BCBS premise that the stock of HQLA should be available for use during periods of stress. Other commenters requested that the agencies take into consideration that when an institution's LCR falls below 100 percent, it is not necessarily indicative of any real liquidity concerns. Commenters expressed concern that disclosure requirements under securities laws or stock exchange listing rules could require an institution to immediately and publicly report an LCR below 100 percent or the adoption of a remediation plan, which would make the HQLA de facto unusable during times of stress and could exacerbate any burgeoning liquidity stress being experienced. Similarly, commenters expressed concern that media reports of an institution's LCR falling below100 percent would not necessarily reflect the underlying reasons and complexities in the case of a temporary LCR shortfall and may create liquidity instability. Accordingly, such commenters recommended that any public disclosure at the bank holding company level be carefully tailored. Alternatively, one commenter requested that any supervisory procedures be triggered only when a covered company's LCR has fallen by at least 5 percent for a period of at least 3 business days. In order to accommodate normal fluctuations in a firm's day-to-day liquidity position, the commenter encouraged the agencies to consider providing more flexibility in the final rule. One commenter requested that the agencies clarify whether, in addition to monitoring a covered company's compliance with the LCR, the agencies would be taking other indicators of financial health into account. Another commenter noted that daily notification requirements to a covered company's appropriate Federal banking agency for non-compliance with the LCR would detract from the company's critical operating duties. Several commenters requested that the agencies reconsider the negative connotation of falling below the target ratio and the requirement to provide a written remediation plan, which they stated would cause the LCR to become a bright line requirement to be met each day instead of serving as a cushion for stressful times. One commenter requested that the agencies consider making greater use of the countercyclical potential of liquidity regulation by permitting liquidity requirements to be adjusted upward during periods where markets are overheated, similar to the countercyclical capital requirements under the Basel III capital framework.

In the proposed rule, consistent with the Basel III Revised Liquidity Framework, the agencies affirmed the principle that a covered company's HQLA amount is expected to be available for use to address liquidity needs in a time of stress. The agencies believe that the proposed LCR shortfall framework would provide them with the appropriate amount of supervisory flexibility to respond to LCR shortfalls. Depending on the circumstances, an LCR shortfall would not have necessarily resulted in supervisory action, but, at a minimum, would have resulted in heightened supervisory monitoring. The notification procedures that were to be followed whenever a covered company dropped below the required LCR were intended to enable supervisors to monitor and respond appropriately to the unique circumstances that are giving rise to a covered company's LCR shortfall. This supervisory monitoring and response would be hindered if such notification were only to occur when a covered company dropped a specified percentage below the LCR requirement. Such notification may give rise to a supervisory or enforcement action, depending on operational issues at a covered company, whether the violation is a part of a pattern or practice, whether the liquidity shortfall was temporary or caused by an unusual event, and the extent of the shortfall or noncompliance. The agencies believe the proposed LCR shortfall framework provides appropriate supervisory flexibility and are adopting it in the final rule substantially as proposed.

The agencies recognize that there will be a period of time during which covered companies will be calculating their LCR on the last day of each calendar month, rather than on each business day. Accordingly, the final rule requires that during that period, if a covered company's LCR is below the required minimum when it is calculated on the last day of each calendar month, or if its supervisor has determined that the covered company is otherwise materially noncompliant, the covered company must promptly consult with the appropriate Federal banking agency to determine whether the covered company must provide a written remediation plan.

A covered company dropping below the LCR requirement will necessitate allocating resources to address the LCR shortfall. However, the agencies believe this allocation of resources is appropriate to promote the overall

safety and soundness of the covered company. As with all supervisory monitoring, the agencies will monitor a covered company's compliance with the final rule in conjunction with the agencies' overall supervisory framework. If necessary, the agencies will adjust the supervisory response to address any deterioration in the financial condition of a covered company.

With regard to counter cyclicality, by requiring that ample liquid assets be held during favorable conditions such that a covered company can use them in times of stress, the LCR effectively works as a countercyclical requirement. The agencies are not adding additional countercyclical elements to the final rule.

As noted elsewhere in this Supplementary Information section, the proposed rule did not include disclosure requirements for the LCR and the agencies anticipate that they will seek comment on reporting requirements through a future notice, which will be tailored to disclose the appropriate level of information. The agencies are clarifying that, other than any public disclosure requirements that may be proposed in a separate notice, reports to the agencies of any decline in a covered company's LCR below 100 percent, and any related supervisory actions would be considered and treated as confidential supervisory information.

IV. Transition and Timing

The proposed rule included a transition period for the LCR that would have required covered companies to maintain a minimum LCR as follows: 80 percent beginning on January 1, 2015, 90 percent beginning on January 1, 2016, and 100 percent beginning on January 1, 2017, and thereafter. The proposed transition period accounted for the potential implications of the proposed rule on financial markets, credit extension, and economic growth and sought to balance these concerns with the proposed LCR's important role in promoting a more robust and resilient banking sector.

Commenters expressed concern with: (i) The proposed transition period with regard to the operational requirements necessary to meet the proposed rule, (ii) the fact that the transition period differs from the timetable published in the Basel III Revised Liquidity Framework, and (iii) the HQLA shortfall amount that the financial system faces. One commenter expressed concern that the proposal was premature because the BCBS is currently reviewing ways to reduce the complexity and opaqueness of the Basel III capital framework.

Several commenters stated that compliance with the proposed transition timeline would require comprehensive information technology improvements and governance processes over a short period of time. One commenter noted that covered companies will need to make operational changes to comply with the new requirement and that some covered companies will need to adjust their asset composition significantly. One commenter argued that certain covered companies have not historically been subject to formal regulatory reporting requirements at the holding company level and that the agencies should consider this in determining whether to impose accelerated implementation on these companies. The commenter further stated that the implementation challenges posed by the proposal would be particularly acute for these covered companies and requested that the final rule provide an extended transition period for those companies that have not traditionally been subject to the regulatory reporting regimes that are applicable to bank holding companies. Similarly, two commenters noted that U.S. banking organizations that have not been identified as G–SIBs by the Financial Stability Board have not been previously required to report their liquidity positions on a daily basis under the Board's FR 2052a reporting form, and thus these banking organizations have not had time to upgrade data and systems to be in a position to comply with the proposed rule and its daily reporting requirements. Additionally, according to commenters, accelerated implementation would compress the full cost and burden of compliance into an extremely brief period for these organizations.

A few commenters requested that the agencies consider that the implementation of the proposed LCR requirements would happen contemporaneously with the implementation of other resource-intensive regulatory requirements, all of which would require changes to the infrastructure of banking organizations. Several commenters requested that the implementation date of the rule be delayed, with some specifically requesting delay by 12 months to begin no earlier than January 1, 2016, one commenter requesting a delay by 24 months to begin no earlier than January 1, 2017, and another commenter requesting a phase-in period of three years.

Several commenters requested that the proposed transition time frame follow the Basel III Revised Liquidity Framework. One commenter stated that this approach would minimize the likelihood of an adverse impact on the financial markets. One commenter stated that an accelerated implementation timeline would make it impossible for there to be a level playing field for LCR comparison across all internationally active banking organizations until 2019 when the Basel III Revised Liquidity Framework becomes fully implemented in other jurisdictions, and that asymmetrical treatment between the United States and Europe will advantage foreign lenders and borrowers, as well as their economies.

A few commenters expressed concern that the proposed transition timeline was in part predicated on a level of shortfall in HQLA estimated by the agencies. One commenter argued that the empirical evidence justifying the agencies' aggregate HQLA amount shortfall conclusion on which the implementation timing was based is very limited and requested that the agencies revisit the conclusion regarding the amount of shortfall. The commenter expressed concern that the shortfall assumption may be based on the less stringent approach of the Basel III Revised Liquidity Framework. The commenter also expressed concern that the estimate of the LCR shortfall does not take into account any shortfall that may be present in foreign banking organizations that will be required to form an intermediate holding company under the Board's Regulation YY,[90] and thus the estimate of the shortfall is likely significantly underestimated.[91] A commenter stated that its analysis indicated that a number of institutions would find it difficult to reach a LCR of 80 percent by 2015. Several commenters requested that a quantitative impact study be conducted before the agencies implement an accelerated implementation schedule. Several commenters requested that the agencies clarify the interaction between the daily calculation requirement under the proposed rule, and the current liquidity reporting that certain firms are undertaking under the Board's FR 2052a and Liquidity Monitoring Report (FR 2052b) reporting forms. In particular, the commenters expressed concern that the agencies would be requiring multiple daily calculations and reports with respect to the same data.

[90] *See* 12 CFR 252.153.

[91] As noted above, the agencies have not applied the requirements of the rule to foreign banking organizations or intermediate holding companies that are not otherwise covered companies.

With respect to commenters' concerns regarding the proposed rule's deviation from the Basel III Revised Liquidity Framework phase-in, the agencies believe the accelerated phase-in properly reflects the significant progress covered companies have made since the financial crisis in enhancing their overall liquidity positions. The agencies continue to believe that the minimum level of the LCR that would be applicable in each calendar year specified in the proposed transition periods is appropriate to ensure that the financial stability benefits presented by the standard are appropriately realized. Accordingly, as with the proposed rule, the final rule requires covered companies to maintain a LCR as follows: 80 percent beginning on January 1, 2015, 90 percent beginning on January 1, 2016, and 100 percent beginning on January 1, 2017, and thereafter. These transition periods are intended to facilitate compliance with a new minimum liquidity requirement and the agencies expect that covered companies with LCRs at or near 100 percent generally would not reduce their liquidity coverage during the transition period. The agencies emphasize that the final rule's LCR is a minimum requirement and that companies should have internal liquidity management systems and policies in place to ensure they hold liquid assets sufficient to meet their institution-specific liquidity needs that could arise in a period of stress.

In determining the proposed transition time frame, the agencies were aware that covered companies may face a range of implementation issues in coming into compliance with the proposed rule. The agencies asked in the proposal whether the proposed transition periods were appropriate for all covered companies in respect to the proposed LCR. Recognizing commenters' concerns regarding the operational difficulty for organizations that were not already subject to daily liquidity reporting requirements, and the systems changes necessary to calculate the LCR accurately on a daily basis, the agencies believe it is appropriate to differentiate the transition periods for calculation of the liquidity coverage ratio based on the size, complexity, and potential systemic impact of covered companies. The final rule therefore requires covered depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody, and any depository institution that is a consolidated subsidiary of such depository institution holding companies that has total consolidated assets equal to $10 billion or more, to conform to transition periods that are different from those for other covered companies. The agencies expect these largest, most complex firms to have the most sophisticated liquidity risk monitoring procedures, commensurate with their size and complexity,[92] and these firms are currently submitting daily liquidity reports. Under the final rule, these covered companies are required to calculate the LCR on the last business day of each calendar month from January 1, 2015, to June 30, 2015, and on each business day from July 1, 2015, onwards. All other covered companies must calculate the LCR on the last business day of each calendar month beginning January 1, 2015, and on each business day from July 1, 2016, onwards. The transition provisions of the final rule are also set forth in Table 5 below.

In developing these transition periods, the agencies analyzed data received from several institutions under a quantitative impact study as well as supervisory data from each of the institutions that would be subject to the final rule. Based on the review of this data, the agencies believe that the transition periods set forth in the rule are appropriately tailored to the size, complexity, and potential systemic impact of covered companies. The agencies do not currently believe that additional data is necessary for the adjustment of the transition periods, but will monitor the implementation of the final rule by covered companies during the transition periods.

Although the agencies have not proposed the regulatory or public reporting requirements for the final rule, the agencies anticipate that they will seek comment on reporting requirements through a future notice.

TABLE 5—TRANSITION PERIOD FOR THE LIQUIDITY COVERAGE RATIO

Transition period	Liquidity coverage ratio
Calendar year 2015	.80
Calendar year 2016	.90
Calendar year 2017 and thereafter	1.00
Calculation Frequency	
Covered depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody, and any depository institution that is a consolidated subsidiary of such depository institution holding companies that has total consolidated assets equal to $10 billion or more:	
Last business day of the calendar month	Beginning January 1, 2015.
Each business day	Beginning July 1, 2015 and thereafter.
All other covered companies:	
Last business day of the calendar month	Beginning January 1, 2015.
Each business day	Beginning July 1, 2016 and thereafter.

V. Modified Liquidity Coverage Ratio

Section 165 of the Dodd-Frank Act authorizes the Board to tailor the application of its enhanced prudential standards, including differentiating among covered companies on an individual basis or by category of institution.[93] When differentiating among companies for purposes of applying the Board's standards established under section 165, the Board may consider the companies' size,

[92] For example, the Board's Regulation YY requires large domestic bank holding companies to develop internal liquidity risk-management and stress testing practices that are tailored to the risk profile and business model of the particular institution. *See* 12 CFR 252.33–35. The firm-specific liquidity requirements set forth in the Board's Regulation YY are intended to complement the standardized approach of the U.S. liquidity coverage ratio framework, which provides for comparability across firms within the United States.

[93] *See* 12 U.S.C. 5365(a) and (b).

capital structure, riskiness, complexity, financial activities, and any other risk-related factor the Board deems appropriate.[94]

The Basel III Revised Liquidity Framework was developed for internationally active banking organizations, taking into account the complexity of their funding sources and structure. Although depository institution holding companies with at least $50 billion in total consolidated assets that are not covered companies (modified LCR holding companies) are large financial companies with extensive operations in banking, brokerage, and other financial activities, they generally are smaller in size, less complex in structure, and less reliant on riskier forms of market funding than covered companies. On a relative basis, the modified LCR holding companies tend to have simpler balance sheets, better enabling management and supervisors to take corrective actions more quickly in a stressed scenario than is the case with a covered company.

Accordingly, the Board proposed to tailor the proposed rule's application of the liquidity coverage ratio requirement to modified LCR holding companies pursuant to its authority under section 165 of the Dodd-Frank Act. Although the Board believes it is important for all bank holding companies subject to section 165 of the Dodd-Frank Act (and similarly situated savings and loan holding companies) to be subject to a quantitative liquidity requirement as an enhanced prudential standard, it recognizes that these smaller companies would likely not have as great a systemic impact as larger, more complex companies if they experienced liquidity stress. Therefore, because the options for addressing their liquidity needs under such a scenario (or, if necessary, for resolving such companies) would likely be less complex and therefore more likely to be implemented in a shorter period of time, the Board proposed a modified LCR incorporating a shorter (21 calendar-day) stress scenario for modified LCR holding companies.

The proposed modified LCR would have been a simpler, less stringent form of the proposed rule's liquidity coverage ratio (for the purposes of this section V., unmodified LCR) and would have imposed outflow rates based on a 21 calendar-day rather than a 30 calendar-day stress scenario. As a result, outflow rates for the proposed modified LCR generally would have been 70 percent of the unmodified LCR's outflow rates. In addition, modified LCR holding companies would not have been required to calculate a maximum cumulative peak net outflow day for total net cash outflows as required for covered companies subject to the unmodified LCR.[95] The requirements of the modified LCR standard would have otherwise been the same as the unmodified LCR as described in the proposal, including the proposed HQLA criteria and the calculation of the HQLA amount, and modified LCR holding companies would have to comply with all unmodified aspects of the standard to the same extent as covered companies.

A. Threshold for Application of the Modified Liquidity Coverage Ratio Requirement

One commenter expressed support for the modified LCR, stating that modified LCR holding companies have substantially less complex funding and risk profiles than covered companies. The commenter stated that operating under the modified LCR will allow such a holding company to remain competitive without compromising its commitment to liquidity risk management or drastically limiting the amount of maturity transformation it undertakes on behalf of its customers. A commenter further expressed support for the Board's use of cumulative net cash outflows over the stress period in the modified LCR compared to the net cumulative peak calculation in the unmodified LCR requirement's proposed rule.

As discussed above in section I.D., several commenters requested that the agencies apply the modified LCR to all banking organizations with limited international operations regardless of asset size. The commenters argued that the risk and funding profile of banking organizations with balance sheets of $250 billion or more in total consolidated assets and limited international operations is more consistent with that of modified LCR holding companies than with internationally active G–SIBs, for which the commenters say the LCR was originally intended. A commenter stated that deposit pricing may be adversely affected by the threshold for application of the modified LCR requirement and expressed concerns regarding an unlevel playing field across banking organizations. Another commenter stated that the proposed rule's tiered approach to assessing liquidity risks among U.S. banking organizations raises the potential unintended consequence that certain risks the agencies wish to ensure are backed by adequate liquidity will migrate to those institutions that are not required to hold as much liquidity. One commenter requested that the Federal Reserve articulate the justification for applying the LCR to the selected institutions, particularly in light of other supervisory efforts to monitor and strengthen liquidity management.

As discussed in section I of this Supplementary Information section, the agencies believe that the unmodified LCR is appropriate for the size, complexity, risk profile, and interconnectedness of covered companies. Consistent with the enhanced prudential standards requirements in Regulation YY, the Board continues to believe that bank holding companies and savings and loan holding companies with total consolidated assets of at least $50 billion dollars that are not covered companies should be subject to the modified LCR. Further, the Board believes that tailoring the requirements of the quantitative minimum standard for organizations that are not covered companies under the rule is consistent with the Dodd-Frank Act and that it is appropriate for modified LCR holding companies with less complex funding structures to be required to hold lower amounts of HQLA under the rule.

B. 21 Calendar-Day Stress Period

Several commenters noted that the 21 calendar-day stress period is operationally challenging because banking organizations typically manage and operate on a month-end or 30-day cycle. Thus, commenters suggested that the modified LCR be based on a calendar month stress period, rather than the 21 calendar-day stress period in the proposal, and argued that the 21 calendar-day basis of the modified LCR would have made it difficult to fully embed the calculation into internal processes including liquidity stress testing and balance sheet forecasts. One commenter argued that the benefits of a 21 calendar-day measurement period would typically be small because most holding companies that would be subject to the modified LCR do not generally rely on short-term funding; however, the same commenter requested the 70% outflow rate for non-maturity cash outflows be retained. Commenters argued that the 21 calendar-day forward-looking stress period required under the modified LCR would consistently omit key recurring payment activity that occurs on the calendar-month cycle and would force the banks to manage cash flows in an abnormal manner. Commenters also

[94] *See* 12 U.S.C. 5365(a)(2).

[95] *See supra* section II.C.

argued that the 21 calendar-day measurement period would make the modified LCR holding companies' LCR extremely volatile. One commenter requested that the agencies give such firms the option to utilize a 30 calendar-day measurement period, whereas others requested that the modified LCR be based on 30 calendar-day time frame and outflow rates be set at 70 percent of the outflow rate in the unmodified liquidity coverage ratio. One commenter stated that many of the calibrations in the rule, such as the treatment of operational deposits, municipal deposits, and level 2A securities, overstate the liquidity risk of the institutions covered by the modified LCR. The commenter requested that the agencies consider a lower LCR compliance threshold, such as 50 percent, to better align with the more stable funding profile of modified LCR holding companies.

Commenters suggested that the modified LCR be based on a monthly cycle so that 31-day, 30-day, and 28-day months are all treated as a cycle for the modified LCR. Two commenters stated that the 21 calendar-day measurement period would create additional measurement and reporting burdens and inconsistencies, because it deviates from other similar liquidity standards proposed by the BCBS and by the Dodd-Frank Act.

The Board agrees with commenters that there is merit in using a stress period that is consistent with periods over which liquidity risk is monitored by modified LCR holding companies as part of their internal practices. Thus, consistent with the risk management practices required under the Board's Regulation YY, the Board is applying a stress period of 30 days to the calculation of the modified LCR. To tailor the minimum quantitative standard for modified LCR holding companies while generally maintaining the amount of HQLA required for these firms under the proposal, the Board is amending the modified LCR denominator such that the net cash outflows shall be the net cash outflows calculated under the unmodified liquidity coverage ratio requirements over a 30 calendar-day stress period (excluding step 2 of the peak day approach described in section II.C.1 of this Supplementary Information section) multiplied by a factor of 0.7.

C. Calculation Requirements and Comments on Modified LCR Reporting

The proposed rule would have applied the modified LCR to depository institution holding companies domiciled in the United States that have total consolidated assets of $50 billion or more based on the average of the total asset amount reported on the institution's four most recent FR Y–9Cs. One commenter requested that the agencies clarify when companies subject to the modified LCR are required to start meeting the requirement: The day on which the company files the fourth FR Y–9C showing that it is subject to the rule, the day of the quarter following the filing of that report, or another date.

One commenter requested that the agencies clarify the mechanics for calculating the modified LCR and reporting to the regulators. Specifically, the commenter asked whether the modified LCR requires a daily calculation. One commenter recommended that regional banking organizations be required to calculate the LCR monthly and to report the information on a delayed basis, for example on the 20th day of the calendar month following the calculation date. The Board recognizes that the calculation requirements under the modified LCR present certain operational challenges to modified LCR holding companies. The Board is delaying the earliest date upon which a modified LCR holding company must comply with this rule to January 1, 2016. In addition, the Board is adopting in the final rule a monthly calculation requirement, rather than the daily calculation requirement in the proposed rule. This monthly calculation requirement reflects the difference in size, complexity, and funding profile of the institutions subject to the modified LCR. Modified LCR holding companies will be subject to the transition periods set forth in Table 6 below. If a modified LCR holding company's LCR is below the required minimum when it is calculated on the last day of each calendar month, or if its supervisor has determined that the covered company is otherwise materially noncompliant, the covered company must promptly consult with the Board to determine whether the covered company must provide a written remediation plan.

As discussed in section I of this Supplementary Information section, the agencies anticipate proposing reporting requirements in a future notice. This future notice would contain the reporting requirements for institutions subject to the Board's modified LCR, including any applicable reporting date requirements.

The Board is clarifying that a modified LCR holding company is required to comply with the modified LCR on the first day of the quarter following the date at which the average total consolidated assets of the holding company equal or exceed $50 billion.

TABLE 6—TRANSITION PERIOD FOR THE MODIFIED LIQUIDITY COVERAGE RATIO

Transition period	Liquidity coverage ratio
Calendar year 2016	.90
Calendar year 2017 and thereafter	1.00

Calculation Frequency		
All modified LCR holding companies	Last business day of the calendar month.	Beginning January 1, 2016 and thereafter.

VI. Plain Language

Section 722 of the Gramm-Leach Bliley Act [96] requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies sought to present the proposed rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

[96] Pub L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

VII. Regulatory Flexibility Act

Section 4 of the Regulatory Flexibility Act [97] (RFA), requires an agency to prepare a final regulatory flexibility analysis (FRFA) when an agency promulgates a final rule unless,

[97] 5 U.S.C. 604.

pursuant to section 5(b) of the RFA, the agency certifies that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities [98] (defined for purposes of the RFA to include banking entities with total assets less than or equal to $550 million and trust companies with total assets less than or equal to $38.5 million (small banking entities)).[99] Pursuant to section 5(b) of the RFA, the OCC and the FDIC are certifying that the final rule will not have a significant economic impact on a substantial number of small entities.

OCC

As discussed previously in this Supplementary Information section, the final rule generally will apply to national banks and Federal savings associations with: (i) Total consolidated assets equal to $250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to $10 billion or more; or (iii) total consolidated assets equal to $10 billion or more if a national bank or Federal savings association is a consolidated subsidiary of a company subject to the proposed rule. As of December 31, 2013, the OCC supervises 1,231 small entities. The only OCC-supervised institutions subject to the final rule have $10 billion or more in total consolidated assets. Accordingly, no OCC-supervised small banking entities meet the criteria to be a covered institution under the final rule. Therefore, the final rule will not have a significant economic impact on a substantial number of small OCC-supervised banking entities.

Pursuant to section 5(b) of the RFA, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small national banks and small Federal savings associations.

Board

The Board is providing a final regulatory flexibility analysis with respect to this final rule. As discussed above, this final rule would implement a quantitative liquidity requirement consistent with the liquidity coverage ratio established by the BCBS. The Board received no public comments related to the initial Regulatory Flexibility Act analysis in the proposed rule from the Chief Council for Advocacy of the Small Business Administration or from the general public.

As discussed previously in this Supplementary Information section, the final rule generally would apply to Board-regulated institutions with (i) total consolidated assets equal to $250 billion or more; (ii) total consolidated on-balance sheet foreign exposure equal to $10 billion or more; or (iii) total consolidated assets equal to $10 billion or more if that Board-regulated institution is a depository institution subsidiary of a company subject to the proposed rule. The modified version of the liquidity coverage ratio would apply to top-tier bank holding companies and savings and loan holding companies domiciled in the United States that have total consolidated assets of $50 billion or more. The modified version of the liquidity coverage ratio would not apply to: (i) A grandfathered unitary savings and loan holding company that derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act; (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies and either calculates its total consolidated assets in accordance with GAAP or estimates its total consolidated assets, subject to review and adjustment by the Board. The final rule focuses on these financial institutions because of their complexity, funding profiles, and potential risk to the financial system.

As of June 30, 2014, there were approximately 657 small state member banks, 3,716 small bank holding companies, and 254 small savings and loan holding companies. No small top-tier bank holding company, top-tier savings and loan holding company, or state member bank would be subject to the rule, so there would be no additional projected compliance requirements imposed on small bank holding companies, savings and loan holding companies, or state member banks.

The Board believes that the final rule will not have a significant impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the rule that would reduce the economic impact on small banking organizations supervised by the Board.

FDIC

As described previously in this Supplementary Information section, the final rule generally will establish a quantitative liquidity standard for internationally active banking organizations with $250 billion or more in total assets or $10 billion or more of on-balance sheet foreign exposure (internationally active banking organizations), and their consolidated subsidiary depository institutions with $10 billion or more in in total consolidated assets. One FDIC-supervised institution will satisfy the foregoing criteria as of the effective date of the final rule, and it is not a small entity. As of December 31, 2013, based on a $550 million threshold, the FDIC supervises 3,353 small state nonmember banks, and 51 small state savings associations. The only FDIC-supervised institutions subject to the final rule have $10 billion or more in total consolidated assets. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

Pursuant to section 5(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

VIII. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S. C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC and FDIC submitted this collection to OMB at the proposed rule stage. The information collection requirements contained in this joint final rule are being submitted by the FDIC and OCC to OMB for approval under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB. The agencies received no comments regarding the collection at the proposed rule stage.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the

[98] 5 U.S.C. 605(b).

[99] *See* 79 FR 33647 (June 12, 2014).

information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections 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.

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.

Commenters may submit comments on aspects of this notice that may affect burden estimates at the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., 10235, Washington, DC 20503; by facsimile to 202–395–6974; or by email to: *oira_submission@omb.eop.gov.* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.

Frequency of Response: Annual and event generated.

Affected Public:

FDIC: Insured state non-member banks, state savings associations, and certain subsidiaries of these entities.

OCC: National banks, Federal savings associations, or any operating subsidiary thereof.

Board: Insured state member banks, bank holding companies, savings and loan holding companies, and any subsidiary thereof.

Abstract:

The final rule implements a quantitative liquidity requirement consistent with the LCR standard established by the BCBS and contains requirements subject to the PRA. The reporting and recordkeeping requirements are found in §§ __.22 and __.40. Compliance with the information collections will be mandatory. Responses to the information collections will be kept confidential to the extent permitted by law, and there would be no mandatory retention period for the proposed collections of information.

Section __.22 will require that, with respect to each asset eligible for inclusion in a covered company's HQLA amount, the covered company must implement policies that require eligible HQLA to be under the control of the management function in the covered company responsible for managing liquidity risk. The management function must evidence its control over the HQLA by segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity, or demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk management strategy of the covered company. In addition, § __.22 will require that a covered company must have a documented methodology that results in a consistent treatment for determining that the covered company's eligible HQLA meet the requirements of § __.22.

Section __.40 will require that a covered company must notify its appropriate Federal banking agency on any day when its liquidity coverage ratio is calculated to be less than the minimum requirement in § __.10. If a covered company's liquidity coverage ratio is below the minimum requirement in § __.10 for three consecutive days, or if its appropriate Federal banking agency has determined that the institution is otherwise materially noncompliant, the covered company must promptly provide a plan for achieving compliance with the minimum liquidity requirement in § __.10 and all other requirements of this part to its appropriate Federal banking agency.

The liquidity plan must include, as applicable, (1) an assessment of the covered company's liquidity position; (2) the actions the covered company has taken and will take to achieve full compliance, including a plan for adjusting the covered company's risk profile, risk management, and funding sources in order to achieve full compliance and a plan for remediating any operational or management issues that contributed to noncompliance; (3) an estimated time frame for achieving full compliance; and (4) a commitment to provide a progress report to its appropriate Federal banking agency at least weekly until full compliance is achieved.

Estimated Paperwork Burden

Estimated Burden per Response:

Reporting Burden

§ __.40(a)—0.25 hours.
§ __.40(b)—0.25 hours.
§ __.40(b)(4)—0.25 hours.

Recordkeeping Burden

§ __.22(a)(2) and (5)—20 hours.
§ __.40(b)—100 hours.

FDIC

Estimated Number of Respondents: 2.

Total Estimated Annual Burden: 249 hours.

OCC

Estimated Number of Respondents: 20 national banks and Federal savings associations.

Total Estimated Annual Burden: 2,485 hours.

Board

Estimated Number of Respondents: 42 for § __.22; 3 for § __.40.

Total Estimated Annual Burden: 1,153 hours.

IX. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). For purposes of this analysis, the OCC considered whether the final rule includes 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 (adjusted annually for inflation) in any one year.

The OCC has determined that this final rule is likely to result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation) in any one year. When the final rule is published in the **Federal Register**, the OCC's UMRA written statement will be available at: *http://www.regulations.gov,* Docket ID OCC–2013–0016.

Text of Common Rule

(All Agencies)

PART [____]—LIQUIDITY RISK MEASUREMENT STANDARDS

Subpart A General Provisions

Sec.

__.1 Purpose and applicability.
__.2 Reservation of authority.
__.3 Definitions.
__.4 Certain operational requirements.

Subpart B Liquidity Coverage Ratio

__.10 Liquidity coverage ratio.

Subpart C High-Quality Liquid Assets

__.20 High-quality liquid asset criteria.

__.21 High-quality liquid asset amount.
__.22 Requirements for eligible high-quality liquid assets.

Subpart D Total Net Cash Outflow

__.30 Total net cash outflow amount.
__.31 Determining maturity.
__.32 Outflow amounts.
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Subpart E Liquidity Coverage Shortfall

__.40 Liquidity coverage shortfall: Supervisory framework.

Subpart F Transitions

__.50 Transitions.

Subpart A—General Provisions

§ __.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard for certain [BANK]s on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A [BANK] is subject to the minimum liquidity standard and other requirements of this part if:

(i) It has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end [REGULATORY REPORT];

(ii) It has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a depository institution that is a consolidated subsidiary of a company described in paragraphs (b)(1)(i) or (ii) of this section and has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income; or

(iv) The [AGENCY] has determined that application of this part is appropriate in light of the [BANK]'s asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) Subject to the transition periods set forth in subpart F of this part:

(i) A [BANK] that is subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1) of this section on September 30, 2014, must comply with the requirements of this part beginning on January 1, 2015;

(ii) A [BANK] that becomes subject to the minimum liquidity standard and other requirements of this part under paragraphs (b)(1)(i) through (iii) of this section after September 30, 2014, must comply with the requirements of this part beginning on April 1 of the year in which the [BANK] becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) From April 1 to December 31 of the year in which the [BANK] becomes subject to the minimum liquidity standard and other requirements of this part, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning January 1 of the year after the first year in which the [BANK] becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1) of this section, and thereafter, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date; and

(iii) A [BANK] that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(iv) of this section after September 30, 2014, must comply with the requirements of this part subject to a transition period specified by the [AGENCY].

(3) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(4) A [BANK] subject to a minimum liquidity standard under this part shall remain subject until the [AGENCY] determines in writing that application of this part to the [BANK] is not appropriate in light of the [BANK]'s asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(5) In making a determination under paragraphs (b)(1)(iv) or (4) of this section, the [AGENCY] will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in [12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)].

§ __.2 Reservation of authority.

(a) The [AGENCY] may require a [BANK] to hold an amount of high-quality liquid assets (HQLA) greater than otherwise required under this part, or to take any other measure to improve the [BANK]'s liquidity risk profile, if the [AGENCY] determines that the [BANK]'s liquidity requirements as calculated under this part are not commensurate with the [BANK]'s liquidity risks. In making determinations under this section, the [AGENCY] will apply notice and response procedures as set forth in [12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)].

(b) Nothing in this part limits the authority of the [AGENCY] under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

§ __.3 Definitions.

For the purposes of this part:

Affiliated depository institution means with respect to a [BANK] that is a depository institution, another depository institution that is a consolidated subsidiary of a bank holding company or savings and loan holding company of which the [BANK] is also a consolidated subsidiary.

Asset exchange means a transaction in which, as of the calculation date, the counterparties have previously exchanged non-cash assets, and have each agreed to return such assets to each other at a future date. Asset exchanges do not include secured funding and secured lending transactions.

Bank holding company is defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*).

Brokered deposit means any deposit held at the [BANK] that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)), and includes a reciprocal brokered deposit and a brokered sweep deposit.

Brokered sweep deposit means a deposit held at the [BANK] by a customer or counterparty through a contractual feature that automatically transfers to the [BANK] from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

Calculation date means any date on which a [BANK] calculates its liquidity coverage ratio under § __.10.

Client pool security means a security that is owned by a customer of the [BANK] that is not an asset of the

[BANK], regardless of a [BANK]'s hypothecation rights with respect to the security.

Collateralized deposit means:

(1) A deposit of a public sector entity held at the [BANK] that is secured under applicable law by a lien on assets owned by the [BANK] and that gives the depositor, as holder of the lien, priority over the assets in the event the [BANK] enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(2) A deposit of a fiduciary account held at the [BANK] for which the [BANK] is a fiduciary and sets aside assets owned by the [BANK] as security under 12 CFR 9.10 (national bank) or 12 CFR 150.300 through 150.320 (Federal savings associations) and that gives the depositor priority over the assets in the event the [BANK] enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit facility or liquidity facility, that under the terms of the legally binding written agreement governing the facility:

(1) The [BANK] may not refuse to extend credit or funding under the facility; or

(2) The [BANK] may refuse to extend credit under the facility (to the extent permitted under applicable law) only upon the satisfaction or occurrence of one or more specified conditions not including change in financial condition of the borrower, customary notice, or administrative conditions.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Consolidated subsidiary means a company that is consolidated on the balance sheet of a [BANK] or other company under GAAP.

Controlled subsidiary means, with respect to a company or a [BANK], a consolidated subsidiary or a company that otherwise meets the definition of ''subsidiary'' in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1842(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company; or

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph 3(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System.

Covered nonbank company means a designated company that the Board of Governors of the Federal Reserve System has required by rule or order to comply with the requirements of 12 CFR part 249.

Credit facility means a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes. A credit facility does not include a legally binding written agreement to extend funds at a future date to a counterparty that is made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. *See liquidity facility.*

Customer short position means a legally binding written agreement pursuant to which the customer must deliver to the [BANK] a non-cash asset that the customer has already sold.

Deposit means ''deposit'' as defined in section 3(*l*) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)) or an equivalent liability of the [BANK] in a jurisdiction outside of the United States.

Depository institution is defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Depository institution holding company means a bank holding company or savings and loan holding company.

Deposit insurance means deposit insurance provided by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

Derivative transaction means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, forward contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. A derivative does not include any identified banking product, as that term is defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

Designated company means a company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board of Governors of the Federal Reserve System and for which such determination is still in effect.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

Eligible HQLA means a high-quality liquid asset that meets the requirements set forth in § __.22.

Fair value means fair value as determined under GAAP.

Financial sector entity means an investment adviser, investment company, pension fund, non-regulated fund, regulated financial company, or identified company.

Foreign withdrawable reserves means a [BANK]'s balances held by or on behalf of the [BANK] at a foreign central bank that are not subject to restrictions on the [BANK]'s ability to use the reserves.

GAAP means generally accepted accounting principles as used in the United States.

High-quality liquid asset (HQLA) means an asset that is a level 1 liquid asset, level 2A liquid asset, or level 2B liquid asset, in accordance with the criteria set forth in § ___.20.

HQLA amount means the HQLA amount as calculated under § __.21.

Identified company means any company that the [AGENCY] has determined should be treated for the purposes of this part the same as a regulated financial company, investment company, non-regulated fund, pension fund, or investment adviser, based on activities similar in scope, nature, or operations to those entities.

Individual means a natural person, and does not include a sole proprietorship.

Investment adviser means a company registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or foreign equivalents of such company.

Investment company means a person or company registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or foreign equivalents of such persons or companies.

Liquid and readily-marketable means, with respect to a security, that the security is traded in an active secondary market with:

(1) More than two committed market makers;

(2) A large number of non-market maker participants on both the buying and selling sides of transactions;

(3) Timely and observable market prices; and

(4) A high trading volume.

Liquidity facility means a legally binding written agreement to extend funds at a future date to a counterparty that is made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. A liquidity facility includes an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program or conduit in the event that funds are required to repay maturing asset-backed commercial paper. Liquidity facilities exclude facilities that are established solely for the purpose of general working capital, such as revolving credit facilities for general corporate or working capital purposes. If a facility has characteristics of both credit and liquidity facilities, the facility must be classified as a liquidity facility. *See credit facility.*

Multilateral development bank means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable risk.

Non-regulated fund means any hedge fund or private equity fund whose investment adviser is required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), other than a small business investment company as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*).

Nonperforming exposure means an exposure that is past due by more than 90 days or nonaccrual.

Operational deposit means unsecured wholesale funding or a collateralized deposit that is necessary for the [BANK] to provide operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the unsecured wholesale funding or collateralized deposit. In order to recognize a deposit as an operational deposit for purposes of this part, a [BANK] must comply with the requirements of § __.4(b) with respect to that deposit.

Operational services means the following services, provided they are performed as part of cash management, clearing, or custody services:

(1) Payment remittance;

(2) Administration of payments and cash flows related to the safekeeping of investment assets, not including the purchase or sale of assets;

(3) Payroll administration and control over the disbursement of funds;

(4) Transmission, reconciliation, and confirmation of payment orders;

(5) Daylight overdraft;

(6) Determination of intra-day and final settlement positions;

(7) Settlement of securities transactions;

(8) Transfer of capital distributions and recurring contractual payments;

(9) Customer subscriptions and redemptions;

(10) Scheduled distribution of customer funds;

(11) Escrow, funds transfer, stock transfer, and agency services, including payment and settlement services, payment of fees, taxes, and other expenses; and

(12) Collection and aggregation of funds.

Pension fund means an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1001 *et seq.*), a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction.

Public sector entity means a state, local authority, or other governmental subdivision below the U.S. sovereign entity level.

Publicly traded means, with respect to an equity security, that the equity security is traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the security in question.

Qualifying master netting agreement (1) Means a legally binding written agreement that:

(i) Creates a single obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding, of the counterparty;

(ii) Provides the [BANK] the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to U.S. government-sponsored enterprises; and

(iii) Does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no

payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(2) In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a [BANK] must comply with the requirements of § __.4(a) with respect to that agreement.

Reciprocal brokered deposit means a brokered deposit that a [BANK] receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the [BANK] (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) Web site,[1] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under 12 CFR part 249;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462); and

(7) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (6) of this definition (e.g., a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(8) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

Reserve Bank balances means:

(1) Balances held in a master account of the [BANK] at a Federal Reserve Bank, less any balances that are attributable to any respondent of the [BANK] if the [BANK] is a correspondent for a pass-through account as defined in section 204.2(l) of Regulation D (12 CFR 204.2(l));

(2) Balances held in a master account of a correspondent of the [BANK] that are attributable to the [BANK] if the [BANK] is a respondent for a pass-through account as defined in section 204.2(l) of Regulation D;

(3) ''Excess balances'' of the [BANK] as defined in section 204.2(z) of Regulation D (12 CFR 204.2(z)) that are maintained in an ''excess balance account'' as defined in section 204.2(aa) of Regulation D (12 CFR 204.2(aa)) if the [BANK] is an excess balance account participant; or

(4) ''Term deposits'' of the [BANK] as defined in section 204.2(dd) of Regulation D (12 CFR 204.2(dd)) if such term deposits are offered and maintained pursuant to terms and conditions that:

(i) Explicitly and contractually permit such term deposits to be withdrawn upon demand prior to the expiration of the term, or that

(ii) Permit such term deposits to be pledged as collateral for term or automatically-renewing overnight advances from the Federal Reserve Bank.

Retail customer or counterparty means a customer or counterparty that is:

(1) An individual;

(2) A business customer, but solely if and to the extent that:

(i) The [BANK] manages its transactions with the business customer, including deposits, unsecured funding, and credit facility and liquidity facility transactions, in the same way it manages its transactions with individuals;

(ii) Transactions with the business customer have liquidity risk characteristics that are similar to comparable transactions with individuals; and

(iii) The total aggregate funding raised from the business customer is less than $1.5 million; or

(3) A living or testamentary trust that:

(i) Is solely for the benefit of natural persons;

(ii) Does not have a corporate trustee; and

(iii) Terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years, if applicable under state law.

Retail deposit means a demand or term deposit that is placed with the [BANK] by a retail customer or counterparty, other than a brokered deposit.

Retail mortgage means a mortgage that is primarily secured by a first or subsequent lien on one-to-four family residential property.

Savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

SEC means the Securities and Exchange Commission.

Secured funding transaction means any funding transaction that is subject to a legally binding agreement as of the calculation date and gives rise to a cash obligation of the [BANK] to a counterparty that is secured under applicable law by a lien on assets owned by the [BANK], which gives the counterparty, as holder of the lien, priority over the assets in the event the [BANK] enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, loans of collateral to the [BANK]'s customers to effect short positions, other secured loans, and borrowings from a Federal Reserve Bank.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement of the calculation date and gives rise to a cash obligation of a counterparty to the [BANK] that is secured under applicable law by a lien on assets owned by the counterparty, which gives the [BANK], as holder of the lien, priority over the assets in the event the counterparty enters into receivership, bankruptcy,

[1] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

insolvency, liquidation, resolution, or similar proceeding, including reverse repurchase transactions and securities borrowing transactions.

Securities Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

Special purpose entity means a company organized for a specific purpose, the activities of which are significantly limited to those appropriate to accomplish a specific purpose, and the structure of which is intended to isolate the credit risk of the special purpose entity.

Stable retail deposit means a retail deposit that is entirely covered by deposit insurance and:

(1) Is held by the depositor in a transactional account; or

(2) The depositor that holds the account has another established relationship with the [BANK] such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the [BANK] demonstrates to the satisfaction of the [AGENCY] would make deposit withdrawal highly unlikely during a liquidity stress event.

Structured security means a security whose cash flow characteristics depend upon one or more indices or that has embedded forwards, options, or other derivatives or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates, or cash flows.

Structured transaction means a secured transaction in which repayment of obligations and other exposures to the transaction is largely derived, directly or indirectly, from the cash flow generated by the pool of assets that secures the obligations and other exposures to the transaction.

Two-way market means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time frame conforming to trade custom.

U.S. government-sponsored enterprise means an entity established or chartered by the Federal government to serve public purposes specified by the United States Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States government.

Unsecured wholesale funding means a liability or general obligation of the [BANK] to a wholesale customer or counterparty that is not secured under applicable law by a lien on assets owned by the [BANK], including a wholesale deposit.

Wholesale customer or counterparty means a customer or counterparty that is not a retail customer or counterparty.

Wholesale deposit means a demand or term deposit that is provided by a wholesale customer or counterparty.

§ __.4 Certain operational requirements.

(a) *Qualifying master netting agreements.* In order to recognize an agreement as a qualifying master netting agreement as defined in § __.3, a [BANK] must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of the definition of qualifying master netting agreement in § __.3; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding) the relevant judicial and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in § __.3.

(b) *Operational deposits.* In order to recognize a deposit as an operational deposit as defined in § __.3:

(1) The related operational services must be performed pursuant to a legally binding written agreement, and:

(i) The termination of the agreement must be subject to a minimum 30 calendar-day notice period; or

(ii) As a result of termination of the agreement or transfer of services to a third-party provider, the customer providing the deposit would incur significant contractual termination costs or switching costs (switching costs include significant technology, administrative, and legal service costs incurred in connection with the transfer of the operational services to a third-party provider);

(2) The deposit must be held in an account designated as an operational account;

(3) The customer must hold the deposit at the [BANK] for the primary purpose of obtaining the operational services provided by the [BANK];

(4) The deposit account must not be designed to create an economic incentive for the customer to maintain excess funds therein through increased revenue, reduction in fees, or other offered economic incentives;

(5) The [BANK] must demonstrate that the deposit is empirically linked to the operational services and that it has a methodology that takes into account the volatility of the average balance for identifying any excess amount, which must be excluded from the operational deposit amount;

(6) The deposit must not be provided in connection with the [BANK]'s provision of prime brokerage services, which, for the purposes of this part, are a package of services offered by the [BANK] whereby the [BANK], among other services, executes, clears, settles, and finances transactions entered into by the customer or a third-party entity on behalf of the customer (such as an executing broker), and where the [BANK] has a right to use or rehypothecate assets provided by the customer, including in connection with the extension of margin and other similar financing of the customer, subject to applicable law, and includes operational services provided to a non-regulated fund; and

(7) The deposits must not be for arrangements in which the [BANK] (as correspondent) holds deposits owned by another depository institution bank (as respondent) and the respondent temporarily places excess funds in an overnight deposit with the [BANK].

Subpart B—Liquidity Coverage Ratio

§ __.10 Liquidity coverage ratio.

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, a [BANK] must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day in accordance with this part. A [BANK] must calculate its liquidity coverage ratio as of the same time on each business day (elected calculation time). The [BANK] must select this time by written notice to the [AGENCY] prior to the effective date of this rule. The [BANK] may not thereafter change its elected calculation time without prior written approval from the [AGENCY].

(b) *Calculation of the liquidity coverage ratio.* A [BANK]'s liquidity coverage ratio equals:

(1) The [BANK]'s HQLA amount as of the calculation date, calculated under subpart C of this part; *divided by*

(2) The [BANK]'s total net cash outflow amount as of the calculation date, calculated under subpart D of this part.

Subpart C—High-Quality Liquid Assets

§ __.20 High-quality liquid asset criteria.

(a) *Level 1 liquid assets.* An asset is a level 1 liquid asset if it is one of the following types of assets:

(1) Reserve Bank balances;

(2) Foreign withdrawable reserves;

(3) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(4) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government, provided that the security is liquid and readily-marketable;

(5) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, European Community, or a multilateral development bank, that is:

(i) Assigned a zero percent risk weight under subpart D of [AGENCY CAPITAL REGULATION] as of the calculation date;

(ii) Liquid and readily-marketable;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity; or

(6) A security issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity that is not assigned a zero percent risk weight under subpart D of [AGENCY CAPITAL REGULATION], where the sovereign entity issues the security in its own currency, the security is liquid and readily-marketable, and the [BANK] holds the security in order to meet its net cash outflows in the jurisdiction of the sovereign entity, as calculated under subpart D of this part.

(b) *Level 2A liquid assets.* An asset is a level 2A liquid asset if the asset is liquid and readily-marketable and is one of the following types of assets:

(1) A security issued by, or guaranteed as to the timely payment of principal and interest by, a U.S. government-sponsored enterprise, that is investment grade under 12 CFR part 1 as of the calculation date, provided that the claim is senior to preferred stock; or

(2) A security that is issued by, or guaranteed as to the timely payment of principal and interest by, a sovereign entity or multilateral development bank that is:

(i) Not included in level 1 liquid assets;

(ii) Assigned no higher than a 20 percent risk weight under subpart D of [AGENCY CAPITAL REGULATION] as of the calculation date;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, as demonstrated by:

(A) The market price of the security or equivalent securities of the issuer declining by no more than 10 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the security or equivalent securities of the issuer increasing by no more than 10 percentage points during a 30 calendar-day period of significant stress; and

(iv) Not an obligation of a financial sector entity, and not an obligation of a consolidated subsidiary of a financial sector entity.

(c) *Level 2B liquid assets.* An asset is a level 2B liquid asset if the asset is liquid and readily-marketable and is one of the following types of assets:

(1) A corporate debt security that is:

(i) Investment grade under 12 CFR part 1 as of the calculation date;

(ii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, as demonstrated by:

(A) The market price of the corporate debt security or equivalent securities of the issuer declining by no more than 20 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the corporate debt security or equivalent securities of the issuer increasing by no more than 20 percentage points during a 30 calendar-day period of significant stress; and

(iii) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity; or

(2) A publicly traded common equity share that is:

(i) Included in:

(A) The Russell 1000 Index; or

(B) An index that a [BANK]'s supervisor in a foreign jurisdiction recognizes for purposes of including equity shares in level 2B liquid assets under applicable regulatory policy, if the share is held in that foreign jurisdiction;

(ii) Issued in:

(A) U.S. dollars; or

(B) The currency of a jurisdiction where the [BANK] operates and the [BANK] holds the common equity share in order to cover its net cash outflows in that jurisdiction, as calculated under subpart D of this part;

(iii) Issued by an entity whose publicly traded common equity shares have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, as demonstrated by:

(A) The market price of the security or equivalent securities of the issuer declining by no more than 40 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to securities borrowing and lending transactions that are collateralized by the publicly traded common equity shares or equivalent securities of the issuer increasing by no more than 40 percentage points, during a 30 calendar day period of significant stress;

(iv) Not issued by a financial sector entity and not issued by a consolidated subsidiary of a financial sector entity;

(v) If held by a depository institution, is not acquired in satisfaction of a debt previously contracted (DPC); and

(vi) If held by a consolidated subsidiary of a depository institution, the depository institution can include the publicly traded common equity share in its level 2B liquid assets only if the share is held to cover net cash outflows of the depository institution's consolidated subsidiary in which the publicly traded common equity share is held, as calculated by the [BANK] under subpart D of this part.

§ __.21 High-quality liquid asset amount.

(a) *Calculation of the HQLA amount.* As of the calculation date, a [BANK]'s HQLA amount equals:

(1) The level 1 liquid asset amount; plus

(2) The level 2A liquid asset amount; plus

(3) The level 2B liquid asset amount; minus

(4) The greater of:

(i) The unadjusted excess HQLA amount; and

(ii) The adjusted excess HQLA amount.

(b) *Calculation of liquid asset amounts.* (1) *Level 1 liquid asset amount.* The level 1 liquid asset amount equals the fair value of all level 1 liquid assets held by the [BANK] as of the calculation date that are eligible HQLA, less the amount of the reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5).

(2) *Level 2A liquid asset amount.* The level 2A liquid asset amount equals 85 percent of the fair value of all level 2A liquid assets held by the [BANK] as of the calculation date that are eligible HQLA.

(3) *Level 2B liquid asset amount.* The level 2B liquid asset amount equals 50 percent of the fair value of all level 2B liquid assets held by the [BANK] as of the calculation date that are eligible HQLA.

(c) *Calculation of the unadjusted excess HQLA amount.* As of the calculation date, the unadjusted excess HQLA amount equals:

(1) The level 2 cap excess amount; *plus*

(2) The level 2B cap excess amount.

(d) *Calculation of the level 2 cap excess amount.* As of the calculation date, the level 2 cap excess amount equals the greater of:

(1) The level 2A liquid asset amount plus the level 2B liquid asset amount minus 0.6667 times the level 1 liquid asset amount; and

(2) 0.

(e) *Calculation of the level 2B cap excess amount.* As of the calculation date, the level 2B excess amount equals the greater of:

(1) The level 2B liquid asset amount minus the level 2 cap excess amount minus 0.1765 times the sum of the level 1 liquid asset amount and the level 2A liquid asset amount; and

(2) 0.

(f) *Calculation of adjusted liquid asset amounts.* (1) *Adjusted level 1 liquid asset amount.* A [BANK]'s adjusted level 1 liquid asset amount equals the fair value of all level 1 liquid assets that would be eligible HQLA and would be held by the [BANK] upon the unwind of any secured funding transaction (other than a collateralized deposit), secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date where the [BANK] will provide an asset that is eligible HQLA and the counterparty will provide an asset that will be eligible HQLA; less the amount of the reserve balance requirement under section 204.5 of Regulation D (12 CFR 204.5).

(2) *Adjusted level 2A liquid asset amount.* A [BANK]'s adjusted level 2A liquid asset amount equals 85 percent of the fair value of all level 2A liquid assets that would be eligible HQLA and would be held by the [BANK] upon the unwind of any secured funding transaction (other than a collateralized deposit), secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date where the [BANK] will provide an asset that is eligible HQLA and the counterparty will provide an asset that will be eligible HQLA.

(3) *Adjusted level 2B liquid asset amount.* A [BANK]'s adjusted level 2B liquid asset amount equals 50 percent of the fair value of all level 2B liquid assets that would be eligible HQLA and would be held by the [BANK] upon the unwind of any secured funding transaction (other than a collateralized deposit), secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date where the [BANK] will provide an asset that is eligible HQLA and the counterparty will provide an asset that will be eligible HQLA.

(g) *Calculation of the adjusted excess HQLA amount.* As of the calculation date, the adjusted excess HQLA amount equals:

(1) The adjusted level 2 cap excess amount; *plus*

(2) The adjusted level 2B cap excess amount.

(h) *Calculation of the adjusted level 2 cap excess amount.* As of the calculation date, the adjusted level 2 cap excess amount equals the greater of:

(1) The adjusted level 2A liquid asset amount plus the adjusted level 2B liquid asset amount minus 0.6667 times the adjusted level 1 liquid asset amount; and

(2) 0.

(i) *Calculation of the adjusted level 2B excess amount.* As of the calculation date, the adjusted level 2B excess liquid asset amount equals the greater of:

(1) The adjusted level 2B liquid asset amount minus the adjusted level 2 cap excess amount minus 0.1765 times the sum of the adjusted level 1 liquid asset amount and the adjusted level 2A liquid asset amount; and

(2) 0.

§ __.22 Requirements for eligible high-quality liquid assets.

(a) *Operational requirements for eligible HQLA.* With respect to each asset that is eligible for inclusion in a [BANK]'s HQLA amount, a [BANK] must meet all of the following operational requirements:

(1) The [BANK] must demonstrate the operational capability to monetize the HQLA by:

(i) Implementing and maintaining appropriate procedures and systems to monetize any HQLA at any time in accordance with relevant standard settlement periods and procedures; and

(ii) Periodically monetizing a sample of HQLA that reasonably reflects the composition of the [BANK]'s eligible HQLA, including with respect to asset type, maturity, and counterparty characteristics;

(2) The [BANK] must implement policies that require eligible HQLA to be under the control of the management function in the [BANK] that is charged with managing liquidity risk, and this management function must evidence its control over the HQLA by either:

(i) Segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity; or

(ii) Demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk management strategy of the [BANK];

(3) The fair value of the eligible HQLA must be reduced by the outflow amount that would result from the termination of any specific transaction hedging eligible HQLA;

(4) The [BANK] must implement and maintain policies and procedures that determine the composition of its eligible HQLA on each calculation date, by:

(i) Identifying its eligible HQLA by legal entity, geographical location, currency, account, or other relevant identifying factors as of the calculation date;

(ii) Determining that eligible HQLA meet the criteria set forth in this section; and

(iii) Ensuring the appropriate diversification of the eligible HQLA by asset type, counterparty, issuer, currency, borrowing capacity, or other factors associated with the liquidity risk of the assets; and

(5) The [BANK] must have a documented methodology that results in a consistent treatment for determining that the [BANK]'s eligible HQLA meet the requirements set forth in this section.

(b) *Generally applicable criteria for eligible HQLA.* A [BANK]'s eligible HQLA must meet all of the following criteria:

(1) The assets are unencumbered in accordance with the following criteria:

(i) The assets are free of legal, regulatory, contractual, or other restrictions on the ability of the [BANK] to monetize the assets; and

(ii) The assets are not pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, but the assets may be considered unencumbered if the assets are pledged to a central bank or a U.S. government-sponsored enterprise where:

(A) Potential credit secured by the assets is not currently extended to the [BANK] or its consolidated subsidiaries; and

(B) The pledged assets are not required to support access to the payment services of a central bank;

(2) The asset is not:

(i) A client pool security held in a segregated account; or

(ii) An asset received from a secured funding transaction involving client pool securities that were held in a segregated account;

(3) For eligible HQLA held in a legal entity that is a U.S. consolidated subsidiary of a [BANK]:

(i) If the U.S. consolidated subsidiary is subject to a minimum liquidity standard under this part, the [BANK] may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of net cash outflows of the U.S. consolidated subsidiary calculated by the U.S. consolidated subsidiary for its own minimum liquidity standard under this part; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223); and

(ii) If the U.S. consolidated subsidiary is not subject to a minimum liquidity standard under this part, the [BANK] may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of the net cash outflows of the U.S. consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the [BANK] for the [BANK]'s minimum liquidity standard under this part; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223);

(4) For HQLA held by a consolidated subsidiary of the [BANK] that is organized under the laws of a foreign jurisdiction, the [BANK] may include the eligible HQLA of the consolidated subsidiary organized under the laws of a foreign jurisdiction in its HQLA amount up to:

(i) The amount of net cash outflows of the consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the [BANK] for the [BANK]'s minimum liquidity standard under this part; *plus*

(ii) Any additional amount of assets that are available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions;

(5) The [BANK] must not include as eligible HQLA any assets, or HQLA resulting from transactions involving an asset that the [BANK] received with rehypothecation rights, if the counterparty that provided the asset or the beneficial owner of the asset has a contractual right to withdraw the assets without an obligation to pay more than de minimis remuneration at any time during the 30 calendar days following the calculation date; and

(6) The [BANK] has not designated the assets to cover operational costs.

(c) *Maintenance of U.S. eligible HQLA.* A [BANK] is generally expected to maintain as eligible HQLA an amount and type of eligible HQLA in the United States that is sufficient to meet its total net cash outflow amount in the United States under subpart D of this part.

Subpart D—Total Net Cash Outflow

§ __.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a [BANK]'s total net cash outflow amount equals:

(1) The sum of the outflow amounts calculated under § __.32(a) through (l); *minus*

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § __.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; *plus*

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

(b) *Calculation of maturity mismatch add-on.* (1) For purposes of this section:

(i) The net cumulative maturity outflow amount for any of the 30 calendar days following the calculation date is equal to the sum of the outflow amounts for instruments or transactions identified in § __.32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date prior to or on that calendar day *minus* the sum of the inflow amounts for instruments or transactions identified in § __.33(c), (d), (e), and (f) that have a maturity date prior to or on that calendar day.

(ii) The net day 30 cumulative maturity outflow amount is equal to, as of the 30th day following the calculation date, the sum of the outflow amounts for instruments or transactions identified in § __.32(g), (h)(1), (h)(2), (h)(5), (j), (k), and (l) that have a maturity date 30 calendar days or less from the calculation date *minus* the sum of the inflow amounts for instruments or transactions identified in § __.33(c), (d), (e), and (f) that have a maturity date 30 calendar days or less from the calculation date.

(2) As of the calculation date, a [BANK]'s maturity mismatch add-on is equal to:

(i) The greater of:

(A) 0; and

(B) The largest net cumulative maturity outflow amount as calculated under paragraph (b)(1)(i) of this section for any of the 30 calendar days following the calculation date; *minus*

(ii) The greater of:

(A) 0; and

(B) The net day 30 cumulative maturity outflow amount as calculated under paragraph (b)(1)(ii) of this section.

(3) Other than the transactions identified in § __.32(h)(2), (h)(5), or (j) or § __.33(d) or (f), the maturity of which is determined under § __.31(a), transactions that have no maturity date are not included in the calculation of the maturity mismatch add-on.

§ __.31 Determining maturity.

(a) For purposes of calculating its liquidity coverage ratio and the components thereof under this subpart, a [BANK] shall assume an asset or transaction matures:

(1) With respect to an instrument or transaction subject to § __.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction as follows:

(i) If an investor or funds provider has an option that would reduce the maturity, the [BANK] must assume that the investor or funds provider will

exercise the option at the earliest possible date;

(ii) If an investor or funds provider has an option that would extend the maturity, the [BANK] must assume that the investor or funds provider will not exercise the option to extend the maturity;

(iii) If the [BANK] has an option that would reduce the maturity of an obligation, the [BANK] must assume that the [BANK] will exercise the option at the earliest possible date, except if either of the following criteria are satisfied, in which case the maturity of the obligation for purposes of this part will be the original maturity date at issuance:

(A) The original maturity of the obligation is greater than one year and the option does not go into effect for a period of 180 days following the issuance of the instrument; or

(B) The counterparty is a sovereign entity, a U.S. government-sponsored enterprise, or a public sector entity.

(iv) If the [BANK] has an option that would extend the maturity of an obligation it issued, the [BANK] must assume the [BANK] will not exercise that option to extend the maturity; and

(v) If an option is subject to a contractually defined notice period, the [BANK] must determine the earliest possible contractual maturity date regardless of the notice period.

(2) With respect to an instrument or transaction subject to § __.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction as follows:

(i) If the borrower has an option that would extend the maturity, the [BANK] must assume that the borrower will exercise the option to extend the maturity to the latest possible date;

(ii) If the borrower has an option that would reduce the maturity, the [BANK] must assume that the borrower will not exercise the option to reduce the maturity;

(iii) If the [BANK] has an option that would reduce the maturity of an instrument or transaction, the [BANK] must assume the [BANK] will not exercise the option to reduce the maturity;

(iv) If the [BANK] has an option that would extend the maturity of an instrument or transaction, the [BANK] must assume the [BANK] will exercise the option to extend the maturity to the latest possible date; and

(v) If an option is subject to a contractually defined notice period, the [BANK] must determine the latest possible contractual maturity date based on the borrower using the entire notice period.

(3) With respect to a transaction subject to § __.33(f)(1)(iii) through (vii) (secured lending transactions) or § __.33(f)(2)(ii) through (x) (asset exchanges), to the extent the transaction is secured by collateral that has been pledged in connection with either a secured funding transaction or asset exchange that has a remaining maturity of 30 calendar days or less as of the calculation date, the maturity date is the later of the maturity date determined under paragraph (a)(2) of this section for the secured lending transaction or asset exchange or the maturity date determined under paragraph (a)(1) of this section for the secured funding transaction or asset exchange for which the collateral has been pledged.

(4) With respect to a transaction that has no maturity date, is not an operational deposit, and is subject to the provisions of § __.32(h)(2), (h)(5), (j), or (k) or § __.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has no maturity date and is subject to the provisions of § __.32 must be considered to mature within 30 calendar days of the calculation date.

(5) With respect to a transaction subject to the provisions of § __.33(g), on the date of the next scheduled calculation of the amount required under applicable legal requirements for the protection of customer assets with respect to each broker-dealer segregated account, in accordance with the [BANK]'s normal frequency of recalculating such requirements.

(b) [Reserved]

§ __.32 Outflow amounts.

(a) *Retail funding outflow amount.* A [BANK]'s retail funding outflow amount as of the calculation date includes (regardless of maturity or collateralization):

(1) 3 percent of all stable retail deposits held at the [BANK];

(2) 10 percent of all other retail deposits held at the [BANK];

(3) 20 percent of all deposits placed at the [BANK] by a third party on behalf of a retail customer or counterparty that are not brokered deposits, where the retail customer or counterparty owns the account and the entire amount is covered by deposit insurance;

(4) 40 percent of all deposits placed at the [BANK] by a third party on behalf of a retail customer or counterparty that are not brokered deposits, where the retail customer or counterparty owns the account and where less than the entire amount is covered by deposit insurance; and

(5) 40 percent of all funding from a retail customer or counterparty that is not:

(i) A retail deposit;

(ii) A brokered deposit provided by a retail customer or counterparty; or

(iii) A debt instrument issued by the [BANK] that is owned by a retail customer or counterparty (see paragraph (h)(2)(ii) of this section).

(b) *Structured transaction outflow amount.* If the [BANK] is a sponsor of a structured transaction where the issuing entity is not consolidated on the [BANK]'s balance sheet under GAAP, the structured transaction outflow amount for each such structured transaction as of the calculation date is the greater of:

(1) 100 percent of the amount of all debt obligations of the issuing entity that mature 30 calendar days or less from such calculation date and all commitments made by the issuing entity to purchase assets within 30 calendar days or less from such calculation date; and

(2) The maximum contractual amount of funding the [BANK] may be required to provide to the issuing entity 30 calendar days or less from such calculation date through a liquidity facility, a return or repurchase of assets from the issuing entity, or other funding agreement.

(c) *Net derivative cash outflow amount.* The net derivative cash outflow amount as of the calculation date is the sum of the net derivative cash outflow amount for each counterparty. The net derivative cash outflow amount does not include forward sales of mortgage loans and any derivatives that are mortgage commitments subject to paragraph (d) of this section. The net derivative cash outflow amount for a counterparty is the sum of:

(1) The amount, if greater than zero, of contractual payments and collateral that the [BANK] will make or deliver to the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (c)(2) of this section, less the contractual payments and collateral that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (c)(2) of this section, provided that the derivative transactions are subject to a qualifying master netting agreement; and

(2) The amount, if greater than zero, of contractual principal payments that the [BANK] will make to the

counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day, less the contractual principal payments that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day.

(d) *Mortgage commitment outflow amount.* The mortgage commitment outflow amount as of a calculation date is 10 percent of the amount of funds the [BANK] has contractually committed for its own origination of retail mortgages that can be drawn upon 30 calendar days or less from such calculation date.

(e) *Commitment outflow amount.* (1) A [BANK]'s commitment outflow amount as of the calculation date includes:

(i) Zero percent of the undrawn amount of all committed credit and liquidity facilities extended by a [BANK] that is a depository institution to an affiliated depository institution that is subject to a minimum liquidity standard under this part;

(ii) 5 percent of the undrawn amount of all committed credit and liquidity facilities extended by the [BANK] to retail customers or counterparties;

(iii) 10 percent of the undrawn amount of all committed credit facilities extended by the [BANK] to a wholesale customer or counterparty that is not a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of such wholesale customer or counterparty;

(iv) 30 percent of the undrawn amount of all committed liquidity facilities extended by the [BANK] to a wholesale customer or counterparty that is not a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of such wholesale customer or counterparty;

(v) 50 percent of the undrawn amount of all committed credit and liquidity facilities extended by the [BANK] to depository institutions, depository institution holding companies, and foreign banks, but excluding commitments described in paragraph (e)(1)(i) of this section;

(vi) 40 percent of the undrawn amount of all committed credit facilities extended by the [BANK] to a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of a financial sector entity, but excluding other commitments described in paragraph (e)(1)(i) or (v) of this section;

(vii) 100 percent of the undrawn amount of all committed liquidity facilities extended by the [BANK] to a financial sector entity or a consolidated subsidiary thereof, including a special purpose entity (other than those described in paragraph (e)(1)(viii) of this section) that is a consolidated subsidiary of a financial sector entity, but excluding other commitments described in paragraph (e)(1)(i) or (v) of this section and liquidity facilities included in paragraph (b)(2) of this section;

(viii) 100 percent of the undrawn amount of all committed credit and liquidity facilities extended to a special purpose entity that issues or has issued commercial paper or securities (other than equity securities issued to a company of which the special purpose entity is a consolidated subsidiary) to finance its purchases or operations, and excluding liquidity facilities included in paragraph (b)(2) of this section; and

(ix) 100 percent of the undrawn amount of all other committed credit or liquidity facilities extended by the [BANK].

(2) For the purposes of this paragraph (e), the undrawn amount of a committed credit facility or committed liquidity facility is the entire unused amount of the facility that could be drawn upon within 30 calendar days of the calculation date under the governing agreement, less the amount of level 1 liquid assets and the amount of level 2A liquid assets securing the facility.

(3) For the purposes of this paragraph (e), the amount of level 1 liquid assets and level 2A liquid assets securing a committed credit or liquidity facility is the fair value of level 1 liquid assets and 85 percent of the fair value of level 2A liquid assets that are required to be pledged as collateral by the counterparty to secure the facility, provided that:

(i) The assets pledged upon a draw on the facility would be eligible HQLA; and

(ii) The [BANK] has not included the assets as eligible HQLA under subpart C of this part as of the calculation date.

(f) *Collateral outflow amount.* The collateral outflow amount as of the calculation date includes:

(1) *Changes in financial condition.* 100 percent of all additional amounts of collateral the [BANK] could be contractually required to pledge or to fund under the terms of any transaction as a result of a change in the [BANK]'s financial condition;

(2) *Derivative collateral potential valuation changes.* 20 percent of the fair value of any collateral securing a derivative transaction pledged to a counterparty by the [BANK] that is not a level 1 liquid asset;

(3) *Potential derivative valuation changes.* The absolute value of the largest 30-consecutive calendar day cumulative net mark-to-market collateral outflow or inflow realized during the preceding 24 months resulting from derivative transaction valuation changes;

(4) *Excess collateral.* 100 percent of the fair value of collateral that:

(i) The [BANK] could be required by contract to return to a counterparty because the collateral pledged to the [BANK] exceeds the current collateral requirement of the counterparty under the governing contract;

(ii) Is not segregated from the [BANK]'s other assets such that it cannot be rehypothecated; and

(iii) Is not already excluded as eligible HQLA by the [BANK] under § __ .22(b)(5);

(5) *Contractually required collateral.* 100 percent of the fair value of collateral that the [BANK] is contractually required to pledge to a counterparty and, as of such calculation date, the [BANK] has not yet pledged;

(6) *Collateral substitution.* (i) Zero percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 1 liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with other assets that qualify as level 1 liquid assets, without the consent of the [BANK];

(ii) 15 percent of the fair value of collateral pledged to the [BANK] by a counterparty, where the collateral qualifies as level 1 liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that qualify as level 2A liquid assets, without the consent of the [BANK];

(iii) 50 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 1 liquid assets and eligible HQLA and where under, the contract governing the transaction, the counterparty may replace the pledged

collateral with assets that qualify as level 2B liquid assets, without the consent of the [BANK];

(iv) 100 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 1 liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that do not qualify as HQLA, without the consent of the [BANK];

(v) Zero percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2A liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that qualify as level 1 or level 2A liquid assets, without the consent of the [BANK];

(vi) 35 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2A liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that qualify as level 2B liquid assets, without the consent of the [BANK];

(vii) 85 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2A liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that do not qualify as HQLA, without the consent of the [BANK];

(viii) Zero percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2B liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with other assets that qualify as HQLA, without the consent of the [BANK]; and

(ix) 50 percent of the fair value of collateral pledged to the [BANK] by a counterparty where the collateral qualifies as level 2B liquid assets and eligible HQLA and where, under the contract governing the transaction, the counterparty may replace the pledged collateral with assets that do not qualify as HQLA, without the consent of the [BANK].

(g) *Brokered deposit outflow amount for retail customers or counterparties.* The brokered deposit outflow amount for retail customers or counterparties as of the calculation date includes:

(1) 100 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which mature 30 calendar days or less from the calculation date;

(2) 10 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which mature later than 30 calendar days from the calculation date;

(3) 20 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which are held in a transactional account with no contractual maturity date, where the entire amount is covered by deposit insurance;

(4) 40 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(5) through (9) of this section and which are held in a transactional account with no contractual maturity date, where less than the entire amount is covered by deposit insurance;

(5) 10 percent of all reciprocal brokered deposits at the [BANK] provided by a retail customer or counterparty, where the entire amount is covered by deposit insurance;

(6) 25 percent of all reciprocal brokered deposits at the [BANK] provided by a retail customer or counterparty, where less than the entire amount is covered by deposit insurance;

(7) 10 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty:

(i) That are deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary; and

(ii) Where the entire amount of the deposits is covered by deposit insurance;

(8) 25 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty:

(i) That are not deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary; and

(ii) Where the entire amount of the deposits is covered by deposit insurance; and

(9) 40 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty where less than the entire amount of the deposit balance is covered by deposit insurance.

(h) *Unsecured wholesale funding outflow amount.* A [BANK]'s unsecured wholesale funding outflow amount, for all transactions that mature within 30 calendar days or less of the calculation date, as of the calculation date includes:

(1) For unsecured wholesale funding that is not an operational deposit and is not provided by a financial sector entity or consolidated subsidiary of a financial sector entity:

(i) 20 percent of all such funding, where the entire amount is covered by deposit insurance and the funding is not a brokered deposit;

(ii) 40 percent of all such funding, where:

(A) Less than the entire amount is covered by deposit insurance; or

(B) The funding is a brokered deposit;

(2) 100 percent of all unsecured wholesale funding that is not an operational deposit and is not included in paragraph (h)(1) of this section, including:

(i) Funding provided by a company that is a consolidated subsidiary of the same top-tier company of which the [BANK] is a consolidated subsidiary; and

(ii) Debt instruments issued by the [BANK], including such instruments owned by retail customers or counterparties;

(3) 5 percent of all operational deposits, other than operational deposits that are held in escrow accounts, where the entire deposit amount is covered by deposit insurance;

(4) 25 percent of all operational deposits not included in paragraph (h)(3) of this section; and

(5) 100 percent of all unsecured wholesale funding that is not otherwise described in this paragraph (h).

(i) *Debt security buyback outflow amount.* A [BANK]'s debt security buyback outflow amount for debt securities issued by the [BANK] that mature more than 30 calendar days after the calculation date and for which the [BANK] or a consolidated subsidiary of the [BANK] is the primary market maker in such debt securities includes:

(1) 3 percent of all such debt securities that are not structured securities; and

(2) 5 percent of all such debt securities that are structured securities.

(j) *Secured funding and asset exchange outflow amount.* (1) A

[BANK]'s secured funding outflow amount, for all transactions that mature within 30 calendar days or less of the calculation date, as of the calculation date includes:

(i) Zero percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 1 liquid assets;

(ii) 15 percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 2A liquid assets;

(iii) 25 percent of all funds the [BANK] must pay pursuant to secured funding transactions with sovereign entities, multilateral development banks, or U.S. government-sponsored enterprises that are assigned a risk weight of 20 percent under subpart D of [AGENCY CAPITAL REGULATION], to the extent that the funds are not secured by level 1 or level 2A liquid assets;

(iv) 50 percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 2B liquid assets;

(v) 50 percent of all funds received from secured funding transactions that are customer short positions where the customer short positions are covered by other customers' collateral and the collateral does not consist of HQLA; and

(vi) 100 percent of all other funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by assets that are not HQLA.

(2) If an outflow rate specified in paragraph (j)(1) of this section for a secured funding transaction is greater than the outflow rate that the [BANK] is required to apply under paragraph (h) of this section to an unsecured wholesale funding transaction that is not an operational deposit with the same counterparty, the [BANK] may apply to the secured funding transaction the outflow rate that applies to an unsecured wholesale funding transaction that is not an operational deposit with that counterparty, except in the case of:

(i) Secured funding transactions that are secured by collateral that was received by the [BANK] under a secured lending transaction or asset exchange, in which case the [BANK] must apply the outflow rate specified in paragraph (j)(1) of this section for the secured funding transaction; and

(ii) Collateralized deposits that are operational deposits, in which case the [BANK] may apply to the operational deposit amount, as calculated in accordance with § __.4(b), the operational deposit outflow rate specified in paragraph (h)(3) or (4) of this section, as applicable, if such outflow rate is lower than the outflow rate specified in paragraph (j)(1) of this section.

(3) A [BANK]'s asset exchange outflow amount, for all transactions that mature within 30 calendar days or less of the calculation date, as of the calculation date includes:

(i) Zero percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 1 liquid assets from the asset exchange counterparty;

(ii) 15 percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 2A liquid assets from the asset exchange counterparty;

(iii) 50 percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 2B liquid assets from the asset exchange counterparty;

(iv) 100 percent of the fair value of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(v) Zero percent of the fair value of the level 2A liquid assets that [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where [BANK] will receive level 1 or level 2A liquid assets from the asset exchange counterparty;

(vi) 35 percent of the fair value of the level 2A liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive level 2B liquid assets from the asset exchange counterparty;

(vii) 85 percent of the fair value of the level 2A liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(viii) Zero percent of the fair value of the level 2B liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive HQLA from the asset exchange counterparty; and

(ix) 50 percent of the fair value of the level 2B liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges, not described in paragraphs (j)(3)(x) through (xiii) of this section, where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(x) Zero percent of the fair value of the level 1 liquid assets the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days;

(xi) 15 percent of the fair value of the level 2A liquid assets the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days;

(xii) 50 percent of the fair value of the level 2B liquid assets the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days; and

(xiii) 100 percent of the fair value of the non-HQLA the [BANK] will receive from a counterparty pursuant to an asset exchange where the [BANK] has rehypothecated the assets posted by the asset exchange counterparty, and, as of the calculation date, the assets will not be returned to the [BANK] within 30 calendar days.

(k) *Foreign central bank borrowing outflow amount.* A [BANK]'s foreign central bank borrowing outflow amount is, in a foreign jurisdiction where the [BANK] has borrowed from the jurisdiction's central bank, the outflow amount assigned to borrowings from central banks in a minimum liquidity standard established in that jurisdiction. If the foreign jurisdiction has not specified a central bank borrowing outflow amount in a minimum liquidity standard, the foreign central bank borrowing outflow amount must be calculated in accordance with paragraph (j) of this section.

(l) *Other contractual outflow amount.* A [BANK]'s other contractual outflow amount is 100 percent of funding or amounts, with the exception of

operating expenses of the [BANK] (such as rents, salaries, utilities, and other similar payments), payable by the [BANK] to counterparties under legally binding agreements that are not otherwise specified in this section.

(m) *Excluded amounts for intragroup transactions.* The outflow amounts set forth in this section do not include amounts arising out of transactions between:

(1) The [BANK] and a consolidated subsidiary of the [BANK]; or

(2) A consolidated subsidiary of the [BANK] and another consolidated subsidiary of the [BANK].

§ __.33 Inflow amounts.

(a) The inflows in paragraphs (b) through (g) of this section do not include:

(1) Amounts the [BANK] holds in operational deposits at other regulated financial companies;

(2) Amounts the [BANK] expects, or is contractually entitled to receive, 30 calendar days or less from the calculation date due to forward sales of mortgage loans and any derivatives that are mortgage commitments subject to § __.32(d);

(3) The amount of any credit or liquidity facilities extended to the [BANK];

(4) The amount of any asset that is eligible HQLA and any amounts payable to the [BANK] with respect to that asset;

(5) Any amounts payable to the [BANK] from an obligation of a customer or counterparty that is a nonperforming asset as of the calculation date or that the [BANK] has reason to expect will become a nonperforming exposure 30 calendar days or less from the calculation date; and

(6) Amounts payable to the [BANK] with respect to any transaction that has no contractual maturity date or that matures after 30 calendar days of the calculation date (as determined by § __ .31).

(b) *Net derivative cash inflow amount.* The net derivative cash inflow amount as of the calculation date is the sum of the net derivative cash inflow amount for each counterparty. The net derivative cash inflow amount does not include amounts excluded from inflows under paragraph (a)(2) of this section. The net derivative cash inflow amount for a counterparty is the sum of:

(1) The amount, if greater than zero, of contractual payments and collateral that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (b)(2) of this section, less the contractual payments and collateral that the [BANK] will make or deliver to the counterparty 30 calendar days or less from the calculation date under derivative transactions other than transactions described in paragraph (b)(2) of this section, provided that the derivative transactions are subject to a qualifying master netting agreement; and

(2) The amount, if greater than zero, of contractual principal payments that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day, less the contractual principal payments that the [BANK] will make to the counterparty 30 calendar days or less from the calculation date under foreign currency exchange derivative transactions that result in the full exchange of contractual cash principal payments in different currencies within the same business day.

(c) *Retail cash inflow amount.* The retail cash inflow amount as of the calculation date includes 50 percent of all payments contractually payable to the [BANK] from retail customers or counterparties.

(d) *Unsecured wholesale cash inflow amount.* The unsecured wholesale cash inflow amount as of the calculation date includes:

(1) 100 percent of all payments contractually payable to the [BANK] from financial sector entities, or from a consolidated subsidiary thereof, or central banks; and

(2) 50 percent of all payments contractually payable to the [BANK] from wholesale customers or counterparties that are not financial sector entities or consolidated subsidiaries thereof, provided that, with respect to revolving credit facilities, the amount of the existing loan is not included in the unsecured wholesale cash inflow amount and the remaining undrawn balance is included in the outflow amount under § __.32(e)(1).

(e) *Securities cash inflow amount.* The securities cash inflow amount as of the calculation date includes 100 percent of all contractual payments due to the [BANK] on securities it owns that are not eligible HQLA.

(f) *Secured lending and asset exchange cash inflow amount.* (1) A [BANK]'s secured lending cash inflow amount as of the calculation date includes:

(i) Zero percent of all contractual payments due to the [BANK] pursuant to secured lending transactions, including margin loans extended to customers, to the extent that the payments are secured by collateral that has been rehypothecated in a transaction and, as of the calculation date, will not be returned to the [BANK] within 30 calendar days;

(ii) 100 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraph (f)(1)(vii) of this section, to the extent that the payments are secured by assets that are not eligible HQLA, but are still held by the [BANK] and are available for immediate return to the counterparty at any time;

(iii) Zero percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i) or (ii) of this section, to the extent that the payments are secured by level 1 liquid assets;

(iv) 15 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i) or (ii) of this section, to the extent that the payments are secured by level 2A liquid assets;

(v) 50 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i) or (ii) of this section, to the extent that the payments are secured by level 2B liquid assets;

(vi) 100 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions not described in paragraphs (f)(1)(i), (ii), or (vii) of this section, to the extent that the payments are secured by assets that are not HQLA; and

(vii) 50 percent of all contractual payments due to the [BANK] pursuant to collateralized margin loans extended to customers, not described in paragraph (f)(1)(i) of this section, provided that the loans are secured by assets that are not HQLA.

(2) A [BANK]'s asset exchange inflow amount as of the calculation date includes:

(i) Zero percent of the fair value of assets the [BANK] will receive from a counterparty pursuant to asset exchanges, to the extent that the asset received by the [BANK] from the counterparty has been rehypothecated in a transaction and, as of the calculation date, will not be returned to the [BANK] within 30 calendar days;

(ii) Zero percent of the fair value of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where

the [BANK] must post level 1 liquid assets to the asset exchange counterparty;

(iii) 15 percent of the fair value of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 2A liquid assets to the asset exchange counterparty;

(iv) 50 percent of the fair value of level 1 liquid assets the [BANK] will receive from counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 2B liquid assets to the asset exchange counterparty;

(v) 100 percent of the fair value of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are not HQLA to the asset exchange counterparty;

(vi) Zero percent of the fair value of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 1 or level 2A liquid assets to the asset exchange counterparty;

(vii) 35 percent of the fair value of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post level 2B liquid assets to the asset exchange counterparty;

(viii) 85 percent of the fair value of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are not HQLA to the asset exchange counterparty;

(ix) Zero percent of the fair value of level 2B liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are HQLA to the asset exchange counterparty; and

(x) 50 percent of the fair value of level 2B liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges, not described in paragraph (f)(2)(i) of this section, where the [BANK] must post assets that are not HQLA to the asset exchange counterparty.

(g) *Broker-dealer segregated account inflow amount.* A [BANK]'s broker-dealer segregated account inflow amount is the fair value of all assets released from broker-dealer segregated accounts maintained in accordance with statutory or regulatory requirements for the protection of customer trading assets, provided that the calculation of the broker-dealer segregated account inflow amount, for any transaction affecting the calculation of the segregated balance (as required by applicable law), shall be consistent with the following:

(1) In calculating the broker-dealer segregated account inflow amount, the [BANK] must calculate the fair value of the required balance of the customer reserve account as of 30 calendar days from the calculation date by assuming that customer cash and collateral positions have changed consistent with the outflow and inflow calculations required under §§ __.32 and __.33.

(2) If the fair value of the required balance of the customer reserve account as of 30 calendar days from the calculation date, as calculated consistent with the outflow and inflow calculations required under §§ __.32 and __.33, is less than the fair value of the required balance as of the calculation date, the difference is the segregated account inflow amount.

(3) If the fair value of the required balance of the customer reserve account as of 30 calendar days from the calculation date, as calculated consistent with the outflow and inflow calculations required under §§ __.32 and __.33, is more than the fair value of the required balance as of the calculation date, the segregated account inflow amount is zero.

(h) *Other cash inflow amounts.* A [BANK]'s inflow amount as of the calculation date includes zero percent of other cash inflow amounts not included in paragraphs (b) through (g) of this section.

(i) *Excluded amounts for intragroup transactions.* The inflow amounts set forth in this section do not include amounts arising out of transactions between:

(1) The [BANK] and a consolidated subsidiary of the [BANK]; or

(2) A consolidated subsidiary of the [BANK] and another consolidated subsidiary of the [BANK].

Subpart E—Liquidity Coverage Shortfall

§ __.40 Liquidity coverage shortfall: Supervisory framework.

(a) *Notification requirements.* A [BANK] must notify the [AGENCY] on any business day when its liquidity coverage ratio is calculated to be less than the minimum requirement in § __ .10.

(b) *Liquidity plan.* (1) For the period during which a [BANK] must calculate a liquidity coverage ratio on the last business day of each applicable calendar month under subpart F of this part, if the [BANK]'s liquidity coverage ratio is below the minimum requirement in § __.10 for any calculation date that is the last business day of the applicable calendar month, or if the [AGENCY] has determined that the [BANK] is otherwise materially noncompliant with the requirements of this part, the [BANK] must promptly consult with the [AGENCY] to determine whether the [BANK] must provide to the [AGENCY] a plan for achieving compliance with the minimum liquidity requirement in § __.10 and all other requirements of this part.

(2) For the period during which a [BANK] must calculate a liquidity coverage ratio each business day under subpart F of this part, if a [BANK]'s liquidity coverage ratio is below the minimum requirement in § __.10 for three consecutive business days, or if the [AGENCY] has determined that the [BANK] is otherwise materially noncompliant with the requirements of this part, the [BANK] must promptly provide to the [AGENCY] a plan for achieving compliance with the minimum liquidity requirement in § __ .10 and all other requirements of this part.

(3) The plan must include, as applicable:

(i) An assessment of the [BANK]'s liquidity position;

(ii) The actions the [BANK] has taken and will take to achieve full compliance with this part, including:

(A) A plan for adjusting the [BANK]'s risk profile, risk management, and funding sources in order to achieve full compliance with this part; and

(B) A plan for remediating any operational or management issues that contributed to noncompliance with this part;

(iii) An estimated time frame for achieving full compliance with this part; and

(iv) A commitment to report to the [AGENCY] no less than weekly on progress to achieve compliance in accordance with the plan until full compliance with this part is achieved.

(c) *Supervisory and enforcement actions.* The [AGENCY] may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum liquidity standard and other requirements of this part.

Subpart F—Transitions

§ __.50 Transitions.

(a) Covered depository institution holding companies with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody. For any depository institution holding company that has total consolidated assets equal to $700 billion or more, as reported on the company's most recent Consolidated Financial Statements for Holding Companies (FR Y–9C), or $10 trillion or more in assets under custody, as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y–15), and any depository institution that is a consolidated subsidiary of such depository institution holding company that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income:

(1) Beginning January 1, 2015, through June 30, 2015, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, in accordance with this part, that is equal to or greater than 0.80.

(2) Beginning July 1, 2015 through December 31, 2015, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.80.

(3) Beginning January 1, 2016, through December 31, 2016, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.90.

(4) On January 1, 2017, and thereafter, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date that is equal to or greater than 1.0.

(b) *Other [BANK]s.* For any [BANK] subject to a minimum liquidity standard under this part not described in paragraph (a) of this section:

(1) Beginning January 1, 2015, through December 31, 2015, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, in accordance with this part, that is equal to or greater than 0.80.

(2) Beginning January 1, 2016, through June 30, 2016, the [BANK] must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, in accordance with this part, that is equal to or greater than 0.90.

(3) Beginning July 1, 2016, through December 31, 2016, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.90.

(4) On January 1, 2017, and thereafter, the [BANK] must calculate and maintain a liquidity coverage ratio on each calculation date that is equal to or greater than 1.0.

[End of Common Rule Text]

List of Subjects

12 CFR Part 50

Administrative practice and procedure; Banks, banking; Liquidity; Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 249

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Liquidity; Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure; Banks, banking; Federal Deposit Insurance Corporation, FDIC; Liquidity; Reporting and recordkeeping requirements.

Adoption of Common Rule

The adoption of the common rules by the agencies, as modified by the agency-specific text, is set forth below:

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble, the OCC adds the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 50 of chapter I of title 12 of the Code of Federal Regulations and further amends part 50 as follows:

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 1. The authority citation for part 50 is added to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, and 1462 *et seq.*

■ 2. Part 50 is amended by:

■ a. Removing ''[AGENCY]'' and adding ''OCC'' in its place, wherever it appears;

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''(12 CFR part 3)'' in its place, wherever it appears;

■ c. Removing ''[BANK]'' and adding ''national bank or Federal savings association'' in its place, wherever it appears;

■ d. Removing ''[BANK]s'' and adding ''national banks and Federal savings associations'' in its place, wherever it appears;

■ e. Removing ''[BANK]'s'' and adding ''national bank's or Federal savings association's'' in its place, wherever it appears;

■ f. Removing ''[REGULATORY REPORT]'' and adding ''Consolidated Reports of Condition and Income'' in its place, wherever it appears; and

■ g. Removing ''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and adding ''12 CFR 3.404'' in its place, wherever it appears.

■ 3. Section 50.1 is amended by:

■ a. Revising paragraph (b)(1)(iii);

■ b. Removing the word ''or'' at the end of paragraph (b)(3)(i);

■ c. Removing the period at the end of paragraph (b)(3)(ii) and adding ''; or'' in its place; and

■ d. Adding paragraph (b)(3)(iii).

The addition and revision read as follows:

§ 50.1 Purpose and applicability.

* * * * *

(b) * * *

(1) * * *

(iii) It is a depository institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income; or

(C) A covered depository institution holding company or depository institution that has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in

another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

* * * * *

(3) * * *

(iii) A Federal branch or agency as defined by 12 CFR 28.11.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board adds the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 249 of chapter II of title 12 of the Code of Federal Regulations and further amends part 249 as follows:

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 4. The authority citation for part 249 is added to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 5. Revise the heading for part 249 as set forth above.

■ 6. Part 249 is amended by:

■ a. Removing ''[AGENCY]'' and adding ''Board'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''Regulation Q (12 CFR part 217)'' in its place wherever it appears.

■ c. Removing ''[BANK]'' and adding ''Board-regulated institution'' in its place wherever it appears.

■ d. Removing ''[BANK]s'' and adding ''Board-regulated institutions'' in its place wherever it appears.

■ e. Removing ''[BANK]'s'' and adding ''Board-regulated institution's'' in its place wherever it appears.

■ f. Removing''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and adding ''12 CFR 263.202'' in its place wherever it appears.

■ 7. Amend § 249.1 by:

■ a. Revising paragraph (b)(1)(i);

■ b. Removing the word ''or'' at the end of paragraph (b)(1)(iii);

■ c. Redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(vi);

■ d. Adding new paragraphs (b)(1)(iv) and (v);

■ e. Revising paragraphs (b)(2)(iii) and (5); and

■ f. Adding new paragraph (c).

The additions and revisions read as follows:

§ 249.1 Purpose and applicability.

* * * * *

(b) * * *

(1) * * *

(i) It has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end (as applicable):

(A) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the Board-regulated institution is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C; or

(B) Consolidated Report of Condition and Income (Call Report);

* * * * *

(iv) It is a covered nonbank company;

(v) It is a covered depository institution holding company that meets the criteria in § 249.60(a) but does not meet the criteria in paragraphs (b)(1)(i) or (ii) of this section, and is subject to complying with the requirements of this part in accordance with subpart G of this part; or

* * * * *

(2) * * *

(iii) A Board-regulated institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(vi) of this section after September 30, 2014, must comply with the requirements of this part subject to a transition period specified by the Board.

* * * * *

(5) In making a determination under paragraphs (b)(1)(vi) or (4) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

(c) *Covered nonbank companies.* The Board will establish a minimum liquidity standard for a designated company under this part by rule or order. In establishing such standard, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act and may tailor the application of the requirements of this part to the designated company based on the nature, scope, size, scale, concentration, interconnectedness, mix of the activities of the designated company or any other risk-related factor that the Board determines is appropriate.

■ 8. In § 249.3, add definitions for ''Board'', ''Board-regulated institution'', and ''State member bank'' in alphabetical order, to read as follows:

§ 249.3 Definitions.

* * * * *

Board means the Board of Governors of the Federal Reserve System.

Board-regulated institution means a state member bank, covered depository institution holding company, or covered nonbank company.

* * * * *

State member bank means a state bank that is a member of the Federal Reserve System.

* * * * *

■ 9. In § 249.22, revise paragraph (b)(3) to read as follows:

§ 249.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(3) For eligible HQLA held in a legal entity that is a U.S. consolidated subsidiary of a Board-regulated institution:

(i) If the U.S. consolidated subsidiary is subject to a minimum liquidity standard under this part, 12 CFR part 50, or 12 CFR part 329, the Board-regulated institution may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of net cash outflows of the U.S. consolidated subsidiary calculated by the U.S. consolidated subsidiary for its own minimum liquidity standard under this part, 12 CFR part 50, or 12 CFR part 329; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier Board-regulated institution during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223);

(ii) If the U.S. consolidated subsidiary is not subject to a minimum liquidity standard under this part, or 12 CFR part 50, or 12 CFR part 329, the Board-regulated institution may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of the net cash outflows of the U.S. consolidated subsidiary as of the 30th calendar day

after the calculation date, as calculated by the Board-regulated institution for the Board-regulated institution's minimum liquidity standard under this part; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier Board-regulated institution during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223); and

* * * * *

■ 10. In § 249.40, revise paragraph (b)(1) to read as follows:

§ 249.40 Liquidity coverage shortfall: Supervisory framework.

* * * * *

(b) *Liquidity plan.* (1) For the period during which a Board-regulated institution must calculate a liquidity coverage ratio on the last business day of each applicable calendar month under subparts F or G of this part, if the Board-regulated institution's liquidity coverage ratio is below the minimum requirement in § 249.10 for any calculation date that is the last business day of the applicable calendar month, or if the Board has determined that the Board-regulated institution is otherwise materially noncompliant with the requirements of this part, the Board-regulated institution must promptly consult with the Board to determine whether the Board-regulated institution must provide to the Board a plan for achieving compliance with the minimum liquidity requirement in § 249.10 and all other requirements of this part.

* * * * *

■ 11. Add subpart G to read as follows:

Subpart G—Liquidity Coverage Ratio for Certain Bank Holding Companies

Sec.
249.60 Applicability.
249.61 Liquidity coverage ratio.
249.62 High-quality liquid asset amount.
249.63 Total net cash outflow.

§ 249.60 Applicability.

(a) *Scope.* This subpart applies to a covered depository institution holding company domiciled in the United States that has total consolidated assets equal to $50 billion or more, based on the average of the Board-regulated institution's four most recent FR Y–9Cs (or, if a savings and loan holding company is not required to report on the FR Y–9C, based on the average of its estimated total consolidated assets for the most recent four quarters, calculated in accordance with the instructions to the FR Y–9C) and does not meet the applicability criteria set forth in § 249.1(b).

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A through E of this part apply to covered depository institution holding companies that are subject to this subpart.

(c) *Applicability.* Subject to the transition periods set forth in § 249.61:

(1) A Board-regulated institution that meets the threshold for applicability of this subpart under paragraph (a) of this section on September 30, 2014, must comply with the requirements of this subpart beginning on January 1, 2015; and

(2) A Board-regulated institution that first meets the threshold for applicability of this subpart under paragraph (a) of this section after September 30, 2014, must comply with the requirements of this subpart beginning on the first day of the first quarter after which it meets the threshold set forth in paragraph (a).

§ 249.61 Liquidity coverage ratio.

(a) *Calculation of liquidity coverage ratio.* A Board-regulated institution subject to this subpart must calculate and maintain a liquidity coverage ratio in accordance with § 249.10 and this subpart, provided however, that such Board-regulated institution shall only be required to maintain a liquidity coverage ratio that is equal to or greater than 1.0 on last business day of the applicable calendar month. A Board-regulated institution subject to this subpart must calculate its liquidity coverage ratio as of the same time on each calculation day (elected calculation time). The Board-regulated institution must select this time by written notice to the Board prior to the effective date of this rule. The Board-regulated institution may not thereafter change its elected calculation time without prior written approval from the Board.

(b) *Transitions.* For any Board-regulated institution subject to a minimum liquidity standard under this subpart:

(1) Beginning January 1, 2016, through December 31, 2016, the Board-regulated institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date, in accordance with this subpart, that is equal to or greater than 0.90.

(2) Beginning January 1, 2017 and thereafter, the Board-regulated institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date, in accordance with this subpart, that is equal to or greater than 1.0.

§ 249.62 High-quality liquid asset amount.

A covered depository institution holding company subject to this subpart must calculate its HQLA amount in accordance with subpart C of this part.

§ 249.63 Total net cash outflow.

(a) A covered depository institution holding company subject to this subpart must calculate its cash outflows and inflows in accordance with subpart D of this part, provided, however, that as of the calculation date, the total net cash outflow amount of a covered depository institution subject to this subpart equals 70 percent of:

(1) The sum of the outflow amounts calculated under § 249.32(a) through (l); *less:*

(2) The lesser of:

(i) The sum of the inflow amounts under § 249.33(b) through (g); and

(ii) 75 percent of the amount in paragraph (a)(1) of this section as calculated for that calendar day.

(b) [Reserved]

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 12. The authority citation for part 329 is added to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 13. Part 329 is added as set forth at the end of the common preamble.

■ 14. Part 329 is amended by:

■ a. Removing ''[AGENCY]'' and adding ''FDIC'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''12 CFR part 324'' in its place wherever it appears.

■ c. Removing ''A [BANK]'' and adding ''An FDIC-supervised institution'' in its place wherever it appears.

■ d. Removing ''a [BANK]'' and add ''an FDIC-supervised institution'' in its place wherever it appears.

■ e. Removing ''[BANK]'' and adding ''FDIC-supervised institution'' in its place wherever it appears.

■ f. Removing ''[BANK]s'' and adding ''FDIC-supervised institutions'' in its place wherever it appears.

■ g. Removing ''[BANK]'s'' and adding ''FDIC-supervised institution's'' in its place wherever it appears.
■ h. Removing ''[REGULATORY REPORT]'' and adding ''Consolidated Report of Condition and Income'' in its place wherever it appears.
■ i. Removing ''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and adding ''12 CFR 324.5'' in its place wherever it appears.

■ 15. In § 329.1, revise paragraph (b)(1)(iii) to read as follows:

§ 329.1 Purpose and applicability.

* * * * *

(b) * * *

(1) * * *

(iii) It is a depository institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company.

* * * * *

■ 16. In § 329.3, add definitions for ''FDIC'' and ''FDIC-supervised institution'' in alphabetical order, to read as follows:

§ 329.3 Definitions.

* * * * *

FDIC means the Federal Deposit Insurance Corporation.

FDIC-supervised institution means any state nonmember bank or state savings association.

* * * * *

Dated: September 3, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 3rd day of September 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–22520 Filed 10–9–14; 8:45 am]

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Part IV

Federal Maritime Commission

46 CFR Part 515

Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties; Proposed Rule

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 13–05]

RIN 3072–AC44

Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing the licensing, financial responsibility requirements and duties of Ocean Transportation Intermediaries. The proposed rule is intended to adapt to changing industry conditions, improve regulatory effectiveness, improve transparency, streamline processes and reduce regulatory burdens.

DATES: Comments are due on or before December 12, 2014.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Tel.: (202) 523–5800, Email: *OMD@fmc.gov*.

SUPPLEMENTARY INFORMATION:

Submit Comments: Include in the subject line: Docket No. 13–05, Comments on Ocean Transportation Intermediary Regulation Revisions. Non-confidential filings may be submitted in hard copy or as a Microsoft Word or PDF attachment addressed to *secretary@fmc.gov*. Confidential filings must be accompanied by a transmittal letter that identifies the filing as ''confidential'' and describes the nature and extent of the confidential treatment requested. Any comment that contains confidential information must consist of the complete filing and be marked by the filer as ''Confidential-Restricted,'' with the material claimed to be confidential clearly marked on each page. A public version must be submitted with the confidential version if applicable. The Commission will provide confidential treatment to the extent allowed by law for submissions, or parts of submissions, for which the filer requests confidentiality. Questions regarding filing or treatment of confidential responses to this notice should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or email provided in this notice.

Background

In 1998, Congress passed the Ocean Shipping Reform Act (OSRA), Public Law 105–258, 112 Stat. 1902, amending the Shipping Act of 1984 in several respects relating to ocean freight forwarders (OFFs) and non-vessel-operating common carriers (NVOCCs), defining both as ocean transportation intermediaries (OTIs). The Commission thereafter adopted new regulations at 46 CFR Part 515 to implement changes effectuated by OSRA. *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries,* 28 SRR 629–654 (March 8, 1999). (Docket No. 98–28 Final Rule).

On May 21, 2013 the Commission published an Advance Notice of Proposed Rulemaking (ANPR) proposing the first significant modifications to Part 515 in fourteen years. 78 FR 32946, May 31, 2013. The Commission received over eighty comments from the public within the extended comment closing date. Though OTIs submitted the largest number of comments, significant comments were also submitted by associations of OTIs, vessel operating common carriers (VOCCs), groups of VOCCs, individual financial responsibility providers and surety associations. After reviewing the comments and identifying provisions that had drawn strong views from a sizeable number of OTIs and others, the Commission determined to make the following changes in the modifications proposed in the ANPR:

- Drop all proposed financial responsibility increases. ANPR section 515.21. The current required levels will remain unchanged.
- Eliminate new potential qualifications specified for OTIs and their Qualifying Individuals (QIs). ANPR sections 515.2(p), 515.11(a)(1)–(2), (b), (c), (e). Also dropped the proposed shortened deadline for replacing a QI after the QI's death, retirement or resignation. ANPR section 515.20(c). The current 30-day requirement to replace a QI is retained.
- Remove the proposed additional bases specified for revocation or suspension of licenses (ANPR section 515.16) and termination or suspensions of registrations of foreign-based NVOCCs (ANPR section 515.19(g)).
- Delete the proposed tiered claim and claim processing system that would give shippers priority to the proceeds of an OTI's financial responsibility. ANPR section 515.23(c)–(d). The current rules covering claims and claim processing remain unchanged. The requirement in ANPR section 515.21(a)(4), that OTIs restore their financial responsibility to the full required amount within 60 days of a claim being paid against it, is also dropped.
- Eliminate draft requirements on common carriers and marine terminal operators to notify the Commission of their court or other transportation claims against OTIs, as well as the requirement that such notifications would be published on the Commission's Web site. ANPR section 515.23(e)–(f).
- Delete the proposed added documentation requirements for OTIs and agents (ANPR section 515.31(a) and (c)), including a requirement for agency agreements to be in writing (ANPR section 515.31(k)).
- Remove the potential provision establishing a rebuttable presumption that an agent acts on its own behalf if it does not include the name and license or registration number of an OTI on documents the agent issues. ANPR section 515.23(a).
- Drop the proposed new requirements on OTIs to include their license and registration numbers in their advertisements and to require their agents to include their principals' names and addresses in their advertising. ANPR section 515.31(j)(1).
- Remove a new requirement on OTIs and agents not to include false or misleading information in advertisements. ANPR section 515.31(j)(2).
- Remove proposed provision establishing a rebuttable presumption that an entity has performed the services it advertised. ANPR section 515.31(j)(3).
- Delete the term ''Advertisement'' in ANPR section 515.2(a), as a consequence of the elimination of ANPR section 515.31(j).
- Drop fees for renewals of OTI licenses and registrations.
- Drop the proposal for a Certificate of Good Standing to be submitted for renewals.

The Commission determined to drop from this proceeding further consideration of a new NVOCC license category for those operating only in the household goods trade. Features of such a license category would be a lower financial responsibility requirement, tailored standards for such OTIs, and the development of guidelines for such a separate license category. Such a

license category was included as one of a number of recommendations adopted by the Commission with respect to its consideration of the *Final Report for Fact Finding Investigation No. 27, Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades.* Other suggestions deemed beyond the scope of the changes proposed for the Commission's OTI regulations will not be considered for purposes of this NOPR.

The Notice of Proposed Rulemaking

The modifications in this NOPR address changes in industry conditions, streamline internal processes, improve transparency, and remove unwarranted regulatory burdens. The NOPR also reflects the Commission's experience in implementing the current regulations since 1999, and addresses issues and questions that have arisen over time.

The NOPR includes several issues first addressed in the ANPR:

- Carries forward requirements for renewal of licenses and registrations but the frequency is changed to every three years (from 2 years), and provides that renewal forms will be entirely on-line and user-friendly.
- Carries forward the requirement that common carriers verify OTI licenses and registrations, tariff publication and financial responsibility, provided such verifications can be made at a single location on the Commission's Web site.
- Carries forward a new expedited hearing procedure, subject to the following provisions: (1) The procedure will not result in summary revocations, terminations or suspensions; (2) a licensee must be given notice and a hearing for failure to renew; and, (3) appeals to the Commission remain available for adverse decisions.

Significant proposed changes are discussed below.

Subpart A—General

Section 515.2—Definitions

The Commission proposes to remove several definitions that are no longer relevant to the Commission's regulatory activities, including ''ocean freight broker'' (§ 515.2(n)), ''brokerage'' (§ 515.2(d)) and ''small shipment'' (§ 515.2(u)).

In addition, the Commission proposes modifying the definition of ''person'' (§ 515.2(n)). The revised definition not only conforms to the definition of ''person'' in 1 U.S.C. 1, but also specifically includes ''limited liability companies,'' while retaining the current language that entities covered are those ''existing under or authorized by the laws of the United States or of a foreign country.''

The definition of ''principal'' (§ 515.2(o)) is revised to make it more concise and is not intended to change its meaning or scope. This definition has been carried forward over the decades substantially unchanged but always limited in focus to principals of licensed ocean freight forwarders. It was first promulgated pursuant to the Shipping Act, 1916, as amended, and carried forward in regulations implementing the Shipping Act of 1984 and OSRA.

It is significant that the type of principal referred to in this definition is the person or entity to whom a licensed ocean freight forwarder owes a fiduciary duty. In contrast, the use of the word ''principal'' in these regulations is focused upon an OTI's status (whether an NVOCC or a licensed ocean freight forwarder) as the principal with respect to the various types of agents that the OTI may employ to carry on its business.

The absence of a definition for ''principal'' where it refers to an OTI acting as the principal is consistent with the Commission's decision in 1999 not to define the term agent when implementing the OSRA amendments. There the Commission reasoned that defining ''agent'' was unnecessary ''because the term is used . . . to reflect the large body of agency law. The Commission does not want to inappropriately alter that definition, thus limiting or conflicting with the law relied on by the shipping industry in applying these regulations.'' Docket No. 98–28 Final Rule, *supra* at 28 SRR 651. The Commission adheres to its prior view that there is no need to further define the term ''principal'' in such contexts.

The definitions of ''freight forwarding services'' (§ 515.2(h)) and ''non-vessel-operating common carrier services'' (§ 515.2(k)) are also revised to better reflect OTIs' current practices and terminology. For example, ''freight forwarding services'' are revised to include preparation of ''export documents, including required 'electronic export information,' '' rather than being limited to preparation of paper-based export declarations (§ 515.2(h)(2)). OFF and NVOCC services are both revised to include preparation of ocean common carrier and NVOCC bills of lading ''or other shipping documents'' (§ 515.2(h)(5) and § 515.2(k)(4)). The change ensures that the services cover preparation of the documents pursuant to which cargo is transported whether or not they are ''equivalent'' to ocean bills of lading, as provided in the current definition of ''freight forwarding services.'' 46 CFR § 515.2(h)(5).

As indicated above, the ANPR definition of ''advertisement'' in section 515.2(a) is deleted as unnecessary, consistent with the deletion of ANPR section 515.31(j). Proposed section 515.2(a) contains the definition of ''Act or Shipping Act of 1984.'' These alternative references to the Commission's governing statute, as recodified into positive law in 2006, appear throughout Part 515.

The definition of ''registered non-vessel-operating common carrier'' is new. It identifies NVOCCs that are located outside of the United States and opt to register rather than to obtain a license.

The term ''qualifying individual'' is added and defines QI as an individual who meets the Shipping Act's experience and character requirements. The QI must meet those requirements at the time a license is issued and must thereafter maintain the necessary character. The OTI must timely replace the QI, as provided by the Commission's rules, when the designated QI ceases to act as the QI, whether by resignation, retirement or death.

Section 515.3—License; When Required

This section is modified to delete, as unneeded, a requirement that ''separately incorporated branch offices'' must be licensed when they serve as agent of a licensed OTI. All separately incorporated entities that perform OTI services, for which they assume responsibility for the transportation, are covered by the requirements that they be licensed and otherwise comply with the financial responsibility obligations of Part 515. The Commission also deletes the requirement that only licensed intermediaries in the United States may perform OTI services on behalf of ''an unlicensed ocean transportation intermediary'' (i.e., foreign-based NVOCC), substituting in its stead the requirement that ''registered NVOCC[s]'' must use licensed OTIs as agents in the United States with respect to OTI services performed in the United States.

Section 515.4—License; When Not Required

Section 515.4(b)—Branch Offices. The Commission proposes to eliminate the regulatory burden associated with procuring and maintaining additional financial responsibility to cover an OTI's unincorporated branch offices by

deleting the reference to obtaining additional financial responsibility currently set out in section 515.4(b)(ii). A corresponding change is made to section 515.21 by deleting the current text of paragraph 515.21(a)(4). The rule also proposes to delete section 515.4(d), which refers to ocean freight brokers, as it is no longer needed.

Section 515.5—Forms and Fees

Section 515.5(b) is modified to provide that all license applications and registration forms must be filed with the Commission electronically unless a waiver request to file on paper is granted by the Director of the Bureau of Certification and Licensing. Electronic filing anticipates the implementation of on-line filing and processing of all applications and forms.

Section 515.5(c)(1) has been added and requires OTIs to pay applicable fees within ten (10) business days of the time of submission of such applications and forms. As the Commission has developed the ability to receive on-line payments by credit or debit cards via Pay.gov and the Automated Clearing House system, the payment of any applicable fees is simplified and facilitates the OTI's ability to pay within the 10-day window. Failure to make timely payment could cause an application or registration to be rejected.

Section 515.5(c)(2) is added to make it easier for OTI applicants and licensees to quickly find the fees that apply to filings they make, by setting out all fees applicable under Part 515 (e.g., fees for filing of license applications and registrations) in one place. Section 515.5(c)(2) directs OTIs to the substantive sections in Part 515 that give rise to the fees.

Subpart B—Eligibility and Procedure for Licensing; Procedure for Registration

Section 515.11—Basic Requirements for Licensing; Eligibility

The revisions in ANPR section 515.11(a)(1) have been dropped from further consideration, and the paragraph as it appears in the Commission's current regulation will remain unchanged, except for the addition of a sentence clarifying the experience required of a foreign-based NVOCC that elects to become licensed. Such foreign-based NVOCCs must acquire the requisite experience with respect to shipments in the United States oceanborne foreign commerce, though the experience may be acquired in the U.S. or a foreign country. The added sentence reflects the standard that has been applied by the Commission since 1999.

The current content of section 515.11(a)(2) is modified by deleting its content as redundant. The requirements in section 515.21(a) (prohibiting all persons from operating as an OTI without having furnished the required financial responsibility) and § 515.22 (requiring an OTI establish its financial responsibility prior to the date it commences furnishing OTI services) clearly provide that an OTI must first obtain financial responsibility before it performs OTI services.

The new content inserted in section 515.11(a)(2), as proposed, makes it clear that the Commission may consider all information relevant to the determination of whether the applicant has the necessary character to render OTI services. Types of information that may be considered include, but are not limited to: Violations of any shipping laws or statutes relating to the import, export or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged; tax liens; court and administrative judgments and proceedings; non-compliance with immigration status requirements; and denial, revocation, or suspension of a Transportation Worker Identification Credential or of a customs broker's license. The types of information that may be considered with respect to character, set out in NOPR section 515.11(a)(2), reflect the types of information that the Commission's Bureau of Certification and Licensing (BCL) has considered and applied during the 15 years since the current regulations went into effect. This section informs applicants of issues that should be addressed in filing their applications so as not to unnecessarily delay processing of their applications.

The current content of section 515.11(a)(3) is no longer needed. The paragraph is deleted, as it provided for NVOCCs that had tariffs and financial responsibility in place at the time the OSRA licensing requirements went into effect in 1999 to be temporarily grandfathered pending promulgation of regulations.

The existing requirement in section 515.11(b)(2) that all partners must execute an OTI's application is deleted. The current wording of 515.11(b)(3) as to corporations is retained.

Section 515.11(b)(4) is added to identify the positions within the management structure of an LLC that are eligible to be designated as QI. The QI may be an ''officer'' of an LLC if the LLC's operating agreement so provides. The Commission has applied this standard since the current regulations were promulgated in order to adapt to OTIs' frequent election to form their businesses as LLCs.

The Commission considers it desirable to revise section 515.11(e) to mirror the Commission's 1999 clarification that, in order for a foreign-based NVOCC to establish a presence in the United States for purposes of obtaining a license, it ''must set up an unincorporated office that is resident in the United States.'' Docket No. 98–28, *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries (Confirmation of interim final rule and correction),* 28 SRR 667, 668 (FMC 1999).

Section 515.12—Application for License

Section 515.12(a) is revised to clarify instructions on filing a license application, including the payment of fees. The Commission recently issued a direct final rule establishing that notices of application filings shall be made on the Commission's Web site. See, Docket 14–08, *Procedure for Public Notification of Ocean Transportation Intermediary Licensing Activity.* 79 FR 42986, July 24, 2014. The direct final rule similarly provides that Commission notices of license revocations and suspensions, required by section 515.16(b), will be made on the Commission's Web site. As this rule has already become effective, there is no need to further address it in this rulemaking proceeding.

Section 515.12(b) is revised to provide for rejection of applications that are facially incomplete or where the applicant fails to meet the requirements of the Shipping Act or the Commission's regulations. The application fee is returned to the applicant along with a statement of reasons for the rejection.

A new section 515.12(c) establishes a process pursuant to which BCL shall close applications where applicants fail to timely provide information or documents needed for review. The date for submission of such information will be provided by BCL to the applicant. The Commission will apply section 515.12(c) reasonably and flexibly. Once the date has been established for a response by BCL, the applicant should keep BCL fully informed as to the reasons for any response delays in order to avoid closure of its application. Applicants whose applications are closed may reapply at any time.

With the addition of the new content inserted in section 515.5(c), the content of current section 515.12(c) (Investigation) is redesignated as section

515.12(d). Section 515.12(d) is redesignated as 515.12(e) and is revised to require that BCL be promptly advised only of changes in material facts relevant to an application. The Commission's current section 515.12(e) is superseded by the electronic filing requirement in section 515.5(b).

Section 515.14—Issuance, Renewal, and Use of License

Section 515.14(c) is new. The Commission's proposes to change license and registration renewal periods to every three (3) years, rather than two years as proposed in the ANPR. If adopted, OTI licenses will be issued for an initial three year period and renewed every three years thereafter.

Section 515.14(d)(1) is also new and requires licensees to renew their licenses 60 days prior to the renewal date of their license by up-dating an on-line form with any changes or corrections that they find in the information displayed on screen. This paragraph also provides that a new license bear a renewal date on the same day and month as the date on which the license was originally issued, with the renewal day and month remaining the same for successive renewals. The renewal date remains the same regardless of the date a renewal form is submitted or the date a renewed license is issued. This feature provides ongoing certainty to the licensee as to its status.

The proposed renewal process for OTIs is straightforward as their license will be issued with renewal dates by which renewal must be completed. The license renewal requirement is intended to ensure that information essential to the Commission's oversight of OTIs is verified periodically. Renewal will require licensed OTIs to verify on-line their QIs' identification and contact information, changes in business or organization, trade names, tariff publication information, physical address, and electronic contact data. OTIs would only update information that is no longer accurate.

Renewals by licensees will provide the Commission with updated information that the Commission currently requires in sections 515.12(d) and 515.18 (the content of current section 515.18 is located in NOPR section 515.20). At any given time, BCL has 30 to 40 inquiries concerning the identity of a licensee's QI, officers, owners, or business affiliations, notwithstanding the fact that current sections 515.12(d) and 515.18 have long required OTIs to inform the Commission within 30 days of a change.

Furthermore, with respect to four specific categories of information required to be reported under current regulations (change of business address, retirement or resignation of a QI, failure to notify/increase the OTI's surety bond, failure to advise the Commission of operation under a new trade name), subsequent contacts made by Commission staff indicate a failure to timely report averaging 14.6–24.4% for 2012–2013. This experience includes NVOCCs and OFFs, both large and small.

The information required by the Commission in promulgating the current rules is no less necessary today. The NOPR renewal process reflects approximately 15 years of Commission experience and will help ensure that necessary information is kept up to date.

As indicated in § 515.14(d)(3), this renewal process will not trigger a detailed Commission review or consideration of the character and eligibility of existing licensed OTIs, except, as provided in § 515.14(d)(2), when an OTI supplies information that requires a separate review or approval pursuant to section 515.20. Responsive to numerous ANPR comments, the Commission intends that the renewal process will be entirely on-line and user friendly.

In proposing this change, the Commission is mindful that no renewal dates are included on the licenses of the approximately 4,700 OTIs that are currently licensed. Accordingly, a process is needed to allow these OTIs to renew their licenses without unreasonable burden or processing delays that may occur if large numbers of renewal applications are submitted all at once. The Commission seeks comments from the public as to the process they consider would best achieve this goal. For example, would email notification by BCL to each such licensee of the renewal date assigned by BCL enable these OTIs to renew their licenses without confusion?

Section 515.15—Denial of License

The hearing provisions in section 515.15(c) are revised to refer to the new hearing procedures set forth in section 515.17. Such hearings are currently conducted pursuant to the more complex adjudicatory hearing procedures in Part 502 of the Commission's regulations.

Section 515.16—Revocation or Suspension of License

As discussed above with respect to section 515.12(a)(1) (notices of the filing of license applications), section 515.16(b) was revised in Docket No. 14–08, *Procedure for Public Notification of Ocean Transportation Intermediary Licensing Activity.* 79 FR 42986, July 24, 2014, to authorize notices of revocations and suspensions of licenses to be made by publication on the Commission's Web site.

Section 515.17—Hearing Procedures Governing: Denial, Revocation, or Suspension of OTI Licenses

The proposal would streamline appeal procedures for denial of OTI license applications, and for revocation or suspension of OTI licenses. Currently, such appeals are conducted under the Commission's Rules of Practice and Procedure, published at 46 CFR part 502, and provide for full evidentiary hearings, a process that is often lengthy and expensive. Rather than applying a formal full hearing process for such denials, revocations or suspensions, this section provides for a more efficient process for each type of delegated action.

Section 515.17(a) provides that requests for hearing under sections 515.15 (license denials) and 515.16 (license revocations and suspensions) are to be referred to the Commission's General Counsel, who will designate a hearing officer for review and decision. BCL will provide to the hearing officer a copy of the notice given to the applicant or licensee and BCL's materials supporting the notice, upon being advised by the hearing officer that a hearing request has been made. The hearing officer will provide a copy of BCL's material, not otherwise privileged, to the requesting party along with a notice advising the party of its right to submit written argument, affidavits of fact, other information, and documents within 30 days of the date of the notice. BCL will submit its response no later than 20 days after the submission by the requesting party. These records and submissions shall constitute the entire record for decision upon which the hearing officer's decision will be based. The hearing officer's decision is to be issued within 40 days of the record being closed.

After the hearing officer's decision is issued, an OTI may file a petition for Commission review of the hearing officer's decision pursuant to § 501.21(f)(1). The section provides for Commission review of staff actions, such as that of the hearing officer, taken under delegated authority.

Section 515.17(c) has been added to clarify that where a revocation, termination or suspension also involves an enforcement action that, for example, involves the assessment of penalties, formal proceedings before an Administrative Law Judge are still required. The Commission's discovery

rules remain available to licensees in such instances.

Section 515.19—Registration of Foreign-Based Non-Vessel-Operating Common Carriers

Since the ANPR was issued, the Commission revised Part 515, effective July 19, 2013, as a necessary element to its determination in Docket No. 11–22, *Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption,* 78 FR 42886, July 18, 2013. The Commission added a new registration requirement for foreign-based unlicensed NVOCCs, the content of which is largely identical to that contained in ANPR section 515.19. Except as addressed below, the Commission will retain the adopted text of 515.19.

Existing section 515.19(g)(1) informs foreign-based registered NVOCCs of grounds upon which the Commission may base terminations or suspensions of the effectiveness of a registration. Proposed section 515.19(g)(2) provides that a registrant may request a hearing using the same procedures set out in § 515.17 governing hearing requests for OTI licensees.

Section 515.20—Changes in Organization

The content in this section (moved from § 515.18) removes, as unneeded, the provision that specifically requires separately incorporated branch offices to obtain their own licenses. All separately incorporated entities that provide OTI services in their own name are required to be licensed, irrespective of whether they are related to another incorporated OTI.

Section 515.20(c) will continue to provide that OTIs operating as partnerships, corporations or LLCs must submit a report within 30 business days when their QI ceases to serve as a full-time employee of the OTI. New content is added to section 515.20(e) identifying changes to a licensee's organization that must also be reported to the Commission on an ongoing basis, such as changes in business address, criminal conviction or indictment of the licensee, QI or its officers, and changes of 5 percent or more in the common equity ownership or voting securities of the OTI. No fee will be charged for filings pursuant to section 515.20(e).

Subpart C—Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries

Section 515.23—Claims Against an Ocean Transportation Intermediary

Section 515.23(c) has been modified to reflect the Commission's vote to require only financial responsibility providers to report the filing notices of claims to the Commission. Also, the Commission has dropped the ANPR requirement that notices of claims be published on the Commission's Web site. Section 515.23(c) now provides for notices of claims and claim payments to be submitted only to the Commission.

Section 515.25—Filing of Proof of Financial Responsibility

Section 515.25(a)(1) is revised to clarify that an application for a license will become invalid, and approval rescinded, if the required proof of financial responsibility is not filed within 120 days of notification of license approval. The rule provides that applicants whose applications have become invalid may submit a new Form FMC–18, with the required fee, at any time. The section also provides that an NVOCC's registration will not be effective until the registrant has furnished proof of financial responsibility, filed a Form FMC–1, and published a tariff.

Section 515.26—Termination of Financial Responsibility

This section is revised to provide that registrations may be terminated, as well as licenses revoked, without hearing or other proceeding in the event that the required financial responsibility is terminated.

Section 515.27—Proof of Compliance—NVOCC

Section 515.27(a) has been revised to restate the paragraph to make clear that no common carrier shall ''knowingly and willfully'' transport cargo for an NVOCC unless the common carrier has determined that the NVOCC has a license or registration, has published a tariff, and has provided proof of financial responsibility. Section 515.27(b)(2) has been revised to insert the Commission's web address as a location that common carriers can consult to verify an NVOCC's status. The Commission is working to ensure that common carriers can make the required verifications at a single, convenient, location on the Commission's Web site.

Subpart C Appendices

Appendices A through F are removed from their current location between section 515.27 and section 515.31, and moved to the end of Part 515. The Commission believes that moving these forms to the end will make use of Part 515 less cumbersome.

Subpart D—Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission

Section 515.31—General Duties

Section 515.31 has been revised throughout to apply to all OTIs, both licensed and registered. Without such a change, registrants would not be subject to, for example, the section 515.31(f) requirement prohibiting preparation of claims that the registrant has reason to believe are false or fraudulent.

Section 515.31(g) places an obligation on all OTIs to promptly respond to requests for all records and books of accounts made by authorized Commission representatives. In addition, section 515.31(g) now clarifies that OTI principals are responsible for requiring that their agents promptly respond to requests directed to such agents.

As a result of the deletion of ANPR sections 515.31(j) and (k), ANPR section 515.31(l) (prohibiting any entity from advertising or holding out to provide OTI services unless it has a valid OTI license or registration) is redesignated as section 515.31(j). Proposed section 515.31(j) is an outgrowth of the Commission's decision in Docket No. 06–01, *Worldwide Relocations, Inc., et al.—Possible Violations,* 32 SRR 495, 503 (FMC 2012), in which it analyzed factors to be considered when determining whether an entity has held itself out to the general public to provide NVOCC services. In *Worldwide Relocations,* the Commission cited *Common Carriers by Water—Status of Express Companies, Truck Lines and Other Non-Vessel Carriers,* 1 SRR 292, 301 (FMC 1961), in which it found that persons or entities may hold themselves out ''by the establishment and maintenance of tariffs, by advertisement and solicitation, and otherwise.'' The Commission also cited *Activities, Tariff Filing Practices and Carrier Status of Containerships, Inc.,* 6 SRR 483, 489 n. 7 (FMC 1965), noting that the concept of holding out includes, among other things, advertisement and solicitation. Similarly, section 515.31(j) applies to OFFs, as they hold out to perform ocean freight forwarding services via advertising and solicitation.

Section 515.33—Records Required To Be Kept

The introductory paragraph of Section 515.33 is revised to clarify that all OTIs shall maintain records pertaining to their OTI business, and that the records must be maintained in useable form and readily available to the Commission. This records retention requirement applies whether the records are kept in

the United States or in foreign locations. The requirement to keep such records solely in the United States is deleted.

Subpart E—Freight Forwarding Fees and Compensation

Section 515.41—Forwarder and Principal; Fees

The current content of section 515.41(c) (ocean freight forwarders shall not deny equal terms of special contracts to similarly situated shippers) is deleted. The Commission has determined it is no longer needed.

Section 515.42—Forwarder and Carrier; Compensation

Section 515.42(c) is revised to specifically authorize electronic certifications by forwarders to carriers that forwarding services have been provided. Such electronic certifications (e.g., an automated forwarder database) must identify the shipments for which compensation is made and provide for the forwarder's confirmation that the services for which forwarder compensation is to be paid have been provided. This provision will ensure, for example, that the forwarder will confirm that the carrier's list of shipments is correct, and, if not, the forwarder will advise the carrier of shipments that should be added or deleted. Certifications must be retained for a period of 5 years by the common carrier. The Commission anticipates that such electronic certification will facilitate carrier payments through the banking system's automated clearinghouse (ACH) payment network, a lower cost and more convenient procedure for both carrier and forwarder.

Regulatory Flexibility Act—Threshold Analysis and Chairman's Certification of No Significant Economic Impact

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule directly affects all U.S. licensed OTIs, of which there are currently 4,648. The FMC estimates that approximately 97 percent of these OTIs are small entities. Therefore, the Commission has determined that this proposed rule will have an impact on a substantial number of small entities.

However, the Commission has determined that the impact on entities affected by the proposed rule will not be significant. Most of the proposed changes have been found to have either no economic impact or beneficial economic impacts. Concerning the one change with the potential to generate economic disbenefit, i.e., the license renewal requirement, the dollar magnitude of the economic impact has been estimated to be less than one-tenth of one percent of average annual revenue for even the smallest entities.

Accordingly, the Chairman of the Federal Maritime Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Commission invites comment from members of the public who believe the rule will have a significant economic impact on the U.S.-based OTIs.

This rule is not a ''major rule'' under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend 46 CFR Part 515 as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart A—General

■ 2–3. In § 515.1, revise paragraph (b) to read as follows:

§ 515.1 Scope.

* * * * *

(b) Information obtained under this part is used to determine the qualifications of ocean transportation intermediaries and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of an ocean transportation intermediary license or registration. Persons operating without the proper license or registration may be subject to civil penalties not to exceed $9,000 for each such violation, unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $45,000 for each violation; for other violations of the provisions of this part, the civil penalties range from $9,000 to $45,000 for each violation (46 U.S.C. 41107–41109). Each day of a continuing violation shall constitute a separate violation.

■ 4. Revise § 515.2 to read as follows:

§ 515.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* or *Shipping Act* means the Shipping Act of 1984, as amended. 46 U.S.C. 40101–41309.

(b) *Beneficial interest* includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term ''beneficial interest'' shall not include any obligation in favor of an ocean transportation intermediary arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) *Branch office* means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee's designated home office.

(d) *Commission* means the Federal Maritime Commission.

(e) *Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities, and

(ii) Only with respect to those commodities.

(f) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in § 515.2(h).

(g) *Freight forwarding fee* means charges billed by an ocean freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

(1) Ordering cargo to port;

(2) Preparing and/or processing export documents, including the required 'electronic export information';

(3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing common carrier bills of lading or other shipping documents;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) Assisting with clearing shipments in accordance with United States Government export regulations;

(10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(i) *From the United States* means oceanborne export commerce from the United States, its territories, or possessions, to foreign countries.

(j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean transportation intermediary.

(k) *Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:

(1) Purchasing transportation services from a common carrier and offering such services for resale to other persons;

(2) Payment of port-to-port or multimodal transportation charges;

(3) Entering into affreightment agreements with underlying shippers;

(4) Issuing bills of lading or other shipping documents;

(5) Assisting with clearing shipments in accordance with U.S. government regulations;

(6) Arranging for inland transportation and paying for inland freight charges on through transportation movements;

(7) Paying lawful compensation to ocean freight forwarders;

(8) Coordinating the movement of shipments between origin or destination and vessel;

(9) Leasing containers;

(10) Entering into arrangements with origin or destination agents;

(11) Collecting freight monies from shippers and paying common carriers as a shipper on NVOCC's own behalf.

(l) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(m) *Ocean transportation intermediary* (OTI) means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of this part, the term

(1) *Ocean freight forwarder* (OFF) means a person that—

(i) In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) Processes the documentation or performs related activities incident to those shipments; and

(2) *Non-vessel-operating common carrier* (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(n) *Person* means individuals, corporations, companies, including limited liability companies, associations, firms, partnerships, societies and joint stock companies existing under or authorized by the laws of the United States or of a foreign country.

(o) *Principal,* with respect to a licensed ocean freight forwarder employed to facilitate ocean transportation of property, refers to the shipper, consignee, seller or purchaser of such property, and to anyone acting on behalf of such shipper, consignee, seller or purchaser.

(p) *Qualifying individual* (QI) means an individual who meets the experience and character requirements of section 19 of the Shipping Act (46 U.S.C. 40901–40904) and this part.

(q) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensed ocean freight forwarder's usual charges for such services.

(r) *Registered non-vessel-operating common carrier (registered NVOCC)* means an NVOCC whose primary place of business is located outside the United States and who elects not to become licensed as an NVOCC, but to register with the Commission as provided in § 515.19, post a bond or other surety in the required amount, and publish a tariff as required by 46 CFR part 520.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) A non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(u) *Special contract* is a contract for ocean freight forwarding services which provides for a periodic lump sum fee.

(v) *Transportation-related activities* which are covered by the financial responsibility obtained pursuant to this part include, to the extent involved in the foreign commerce of the United States, any activity performed by an ocean transportation intermediary that is necessary or customary in the provision of transportation services to a customer, but are not limited to the following:

(1) For an ocean transportation intermediary operating as an ocean freight forwarder, the freight forwarding services enumerated in § 515.2(h), and

(2) For an ocean transportation intermediary operating as a non-vessel-operating common carrier, the non-vessel-operating common carrier services enumerated in § 515.2(k).

(w) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

■ 5. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. For purposes of this part, a person is considered to be ''in the United States'' if such person is resident in, or incorporated or established under, the laws of the United States. Registered NVOCCs must utilize only licensed ocean transportation intermediaries to provide NVOCC services in the United States. In the United States, only licensed OTIs may act as agents to provide OTI services for registered NVOCCs.

■ 6. Revise § 515.4 to read as follows:

§ 515.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shippers.* Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Agents, employees, or branch offices of a licensed ocean transportation intermediary.* An agent, individual employee, or branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such licensee; however, branch offices must be reported to the Commission in Form FMC–18 or pursuant to § 515.20(e). A licensed ocean transportation intermediary shall be fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee's business.

(c) *Common carriers.* A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs.

(d) *Federal military and civilian household goods.* Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of subpart B of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense, or the General Services Administration.

■ 7. Revise § 515.5 to read as follows:

§ 515.5 Forms and fees.

(a) *Forms.* License Application Form FMC–18 Rev., Application for Renewal of Ocean Transportation Intermediary License Form-___, and Foreign-based Unlicensed NVOCC Registration/ Renewal Form FMC–65, are found at the Commission's Web site *www.fmc.gov* for completion on-line by applicants, licensees, and registrants. Financial responsibility Forms FMC–48, FMC–67, FMC–68, FMC–69 may be obtained from the Commission's Web site at *www.fmc.gov,* from the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's Area Representatives.

(b) *Filing of license applications and registration forms.* All applications and forms are to be filed electronically unless a waiver is granted to file in paper form. A waiver request must be submitted in writing to the Director, Bureau of Certification and Licensing, 800 North Capitol Street NW., Washington, DC 20573, and must demonstrate that electronic filing imposes an undue burden on the applicant or registrant. The director, or a designee, will render a decision on the request and notify the requestor within two (2) business days of receiving the request. If a waiver request is granted, the approval will provide instructions for submitting a paper application or registration. If the waiver request is denied, a statement of reasons for the denial will be provided.

(c) *Fees.* (1) All fees shall be paid by:

(i) Money order, certified, cashier's, or personal check payable to the order of the ''Federal Maritime Commission;''

(ii) Pay.gov;

(iii) The Automated Clearing House system; or

(iv) By other means authorized by the Director of the Commission's Office of Budget and Finance.

(2) Applications or registrations shall be rejected unless the applicable fee and any bank charges assessed against the Commission are received by the Commission within ten (10) business days after submission of the application or registration. In any instance where an application has been processed in whole or in part, the fee will not be refunded.

(3) Fees under this part 515 shall be as follows:

(i) Application for new OTI license as required by § 515.12(a): automated filing $250; paper filing pursuant to waiver $825.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): automated filing $125; paper filing pursuant to waiver $525.

(iii) A copy of the Regulated Persons Index may be purchased for $108 as provided in § 515.34.

■ 8. Amend the heading for subpart B by adding at the end ''and Registration'' to read as follows:

Subpart B—Eligibility and Procedure for Licensing and Registration

■ 9. Revise § 515.11 to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean transportation intermediary license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services. A foreign NVOCC seeking to be licensed under this part must demonstrate that its qualifying individual has a minimum 3 years' experience in ocean transportation intermediary activities, and the necessary character to render ocean transportation intermediary services. The required OTI experience of the QI of a foreign based NVOCC seeking to become licensed under this part (foreign-based licensed NVOCC) may be experience acquired in the U.S. or a foreign country with respect to shipments in the United States oceanborne foreign commerce.

(2) In addition to information provided by the applicant and its references, the Commission may consider all information relevant to determining whether an applicant has the necessary character to render ocean transportation intermediary services, including but not limited to, information regarding: violations of any shipping laws, or statutes relating to the import, export, or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged;

tax liens and other court and administrative judgments and proceedings; compliance with immigration status requirements described in 49 CFR 1572.105; denial, revocation, or suspension of a Transportation Worker Identification Credential under 49 CFR 1572; and the denial, revocation, or suspension of a customs broker's license under 19 CFR Subpart B, section 111. The required OTI experience of the QI of a foreign-based NVOCC seeking to become licensed under this part (foreign-based licensed NVOCC) may be experience acquired in the U.S. or a foreign country with respect to shipments in the United States oceanborne foreign commerce.

(b) *Qualifying individual.* The following individuals must qualify the applicant for a license:

(1) *Sole proprietorship.* The applicant sole proprietor.

(2) *Partnership.* At least one of the active managing partners.

(3) *Corporation.* At least one of the active corporate officers

(4) *Limited liability company.* One of the members or managers, or an individual in an equivalent position in the LLC as expressly set forth in the LLC operating agreement.

(c) *Affiliates of intermediaries.* An independently qualified applicant may be granted a separate license to carry on the business of providing ocean transportation intermediary services even though it is associated with, under common control with, or otherwise related to another ocean transportation intermediary through stock ownership or common directors or officers, if such applicant submits: a separate application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under § 515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, unless both entities are commonly owned or where one directly controls the other.

(d) *Common carrier.* A common carrier or agent thereof which meets the requirements of this part may be licensed as an ocean freight forwarder to dispatch shipments moving on other than such carrier's own bills of lading subject to the provisions of § 515.42(g).

(e) *Foreign-based licensed NVOCC.* A foreign-based NVOCC that elects to obtain a license must establish a presence in the United States by opening an unincorporated office that is resident in the United States and is qualified to do business where it is located.

■ 10. Revise § 515.12 to read as follows:

§ 515.12 Application for license.

(a) *Application and forms.* (1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit electronically (absent a waiver pursuant to § 515.5(b)) a completed application Form FMC–18 Rev. (Application for a License as an Ocean Transportation Intermediary) in accordance with the automated FMC–18 filing system and corresponding instructions. A filing fee shall be paid, as required under § 515.5(c). Notice of filing of each application shall be published on the Commission's Web site *www.fmc.gov* and shall state the name and address of the applicant and the name and address of the QI. If the applicant is a corporation or partnership, the names of the officers or partners thereof may be published. For an LLC, the names of the managers, members or officers, as applicable, may be published.

(2) An individual who is applying for a license as a sole proprietor must complete the following certification:

I, _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 862.

(b) *Rejection.* Any application which appears upon its face to be incomplete or to indicate that the applicant fails to meet the licensing requirements of the Act, or the Commission's regulations, may be rejected and a notice shall be sent to the applicant, together with an explanation of the reasons for rejection, and the filing fee shall be refunded in full. Persons who have had their applications rejected may submit a new Form FMC–18 at any time, together with the required filing fee.

(c) *Failure to provide necessary information and documents.* In the event an applicant fails to provide documents or information necessary to complete processing of its application, notice will be sent to the applicant identifying the necessary information and documents and establishing a date for submission by the applicant. Failure of the applicant to submit the identified materials by the established date will result in the closing of its application without further processing. In the event an application is closed as a result of the applicant's failure to provide information or documents necessary to complete processing, the filing fee will not be returned. Persons who have had their applications closed under this section may reapply at any time by submitting a new application with the required filing fee.

(d) *Investigation.* Each applicant shall be investigated in accordance with § 515.13.

(e) *Changes in fact.* Each applicant shall promptly advise the Commission of any material changes in the facts submitted in the application. Any unreported change may delay the processing and investigation of the application and result in rejection, closing, or denial of the application.

■ 11. In § 515.14, revise the section heading and paragraph (b) and add paragraphs (c) and (d) to read as follows:

§ 515.14 Issuance, renewal, and use of license.

* * * * *

(b) *To whom issued.* The Commission will issue a license only in the name of the applicant, whether the applicant is a sole proprietorship, a partnership, a corporation, or limited liability company. A license issued to a sole proprietor doing business under a trade name shall be in the name of the sole proprietor, indicating the trade name under which the licensee will be conducting business. Only one license shall be issued to any applicant regardless of the number of names under which such applicant may be doing business, and except as otherwise provided in this part, such license is limited exclusively to use by the named licensee and shall not be transferred without prior Commission approval to another person.

(c) Licenses shall be issued for an initial period of three (3) years. Thereafter, licenses will be renewed for sequential three year periods upon successful completion of the renewal process in paragraph (d) of this section.

(d) *License renewal process.* (1) The licensee shall submit electronically to the Director of the Bureau of Certification and Licensing (BCL) a completed Form FMC–___ (Application for Renewal of Ocean Transportation Intermediary License) no later than sixty (60) days prior to the renewal date set forth on its license. Upon successful completion of the renewal process, the Commission shall issue a new license bearing a renewal date three (3) years later on the same day and month on which the license was originally issued. The renewal date will remain the same for subsequent renewals irrespective of the date on which the license renewal is submitted or when the renewed license is issued by the Commission, unless another renewal date is assigned by the Commission.

(2) Where information provided in an OTI's renewal form, Form FMC–____, is changed from that set out in its current Form FMC–18 and requires Commission approval pursuant to § 515.20, the licensee must promptly submit a request for such approval on Form FMC–18 together with the required filing fee. The licensee may continue to operate as an ocean transportation intermediary during the pendency of the Commission's approval process.

(3) Though the foregoing license renewal process is not intended to result in a re-evaluation of a licensee's character, the Commission may review a licensee's character at any time, including at the time of renewal, based upon information received from the licensee or other sources.

■ 12. In § 515.15, revise paragraph (c) to read as follows:

§ 515.15 Denial of license.

* * * * *

(c) Has made any materially false or misleading statement to the Commission in connection with its application; then, a notice of intent to deny the application shall be sent to the applicant stating the reason(s) why the Commission intends to deny the application. The notice of intent to deny the application will provide, in detail, a statement of the facts supporting denial. An applicant may request a hearing on the proposed denial by submitting to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twenty (20) days of the date of the notice, a statement of reasons why the application should not be denied. Such hearing shall be provided pursuant to the procedures contained in § 515.17. Otherwise, the denial of the application will become effective and the applicant shall be so notified.

■ 13. Revise § 515.16 to read as follows:

§ 515.16 Revocation or suspension of license.

(a) *Grounds.* Except for the automatic revocation for termination of proof of financial responsibility under § 515.26, a license may be revoked or suspended after notice and an opportunity for a hearing under the procedures of § 515.17.

The notice of revocation or suspension will provide, in detail, a statement of the facts supporting the action. The licensee may request a hearing on the proposed revocation or suspension by submitting to the Commission's Secretary, within twenty (20) days of the date of the notice, a statement of reasons why the license should not be revoked or suspended. Such hearing shall be provided pursuant to the procedures contained in § 515.17. Otherwise, the action regarding the license will become effective. A license may be revoked or suspended for any of the following reasons:

(1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;

(2) Failure to respond to any lawful order or inquiry by the Commission;

(3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;

(4) A Commission determination that the licensee is not qualified to render intermediary services; or

(5) Failure to honor the licensee's financial obligations to the Commission.

(b) *Notice.* The Commission shall publish on the Commission's Web site *www.fmc.gov* notice of each revocation and suspension.

§ 515.18 [Redesignated as § 515.20].

■ 14. Redesignate § 515.18 as § 515.20.

§ 515.17 [Redesignated as § 515.18].

■ 15. Redesignate § 515.17 as § 515.18.

■ 16. Add new § 515.17 to read as follows:

§ 515.17 Hearing procedures governing denial, revocation, or suspension of OTI license.

(a) *Hearing requests.* All hearing requests under §§ 515.15 and 515.16 shall be submitted to the Commission's Secretary. Such requests shall be referred to the General Counsel to designate a hearing officer for review and decision under the procedures established in this section. Upon receipt of a request for hearing, the hearing officer shall notify BCL, and BCL will provide to the hearing officer a copy of the notice given to the applicant or licensee and a copy of BCL materials supporting the notice. The hearing officer will then issue a notice advising the applicant or, in the case of a revocation or suspension of the license, the licensee of the right to submit information and documents, including affidavits of fact and written argument, in support of an OTI application or continuation of a current OTI license.

(b) *Notice.* The notice shall establish a date no later than thirty (30) days from the date of the notice for submission of all supporting materials by the applicant or licensee. The notice shall also provide that the BCL may submit responsive materials no later than twenty (20) days from the date the applicant or licensee submitted its materials. BCL's notice and materials supporting its notice, the submission of the applicant or licensee, and the responsive submission of BCL shall constitute the entire record upon which the hearing officer's decision shall be based. The hearing officer's decision shall be issued within forty (40) days after the closing of the record.

(c) *Commission-initiated enforcement proceedings.* In proceedings for assessment of civil penalties for violations of the Shipping Act or Commission regulations, a license may be revoked or suspended after notice and an opportunity for hearing under Part 502 (Rules of Practice and Procedure).

■ 17. In § 515.19, add paragraph (g)(2) to read as follows:

§ 515.19 Registration of foreign-based non-vessel-operating common carriers.

(g) * * *

(2) *Hearing procedure.* Registrants may request a hearing for terminations or suspensions of the effectiveness of their registrations following the same procedures set forth in § 515.17 (governing hearing requests for denials, revocations and suspensions of licenses).

* * * * *

■ 18. Revise newly redesignated § 515.20 to read as follows:

§ 515.20 Changes in organization.

(a) *Licenses.* The following changes in an existing licensee's organization require prior approval of the Commission, and application for such status change or license transfer shall be made on Form FMC–18, filed with the Commission's Bureau of Certification and Licensing, and accompanied by the fee required under § 515.5(c):

(1) Transfer of a corporate license to another person;

(2) Change in ownership of a sole proprietorship;

(3) Any change in the business structure of a licensee from or to a sole proprietorship, partnership, limited liability company, or corporation, whether or not such change involves a change in ownership;

(4) Any change in a licensee's name; or

(5) Change in the identity or status of the designated QI, except as described in paragraphs (b) and (c) of this section.

(b) *Operation after death of sole proprietor.* In the event that the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may continue operation of such proprietorship solely with respect to shipments for which the

deceased sole proprietor had undertaken to act as an ocean transportation intermediary pursuant to the existing license, if the death is reported within 30 days to the Commission and to all principals and shippers for whom services on such shipments are to be rendered. The acceptance or solicitation of any other shipments is expressly prohibited until a new license has been issued. Applications for a new license by the executor, administrator, heir(s), or assign(s) shall be made on Form FMC–18, and shall be accompanied by the fee required under § 515.5(c).

(c) *Operation after retirement, resignation, or death of QI.* When a partnership, LLC, or corporation has been licensed on the basis of the qualifications of one or more of the partners, members, managers or officers thereof, and the QI no longer serves as a full-time employee with the OTI or, is no longer responsible for the licensee's OTI activities, the licensee shall report such change to the Commission within thirty (30) business days. Within the same 30-day period, the licensee shall furnish to the Commission the name(s) and detailed intermediary experience of any other active partner(s), member(s), manager(s) or officer(s) who may qualify the licensee. Such QI(s) must meet the applicable requirements set forth in § 515.11(a) through (c). The licensee may continue to operate as an ocean transportation intermediary while the Commission investigates the qualifications of the newly designated partner, member, manager, or officer.

(d) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such acquisition, including any change in ownership, within 30 days after such change occurs by submitting an amended Form FMC–18. No application fee is required when reporting this change.

(e) *Other changes.* Other changes in material fact of a licensee shall be reported within thirty (30) days of such changes, in writing by mail or email (*bcl@fmc.gov*) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Material changes include, but are not limited to: changes in business address; any criminal indictment or conviction of a licensee, QI, or officer; any voluntary or involuntary bankruptcy filed by or naming a licensee, QI, or officer; changes of five (5) percent or more of the common equity ownership or voting securities of the OTI; or, the addition or reduction of one or more partners of a licensed partnership, one or more members or managers of a Limited Liability Company, or one or more branch offices. No fee shall be charged for reporting such changes.

Subpart C—Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries

■ 19. In § 515.21, revise paragraphs (a)(1) through (3), remove paragraph (a)(4), and revise paragraph (b) to read as follows:

§ 515.21 Financial responsibility requirements.

(a) * * *

(1) Any person operating in the United States as an ocean freight forwarder as defined in § 515.2(m)(1) shall furnish evidence of financial responsibility in the amount of $50,000.

(2) Any person operating in the United States as an NVOCC as defined in § 515.2(m)(2) shall furnish evidence of financial responsibility in the amount of $75,000.

(3) Any registered NVOCC, as defined in § 515.2(r), shall furnish evidence of financial responsibility in the amount of $150,000. Such registered NVOCC shall be strictly responsible for the acts and omissions of its employees and agents, wherever they are located.

(b) *Group financial responsibility.* When a group or association of ocean transportation intermediaries accepts liability for an ocean transportation intermediary's financial responsibility for such ocean transportation intermediary's transportation-related activities under the Act, the group or association of ocean transportation intermediaries shall file a group bond form, insurance form or guaranty form, clearly identifying each ocean transportation intermediary covered, before a covered ocean transportation intermediary may provide ocean transportation intermediary services. In such cases, a group or association must establish financial responsibility in an amount equal to the lesser of the amount required by paragraph (a) of this section for each member, or $3,000,000 in aggregate. A group or association of ocean transportation intermediaries may also file an optional bond rider as provided in § 515.25(b).

* * * * *

■ 20. Revise § 515.23 to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

(a) *Payments.* Shippers, common carriers, and other affected persons may seek payment from the bond, insurance, or other surety maintained by an ocean transportation intermediary for damages arising out of its ocean transportation-related activities. The Commission may also seek payment of civil penalties assessed under section 13 of the Shipping Act (46 U.S.C. 41107–41109).

(b) *Payment pursuant to a claim.* (1) If a person does not file a complaint with the Commission pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), but otherwise seeks to pursue a claim against an ocean transportation intermediary bond, insurance, or other surety for damages arising from its transportation-related activities, it shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment for damages obtained. When a claimant seeks payment under this section, it simultaneously shall notify both the financial responsibility provider and the ocean transportation intermediary of the claim by mail or courier service. The bond, insurance, or other surety may be available to pay such claim if:

(i) The ocean transportation intermediary consents to payment, subject to review by the financial responsibility provider; or

(ii) The ocean transportation intermediary fails to respond within forty-five (45) days from the date of the notice of the claim to address the validity of the claim, and the financial responsibility provider deems the claim valid.

(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for reparations ordered by the Commission or damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean transportation intermediary, ordinarily within thirty (30) days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises from the ocean transportation intermediary's transportation-related activities.

(c) *Notices of court and other claims against OTIs by financial responsibility providers.* (1) As provided in each financial responsibility instrument between an OTI and its financial responsibility provider(s), the issuing financial responsibility provider shall submit a notice to the Commission of

each claim, court action, or court judgment against the financial responsibility and each claim paid (including the amount) by the provider.

(2) Notices described in paragraph (1) of this section shall be promptly submitted in writing by mail or email (*bcl@fmc.gov*) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.

(3) Notices required by this section shall include the name of the claimant, name of the court and case number assigned, and the name and license number of the OTI involved. Such notices may include or attach other information relevant to the claim.

(d) *FMC not a depository.* The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparation.

(e) *Optional bond riders.* The Federal Maritime Commission shall not serve as a depository or distributor to third parties of funds payable pursuant to optional bond riders described in § 515.25(b).

■ 21. Revise § 515.25 to read as follows:

§ 515.25 Filing of proof of financial responsibility.

(a) *Filing of proof of financial responsibility*—(1) *Licenses.* Upon notification by the Commission that an applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Certification and Licensing, proof of financial responsibility in the form and amount prescribed in § 515.21. No license will be issued until the Commission is in receipt of valid proof of financial responsibility from the applicant. If, within 120 days of notification of approval for licensing by the Commission, the applicant does not file proof that its financial responsibility is in effect, the application will be invalid. Applicants whose applications have become invalid may submit a new Form FMC–18, together with the required filing fee, at any time.

(2) *Registrations.* A registration shall not become effective until the applicant has furnished proof of financial responsibility pursuant to § 515.21, has submitted a Form FMC–1, and its published tariff becomes effective pursuant to 46 CFR part 520.

(b) *Optional bond rider.* Any NVOCC as defined in § 515.2(m)(2), in addition to a bond meeting the requirements of § 515.21(a)(2) or (3), may obtain and file with the Commission proof of an optional bond rider, as provided in appendix E or appendix F of this part.

■ 22. Revise § 515.26 to read as follows:

§ 515.26 Termination of financial responsibility.

No license or registration shall remain in effect unless valid proof of a financial responsibility instrument is maintained on file with the Commission. Upon receipt of notice of termination of such financial responsibility, the Commission shall notify the concerned licensee, registrant, or registrant's legal agent in the United States, by mail, courier, or other method reasonably calculated to provide actual notice, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license or terminate the registration as of the termination date of the financial responsibility instrument, unless the licensee or registrant shall have submitted valid replacement proof of financial responsibility before such termination date. Replacement financial responsibility must bear an effective date no later than the termination date of the expiring financial responsibility instrument.

■ 23. In § 515.27, revise the section heading and paragraphs (a) through (c) to read as follows:

§ 515.27 Proof of compliance—NVOCC.

(a) No common carrier shall knowingly and willfully transport cargo for the account of an NVOCC unless the carrier has determined that the NVOCC has a license or registration, a tariff, and financial responsibility as required by sections 8 (46 U.S.C. 40501—40503) and 19 (46 U.S.C. 40901- 40904) of the Shipping Act and this part.

(b) A common carrier can obtain proof of an NVOCC's compliance with the OTI licensing, registration, tariff and financial responsibility requirements by:

(1) Consulting the Commission's Web site *www.fmc.gov* as provided in paragraph (d) of this section, to verify that the NVOCC has complied with the OTI licensing, registration, tariff, and financial responsibility requirements; or

(2) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff.

(c) A common carrier that has employed the procedure prescribed in paragraph (b)(1) of this section shall be deemed to have met its obligations under section 10(b)(11) of the Act (46 U.S.C. 41104(11)), unless the common carrier knew that such NVOCC was not in compliance with the OTI licensing, registration, tariff, and financial responsibility requirements.

* * * * *

Appendices A through F to Subpart C [Removed]

■ 24. Remove appendices A through F to subpart C.

Subpart D—Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission

■ 25. Revise § 515.31 to read as follows:

§ 515.31 General duties.

(a) *Licensees and registrants; names and numbers.* Each licensee and registrant shall carry on its business only under the name in which it was licensed or registered and only under its license or registration number as assigned by the Commission. When the licensee's or registrant's name appears on shipping documents, its Commission license or registration number shall also be included.

(b) *Stationery and billing forms.* The name and license or registration number of each OTI shall be permanently imprinted on the licensee's or registrant's office stationery and billing forms.

(c) *Use of license or registration by others; prohibition.* No OTI shall permit its name, license, license number, registration, or registration number to be used by any person who is not an employee or an agent of the OTI. An entity that also provides OTI services in its own name and not on behalf of a licensed or registered OTI must be separately licensed under this part and must provide proof of its own financial responsibility and publish a tariff, if applicable. A branch office of an OTI may use the license of the OTI, provided that the address of the branch office has been reported to the Commission in Form FMC–18 or pursuant to § 515.20(e).

(d) *Arrangements with ocean transportation intermediaries whose licenses have been revoked.* Unless prior written approval from the Commission has been obtained, no OTI shall, directly or indirectly:

(1) Agree to perform ocean transportation intermediary services on shipments as an associate, correspondent, officer, employee, agent, or sub-agent of any person whose license has been revoked or suspended pursuant to § 515.16, or registration terminated or suspended pursuant to § 515.19(g);

(2) Assist in the furtherance of any ocean transportation intermediary business of an OTI whose license has been revoked;

(3) Share forwarding fees or freight compensation with any such person; or

(4) Permit any such person, directly or indirectly, to participate, through ownership or otherwise, in the control or direction of the ocean transportation intermediary business of the licensee or registrant.

(e) *False or fraudulent claims, false information.* No OTI shall prepare or file or assist in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning an ocean transportation intermediary transaction which it has reason to believe is false or fraudulent, nor shall any such OTI knowingly impart to a principal, shipper, common carrier or other person, false information relative to any ocean transportation intermediary transaction.

(f) *Errors and omissions of the principal or shipper.* An OTI who has reason to believe that its principal or shipper has not, with respect to a shipment to be handled by such OTI, complied with the laws of the United States, or has made any error or misrepresentation in, or omission from, any export declaration, bill of lading, affidavit, or other document which the principal or shipper executes in connection with such shipment, shall advise its principal or shipper promptly of the suspected noncompliance, error, misrepresentation or omission, and shall decline to participate in any transaction involving such document until the matter is properly and lawfully resolved.

(g) *Response to requests of Commission.* Upon the request of any authorized representative of the Commission, an OTI shall make available promptly for inspection or reproduction all records and books of account in connection with its ocean transportation intermediary business, and shall respond promptly to any lawful inquiries by such representative. All OTIs are responsible for requiring that, upon the request of any authorized Commission representative, their agents make available all records and books of account relating to ocean transportation intermediary service provided by or for their principals, and respond promptly to any lawful inquiries by such representative.

(h) *Express written authority.* No OTI shall endorse or negotiate any draft, check, or warrant drawn to the order of its OTI principal or shipper without the express written authority of such OTI principal or shipper.

(i) *Accounting to principal or shipper.* An OTI shall account to its principal(s) or shipper(s) for overpayments, adjustments of charges, reductions in rates, insurance refunds, insurance monies received for claims, proceeds of C.O.D. shipments, drafts, letters of credit, and any other sums due such principal(s) or shipper(s).

(j) *Prohibition.* No person may advertise or hold out to provide OTI services unless that person holds a valid OTI license or is registered under this part.

§ 515.32 [Amended]

■ 26. In § 515.32, in paragraph (b), in the first sentence, remove the word ''sales''.

■ 27. In § 515.33, revise the section heading, the introductory text, and paragraph (d) to read as follows:

§ 515.33 Records to be kept.

Each licensed or registered NVOCC and each licensed ocean freight forwarder shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its OTI business. The licensed or registered NVOCC and each licensed freight forwarder may maintain these records in either paper or electronic form, which shall be readily available in usable form to the Commission; the electronically maintained records shall be no less accessible than if they were maintained in paper form. These recordkeeping requirements are independent of the retention requirements of other federal agencies. In addition, each licensed freight forwarder must maintain the following records for a period of five years:

* * * * *

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract between a licensed freight forwarder and a principal, or modification or cancellation thereof.

§ 515.34 [Amended]

■ 28. Amend § 515.34 by removing ''$108'' and adding the phrase ''the fee set forth in § 515.5(c)'' in its place.

Subpart E—Freight Forwarding Fees and Compensation

■ 29. Amend § 515.41 by:

■ a. Removing paragraph (c);

■ b. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and

■ c. Revising newly redesignated paragraph (d).

The revision reads as follows:

§ 515.41 Forwarder and principal; fees.

* * * * *

(d) *In-plant arrangements.* A licensed freight forwarder may place an employee or employees on the premises of its principal as part of the services rendered to such principal, provided:

(1) The in-plant forwarder arrangement is reduced to writing and identifies all services provided by either party (whether or not constituting a freight forwarding service); states the amount of compensation to be received by either party for such services; sets forth all details concerning the procurement, maintenance or sharing of office facilities, personnel, furnishings, equipment and supplies; describes all powers of supervision or oversight of the licensee's employee(s) to be exercised by the principal; and details all procedures for the administration or management of in-plant arrangements between the parties; and

(2) The arrangement is not an artifice for a payment or other unlawful benefit to the principal.

■ 30. In § 515.42, revise paragraphs (a), (b), (c), and (f) to read as follows:

§ 515.42 Forwarder and carrier compensation; fees.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensed freight forwarder's name may appear with the name of the shipper, but the forwarder must be identified as the shipper's agent.

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. When a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certifications for a period of five (5) years.

(c) *Form of certification.* When a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification may be provided electronically by the forwarder or may be placed on one copy of the relevant bill of lading, a summary statement from the forwarder, the forwarder's compensation invoice, or as an endorsement on the carrier's

compensation check. Electronic certification must contain confirmations by the forwarder and the carrier identifying the shipments upon which forwarding compensation may be paid. Each forwarder shall retain evidence in its shipment files that the forwarder, in fact, has performed the required services enumerated on the certification. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No., issued by the Federal Maritime Commission and has performed the following services:

(1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and

(2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

* * * * *

(f) *Compensation; services performed by underlying carrier; exemptions.* No licensed freight forwarder shall charge or collect compensation in the event the underlying common carrier, or its agent, has, at the request of such forwarder, performed any of the forwarding services set forth in § 515.2(h), unless such carrier or agent is also a licensed freight forwarder, or unless no other licensed freight forwarder is willing and able to perform such services.

* * * * *

■ 31. Add appendices A, B, C, D, E, and F to part 515 to read as follows:

Appendix A to Part 515—Ocean Transportation Intermediary (OTI) Bond Form [Form 48]

Form FMC–48

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Bond (Section 19, Shipping Act of 1984 (46 U.S.C. 40901–40904)) _____ [indicate whether NVOCC or Freight Forwarder], as Principal (hereinafter ''Principal''), and _____, as Surety (hereinafter ''Surety'') are held and firmly bound unto the United States of America in the sum of $_____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, Principal operates as an OTI in the waterborne foreign commerce of the United States in accordance with the Shipping Act of 1984, 46 U.S.C. 40101–41309, and, if necessary, has a valid tariff published pursuant to 46 CFR part 515 and 520, and pursuant to section 19 of the Shipping Act (46 U.S.C. 40901–40904), files this bond with the Commission;

Whereas, this bond is written to ensure compliance by the Principal with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR Part 515), this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109); provided, however, that the Surety's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond, insurance policy or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Surety's total obligation hereunder shall not exceed the amount per OTI provided in 46 CFR 515.21 or the amount per group or association of OTIs provided for in 46 CFR 515.21 in aggregate.

Now, Therefore, The condition of this obligation is that the penalty amount of this bond shall be available to pay any judgment or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Principal arising from the Principal's transportation-related activities or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

This bond shall inure to the benefit of any and all persons who have obtained a judgment or a settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Principal arising from its transportation-related activities or order of reparation issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), and to the benefit of the Federal Maritime Commission for any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109). However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty amount of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty amount, regardless of the number of claims or claimants.

This bond is effective the ____ day of _____, _____ and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any event occurring prior to the date when said termination becomes effective.

The Surety consents to be sued directly in respect of any bona fide claim owed by Principal for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of Principal in the event that such legal liability has not been discharged by the Principal or Surety after a claimant has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Principal and/or Surety pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Surety's total obligation hereunder shall not exceed the amount set forth in 46 CFR 515.21, as applicable.

The underwriting Surety will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made against this bond.

Signed and sealed this _____ day of _____, _____.

(Please type name of signer under each signature.)

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Trade Name, If Any

_____
Corporate Principal

_____
State of Incorporation

_____
Trade Name, If Any

_____
Business Address

_____
By

_____
Title

_____
(Affix Corporate Seal)

_____
Corporate Surety

_____
Business Address

_____
By

_____
Title
(Affix Corporate Seal)

Appendix B Part 515—Ocean Transportation Intermediary (OTI) Insurance Form [Form 67]

Form FMC–67

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Insurance

Form Furnished as Evidence of Financial Responsibility Under 46 U.S.C. 40901–40904

This is to certify, that the (Name of Insurance Company), (hereinafter ''Insurer'') of (Home Office Address of Company) has issued to (OTI or Group or Association of OTIs [indicate whether NVOCC(s) or Freight Forwarder(s)]) (hereinafter ''Insured'') of (Address of OTI or Group or Association of OTIs) a policy or policies of insurance for purposes of complying with the provisions of Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901–40904) and the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984 (46 U.S.C. 40101–41309) (Shipping Act).

Whereas, the Insured is or may become an OTI subject to the Shipping Act and the rules and regulations of the Federal Maritime Commission, or is or may become a group or association of OTIs, and desires to establish financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 40901–40904), files with the Commission this Insurance Form as evidence of its financial responsibility and evidence of a financial rating for the Insurer of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such organization's letterhead or designated form, or, in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

Whereas, the Insurance is written to assure compliance by the Insured with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs, this Insurance shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109); provided, however, that Insurer's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the OTI(s) against which a claim or final judgment has been brought and that Insurer's total obligation hereunder shall not exceed the amount per OTI set forth in 46 CFR 515.21 or the amount per group or association of OTIs set forth in 46 CFR 515.21 in aggregate.

Whereas, the Insurer certifies that it has sufficient and acceptable assets located in the United States to cover all liabilities of Insured herein described, this Insurance shall inure to the benefit of any and all persons who have a bona fide claim against the Insured pursuant to 46 CFR 515.23 arising from its transportation-related activities under the Shipping Act, or order of reparation issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), and to the benefit of the Federal Maritime Commission for any penalty assessed against the Insured pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

The Insurer consents to be sued directly in respect of any bona fide claim owed by Insured for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act, of Insured in the event that such legal liability has not been discharged by the Insured or Insurer after a claimant has obtained a final judgment (after appeal, if any) against the Insured from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Insured and/or Insurer pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Insurer is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Insurer's total obligation hereunder shall not exceed the amount per OTI set forth in 46 CFR 515.21 or the amount per group or association of OTIs set forth in 46 CFR 515.21.

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance in the amount per member OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Insured. The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be _____ day of _____, _____, and shall continue in effect until discharged or terminated as herein provided. The Insured or the Insurer may at any time terminate the Insurance by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Insurer shall not be liable for any transportation-related activities under the Shipping Act of the Insured after the expiration of the 30-day period but such termination shall not affect the liability of the Insured and Insurer for such activities occurring prior to the date when said termination becomes effective.

(Name of Agent) _____ domiciled in the United States, with offices located in the United States, at _____ is hereby designated as the Insurer's agent for service of process for the purposes of enforcing the Insurance certified to herein.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

The Insurer will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made against the Insurance.

Signed and sealed this _____ day of _____, _____.

_____
Signature of Official signing on behalf of Insurer

_____
Type Name and Title of signer

This Insurance Form has been filed with the Federal Maritime Commission.

Appendix C to Part 515—Ocean Transportation Intermediary (OTI) Guaranty Form [Form 68]

Form FMC–68

Federal Maritime Commission

Guaranty in Respect of Ocean Transportation Intermediary (OTI) Liability for Damages, Reparations or Penalties Arising from Transportation-Related Activities Under the Shipping Act of 1984 (46 U.S.C. 40101–41309) (Shipping Act).

1. Whereas _____ (Name of Applicant [indicate whether NVOCC or Freight Forwarder]) (hereinafter ''Applicant'') is or may become an Ocean Transportation Intermediary (''OTI'') subject to the Shipping Act of 1984 (46 U.S.C. 40101–41309) and the rules and regulations of the Federal Maritime Commission (FMC), or is or may become a group or association of OTIs, and desires to establish its financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 41107–41109), then, provided

that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the United States to cover all damages arising from the transportation-related activities of the covered OTI as specified under the Shipping Act.

2. Whereas, this Guaranty is written to ensure compliance by the Applicant with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this guaranty shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Applicant arising from the Applicant's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Applicant pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109); provided, however, that the Guarantor's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond, insurance policy, or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Guarantor's total obligation hereunder shall not exceed the amount per OTI provided for in 46 CFR 515.21, in aggregate.

3. Now, Therefore, The condition of this obligation is that the penalty amount of this Guaranty shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Applicant arising from the Applicant's transportation-related activities or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

4. The undersigned Guarantor hereby consents to be sued directly in respect of any bona fide claim owed by Applicant for damages, reparations or penalties arising from Applicant's transportation-related activities under the Shipping Act, in the event that such legal liability has not been discharged by the Applicant after any such claimant has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the FMC, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant and/or Guarantor pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Guarantor is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of OTIs, Guarantor's obligation extends only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the OTI(s) against which a claim or final judgment has been brought.

5. The Guarantor's liability under this Guaranty in respect to any claimant shall not exceed the amount of the guaranty; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed the amount per OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21 in aggregate.

6. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date thirty (30) days after the date of receipt of mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

7. Guarantor shall not be liable for payments of any of the damages, reparations or penalties hereinbefore described which arise as the result of any transportation-related activities of Applicant after the cancellation of the Guaranty, as herein provided, but such cancellation shall not affect the liability of the Guarantor for the payment of any such damages, reparations or penalties prior to the date such cancellation becomes effective.

8. Guarantor shall pay, subject to the limit of the amount per OTI set forth in 46 CFR 515.21, directly to a claimant any sum or sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant's transportation-related activities, or its legal responsibilities under the Shipping Act and the rules and regulations of the FMC, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

9. The Applicant or Guarantor will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made under the Guaranty.

10. Applicant and Guarantor agree to handle the processing and adjudication of claims by claimants under the Guaranty established herein in the United States, unless by mutual consent of all parties and claimants another country is agreed upon. Guarantor agrees to appoint an agent for service of process in the United States.

11. This Guaranty shall be governed by the laws in the State of ____ to the extent not inconsistent with the rules and regulations of the FMC.

12. This Guaranty is effective the day of ____, _____, _____ 12:01 a.m., standard time at the address of the Guarantor as stated herein and shall continue in force until terminated as herein provided.

13. The Guarantor hereby designates as the Guarantor's legal agent for service of process domiciled in the United States _____, with offices located in the United States at _____, for the purposes of enforcing the Guaranty described herein.

_____
(Place and Date of Execution)

_____
(Type Name of Guarantor)

_____
(Type Address of Guarantor)

_____
By

_____
(Signature and Title)

Appendix D to Part 515—Ocean Transportation Intermediary (OTI) Group Bond Form [FMC–69]

Form FMC–69

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Group Supplemental Coverage Bond Form (Shipping Act of 1984 (46 U.S.C. 40101–41309)) (Shipping Act).

_____ [indicate whether NVOCC or Freight Forwarder], as Principal (hereinafter ''Principal''), and _____ as Surety (hereinafter ''Surety'') are held and firmly bound unto the United States of America in the sum of $_____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, (Principal) _____ operates as a group or association of OTIs in the waterborne foreign commerce of the United States and pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40901–40904), files this bond with the Federal Maritime Commission;

Whereas, this group bond is written to ensure compliance by the OTIs, enumerated in Appendix A of this bond, with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR Part 515), this group bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against such OTIs arising from OTI transportation-related activities under the Shipping Act, or order for

reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against one or more OTI members pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109); provided, however, that the Surety's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond, insurance policy or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Surety's total obligation hereunder shall not exceed the amount per OTI provided for in 46 CFR 515.21 or the amount per group or association of OTIs provided for in 46 CFR 515.21 in aggregate.

Now, therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 against the OTIs enumerated in Appendix A of this bond for damages arising from any or all of the identified OTIs' transportation-related activities under the Shipping Act (46 U.S.C. 40101–41309), or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109), that are not covered by the identified OTIs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This group bond shall inure to the benefit of any and all persons who have obtained a judgment or made a settlement pursuant to a claim under 46 CFR 515.23 for damages against any or all of the OTIs identified in Appendix A not covered by said OTIs' insurance policy(ies), guaranty(ies) or surety bond(s) arising from said OTIs' transportation-related activities under the Shipping Act, or order for reparation issued pursuant to section 11 of the Shipping Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against said OTIs pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109). However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The Surety consents to be sued directly in respect of any bona fide claim owed by any or all of the OTIs identified in Appendix A for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of the OTIs in the event that such legal liability has not been discharged by the OTIs or Surety after a claimant has obtained a final judgment (after appeal, if any) against the OTIs from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the OTI(s) and/or Surety pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant(s).

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed the amount per member OTI set forth in 46 CFR 515.21, identified in Appendix A, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the number of OTIs, claims or claimants.

This bond is effective the ____ day of _____, _____, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the OTIs identified in Appendix A as covered by the Principal after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities occurring prior to the date when said termination becomes effective.

The Principal or financial responsibility provider will promptly notify the underwriting Surety in writing and the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC, 20573, by mail or email (*bcl@fmc.gov*), of any additions, deletions or changes to the OTIs enumerated in Appendix A. In the event of additions to Appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to Appendix A, termination of coverage for such OTI(s) shall become effective 30 days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the OTI(s) deleted from Appendix A that occur after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities of said OTI(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made against this group bond.

Signed and sealed this ____ day of _____, _____,

(Please type name of signer under each signature).

_____

Individual Principal or Partner

_____

Business Address

_____

Individual Principal or Partner

_____

Business Address

_____

Individual Principal or Partner

_____

Business Address

_____

Trade Name, if Any

_____

Corporate Principal

_____

Place of Incorporation

_____

Trade Name, if Any

_____

Business Address (Affix Corporate Seal)

_____

By

_____

Title

_____

Principal's Agent for Service of Process (Required if Principal is not a U.S. Corporation)

_____

Agent's Address

_____

Corporate Surety

_____

Business Address (Affix Corporate Seal)

_____

By

_____

Title

_____

Appendix E to Part 515—Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC–48) [FORM 48A]

FMC–48A, OMB No. 3072–0018, (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility [Optional Rider to Form FMC–48]

RIDER

The undersigned _____, as Principal and _____, as Surety do hereby agree that the existing Bond No. _____ to the United States of America and filed with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that $_____ (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China (''MOC'') or its authorized competent communications department of the people's government of the province, autonomous

region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. The total amount of coverage available under this Bond and all of its riders, available pursuant to the terms of section 1(a.) of this rider, equals $_____. The total amount of aggregate coverage equals or exceeds $125,000.

d. This Rider is effective the _____ day of _____, 20____, and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this day of _____, 20____,

[Principal],

By: _____

[Surety],

By: _____

Appendix F to Part 515—Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC–69]

FMC–69A, OMB No. 3072–0018 (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC–69]

RIDER

The undersigned _____, as Principal and _____, as Surety do hereby agree that the existing Bond No. _____ to the United States of America and filed with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that $ _____ (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to any NVOCC enumerated in an Appendix to this Rider to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China (''MOC'') or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond or affect its availability. The Surety shall indicate that $50,000 is available to pay such fines and penalties for each NVOCC listed on appendix A to this Rider wishing to exercise this option.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. This Rider is effective the _____ day of _____, 20____ and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this _____ day of _____, 20____.

[Principal],

By: _____

[Surety],

By: _____

Privacy Act and Paperwork Reduction Act Notice

The collection of this information is authorized generally by Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901–40904). This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Copies of this form will be maintained until the corresponding license has been revoked.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001 or email: *secretary@fmc.gov.*

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–24003 Filed 10–9–14; 8:45 am]

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